

# **BY-LAW NO. 1**

*Business Corporations Act (Ontario)*

**A by-law relating generally to the regulation of the business and affairs of**

**DYE & DURHAM LIMITED**  
**(“Corporation”)**

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## **SECTION I GENERAL**

### **1.1 Interpretation**

Unless otherwise defined, expressions used in this by-law shall have the same meanings as corresponding expressions in the *Business Corporations Act* (Ontario) (the “Act”).

### **1.2 Corporate Seal**

The directors may, but need not, adopt a corporate seal, and may change a corporate seal that is adopted.

### **1.3 Financial Year**

The financial year of the Corporation shall end on such date in each year as shall be determined from time to time by resolution of directors.

### **1.4 Effective Date**

This by-law shall come into force when made by the directors in accordance with the Act.

### **1.5 Repeal**

All previous by-laws of the Corporation are repealed as of the coming into force of this by-law. Such repeal shall not affect the validity of any act done or right, privilege, obligation or liability acquired or incurred under, or the validity of any contract or agreement made pursuant to, or the validity of any articles or predecessor charter documents of the Corporation obtained pursuant to, any such by-laws prior to its repeal. All officers and persons acting under any by-law so repealed shall continue to act as if appointed under the provisions of this by-law and all resolutions of the shareholders or the board or a committee of the board with continuing effect passed under any repealed by-law shall continue in full force and effect except to the extent inconsistent with this by-law and until amended or repealed.

### **1.6 Banking Arrangements**

The banking business of the Corporation, or any part thereof, including, without limitation, the borrowing of money and the giving of security therefor, shall be transacted with such banks, trust companies or other bodies corporate or organizations as may from time to time be designated by or under the authority of the board. Such banking business or any part thereof shall be transacted under such agreements, instructions and delegations of powers as the board may from time to time by resolution prescribe or authorize.

## **SECTION II DIRECTORS**

### **2.1 Quorum**

A quorum for the transaction of business at any meeting of directors shall be a majority of the number of directors or such greater number of directors as the directors may from time to time determine, subject to the provisions of the Act.

### **2.2 Election and Term**

The election of directors shall take place at each annual meeting of shareholders. A director not elected for an expressly stated term shall cease to hold office at the close of the first annual meeting following election or appointment. If an election of directors is not held at the proper time, the incumbent directors shall continue in office until their successors are elected.

### **2.3 Calling of Meetings**

Subject to the Act, meetings of the board shall be held from time to time on such day and at such time and at such place as the board may determine and the secretary, when directed by the board, the chairperson of the board (if any), the chief executive officer, a vice-president who is a director or any two directors shall convene a meeting of the board.

### **2.4 Notice of Meetings**

Unless notice is waived in accordance with the Act, notice of the time and place of each meeting of directors must be given to each director by telephone or by e-mail not less than 48 hours' before the time of the meeting, including, for greater certainty, the day on which the notice is given, provided that the first meeting immediately following a meeting of shareholders at which directors are elected may be held without notice if a quorum is present. A notice of a meeting of directors need not specify the purpose of or the business to be transacted at the meeting except where the Act requires such purpose or business to be specified.

### **2.5 Meeting by Telephone or Electronic Facility**

A meeting of directors or of a committee of directors may be held by means of a telephonic, electronic or other communication facility that permits all persons participating in the meeting to communicate adequately with each other, and a director participating in a meeting by such means is deemed to (a) consent to such meeting format and (b) be present at that meeting.

### **2.6 Chairperson**

The chairperson of any meeting of directors shall be the chairperson, or in his or her absence the lead independent director, or in his or her absence, the chief executive officer if a director, or in his or her absence or if the chief executive officer is not a director, a director chosen by the directors at the meeting.

## **2.7 Voting at Meetings**

At meetings of directors, each director shall have one vote and questions shall be decided by a majority of votes; and in the case of an equality of votes, the chairperson of the meeting will not be entitled a second or casting vote.

## **2.8 Committees**

Unless otherwise determined by the directors, subject to the Act, each committee of directors shall have the power to fix its quorum and to regulate its procedures.

# **SECTION III OFFICERS**

## **3.1 General**

The directors may from time to time appoint a chairperson of the board, a chief executive officer, a chief financial officer, one or more vice-presidents, a secretary, a treasurer and such other officers as the directors may determine from time to time.

## **3.2 Chairperson of the Board**

The chairperson of the board, if any, shall be appointed from among the directors, shall, subject to the policies of the board, when present, be chair of the meetings of directors and shareholders and shall have such other powers and duties as the directors may determine from time to time.

## **3.3 Chief Executive Officer**

Unless the directors otherwise determine, the chief executive officer shall be appointed by the directors and shall have general management of the Corporation's business and affairs.

## **3.4 Vice-President**

A vice-president shall have such powers and duties as the president and chief executive officer may determine from time to time.

## **3.5 Secretary**

The secretary shall give required notices to shareholders, directors, auditors and members of committees, act as secretary of meetings of directors and shareholders when present, keep and enter minutes of such meetings, maintain the corporate records of the Corporation, have custody of the corporate seal, if any, and shall have such other powers and duties as the directors or the chief executive officer may determine from time to time.

## **3.6 Other Officers**

Any other officer shall have such powers and duties as chief executive officer may determine from time to time.

### **3.7 Term of Office**

Each officer shall hold office until his or her successor is appointed, provided that the directors may at any time remove any officer from office but such removal shall not affect the rights of such officer under any contract of employment with the Corporation.

## **SECTION IV PROTECTION OF DIRECTORS, OFFICERS AND OTHERS**

### **4.1 Limitation of Liability**

Except as otherwise provided in the Act, no director or officer for the time being of the Corporation shall be liable for the acts, receipts, neglects or defaults of any other director or officer or employee or for joining in any receipt or act for conformity or for any loss, damage or expense happening to the Corporation through the insufficiency or deficiency of title to any property acquired by the Corporation or for or on behalf of the Corporation or for the insufficiency or deficiency of any security in or upon which any of the moneys of or belonging to the Corporation shall be placed out or invested or for any loss or damage arising from the bankruptcy, insolvency or tortious act of any persons, firm or corporation including any person, firm or corporation with whom or which any moneys, securities or effects shall be lodged or deposited for any loss, conversion, misapplication or misappropriation of or any damage resulting from any dealings with any moneys, securities or other assets belonging to the Corporation or for any other loss, damage or misfortune whatever which may happen in the execution of the duties of his respective office or trust or in relation thereto unless the same shall happen by or through his failure to exercise the powers and to discharge the duties of his office honestly, in good faith and in the best interests of the Corporation and in connection therewith to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. The directors for the time being of the Corporation shall not be under any duty or responsibility in respect of any contract, act or transaction whether or not made, done or entered into in the name or on behalf of the Corporation, except such as shall have been submitted to and authorized or approved by the board. If any director or officer of the Corporation shall be employed by or shall perform services for the Corporation otherwise than as a director or officer or shall be a member of a firm or a shareholder, director or officer of a company which is employed by or performs services for the Corporation, the fact of his being a director or officer of the Corporation shall not disentitle such director or officer or such firm or company, as the case may be, from receiving proper remuneration for such services.

### **4.2 Indemnification of directors and officers**

The Corporation shall indemnify any director or officer of the Corporation, any former director or officer of the Corporation or any individual who acts or acted at the Corporation's request as a director or officer, or in a similar capacity, of another entity, and his or her heirs and legal representatives to the full extent permitted by applicable law.

### **4.3 Right of indemnity not exclusive**

The provisions for indemnification contained in the bylaws of the Corporation will not be deemed exclusive of any other rights to which any person seeking indemnification may be

entitled under any agreement, vote of shareholders or directors or otherwise, both as to action in his or her official capacity and as to action in another capacity, and will continue as to a person who has ceased to be a director, officer, employee or agent and will inure to the benefit of that person's heirs and legal representatives.

#### **4.4 Insurance**

The Corporation shall purchase and maintain insurance for the benefit of any person referred to in the preceding section to the extent permitted by the Act.

### **SECTION V SHAREHOLDERS**

#### **5.1 Quorum**

A quorum for the transaction of business at a meeting of shareholders shall be two persons present and entitled to vote at the meeting that hold or represent by proxy not less than 25% of the votes attached to the outstanding shares of the Corporation entitled to vote at the meeting.

#### **5.2 Special Meetings**

The board, the chairperson or lead director of the board (if any) or the chief executive officer shall have the power to call a special meeting of shareholders at any time.

#### **5.3 Votes to Govern**

At any meeting of shareholders every question shall, unless otherwise required by the articles, the by-laws or by law, be determined by a majority of the votes cast on the question. In case of an equality of votes either upon a show of hands or upon a poll, the chairperson of the meeting shall not be entitled to a second or casting vote in addition to the vote or votes to which the chairperson is entitled as a shareholder or proxy nominee.

#### **5.4 Chairperson**

Subject to the charters and policies of the board, the chairperson of the board (if any) or any other director or officer of the corporation, as determined by the board, may act as chairperson of any meeting of shareholders. If no such director or officer is present within 15 minutes from the time fixed for holding the meeting, the persons present and entitled to vote shall choose one of their number to be chairperson.

#### **5.5 Adjournment**

The chairperson at a meeting of shareholders may, with the consent of the meeting, adjourn the meeting from time to time and place to place. Notice of such adjourned meeting will be provided in accordance with the Act.

## **5.6 Postponement**

A meeting of shareholders may be postponed or cancelled by the board at any time prior to the date of the meeting.

## **5.7 Meeting by Telephonic or Electronic Facility**

A meeting of shareholders may be held by telephonic, electronic or other communication facility that permits all persons participating in the meeting to communicate adequately, and a shareholder who, through those means, votes at a meeting or establishes a communications link to a meeting shall be deemed to be present at that meeting.

Any person participating in a meeting of shareholders by electronic means as provided in this section 5.5 and entitled to vote at that meeting may vote, to the extent and in the manner permitted by law, by means of the telephone, electronic or other communication facility that the Corporation has made available for that purpose.

## **5.8 Proxies**

The board may specify in a notice calling a meeting of shareholders a time, preceding the time of such meeting by not more than 48 hours exclusive of non-business days, before which time proxies to be used at such meeting must be deposited. The board may, prior to or following the deadline, waive or extend the proxy cut-off, with or without notice.

## **5.9 Scrutineers**

The chairperson at any meeting of shareholders may appoint one or more persons (who need not be shareholders) to act as scrutineer or scrutineers at the meeting.

## **5.10 Certificates for Shares**

The shares of stock of the Corporation shall be represented by certificates, or shall be uncertificated shares that may be evidenced by a book-entry system (including a non-certificated inventory system) maintained by the registrar of such stock, or a combination of both. To the extent that shares are represented by certificates, such certificates shall be in such form as shall be approved by the directors. The certificates representing shares of stock of each class shall be signed by, or in the name of, the Corporation by the chairperson of the board, the chief executive officer, the chief financial officer, or any director. Any or all such signatures may be facsimiles. Although any director, officer, transfer agent or registrar whose manual or facsimile signature is affixed to such a certificate ceases to be such director, officer, transfer agent or registrar before such certificate has been issued, it may nevertheless be issued by the Corporation with the same effect as if such director, officer, transfer agent or registrar were still such at the date of its issue.

The stock ledger and blank share certificates shall be kept by the secretary or by a transfer agent or by a registrar or by any other officer or agent designated by the directors.

### **5.11 Replacement of Share Certificates**

Where the owner of a share certificate claims that the share certificate has been lost, apparently destroyed or wrongfully taken, the Corporation shall issue or cause to be issued a new certificate in place of the original certificate if the owner (a) so requests before the Corporation has notice that the share certificate has been acquired by a bona fide purchaser; (b) files with the Corporation an indemnity bond (unless not required to do so by the Corporation) sufficient in the Corporation's opinion to protect the Corporation and any transfer agent, registrar or other agent of the Corporation from any loss that it or any of them may suffer by complying with the request to issue a new share certificate; and (c) satisfies any other reasonable requirements imposed from time to time by the Corporation.

## **SECTION VI ADVANCE NOTICE**

### **6.1 Nomination of Directors**

Subject only to the Act, Applicable Securities Laws (as defined below) and the articles of the Corporation, only persons who are nominated in accordance with the following procedures shall be eligible for election as directors of the Corporation. Nominations of persons for election to the board of directors of the Corporation may be made at any annual meeting of shareholders, or at any special meeting of shareholders, if one of the purposes for which the special meeting was called is the election of directors. Such nominations may be made in the following manner:

- (a) by or at the direction of the board of directors of the Corporation, including pursuant to a notice of meeting;
- (b) by or at the direction or request of one or more shareholders pursuant to a proposal submitted to the Corporation in accordance with the provisions of the Act, or a requisition of meeting submitted to the directors in accordance with the provisions of the Act; or
- (c) by any person (a “**nominating shareholder**”) who:
  - (i) at the close of business on the date of the giving of the notice provided for below in this Section VI and on the record date for determining shareholders entitled to vote at such meeting, is a registered holder or beneficial owner of shares that are entitled to be voted at such meeting; and
  - (ii) complies with the notice and other procedures set forth in this Section VI.

### **6.2 Timely Notice**

In addition to any other requirements in this Section VI and under applicable laws, for a nomination to be made by a nominating shareholder, the nominating shareholder must have given timely notice thereof in proper written form to the corporate secretary of the Corporation at the principal executive offices of the Corporation.

### **6.3 Manner of Timely Notice**

To be timely, a nominating shareholder's notice to the corporate secretary of the Corporation must be made:

- (a) in the case of an annual meeting of shareholders, not less than 30 days prior to the date of the annual meeting of shareholders; provided, however, that if (i) an annual meeting of shareholders is called for a date that is less than 50 days after the date on which the first public announcement (as defined below) of the date of the annual meeting was made, notice must be received not later than the close of business on the 10<sup>th</sup> day following the date on which the public announcement of the date of the annual meeting is first made by the Corporation, and (ii) the Corporation uses "notice-and-access" (as defined in National Instrument 54-101 – *Communications with Beneficial Owners of Securities of a Reporting Issuer*) to send proxy-related materials to shareholders in connection with an annual meeting, notice must be received not less than 40 days prior to the date of the annual meeting; and
- (b) in the case of a special meeting (which is not also an annual meeting) of shareholders called for the purpose of electing directors (whether or not called for other purposes), not later than the close of business on the 15<sup>th</sup> day following the day on which the public announcement of the date of the special meeting of shareholders is first made by the Corporation. The adjournment or postponement of a meeting of shareholders or the announcement thereof shall commence a new time period for the giving of a nominating shareholder's notice as described above.

### **6.4 Proper Form of Timely Notice**

To be in proper written form, a nominating shareholder's notice to the corporate secretary of the Corporation must set forth:

- (a) as to each person whom the nominating shareholder proposes to nominate for election as a director:
  - (i) the name, age, business address and residential address of that person;
  - (ii) the principal occupation or employment of that person;
  - (iii) whether the nominee is a resident Canadian within the meaning of the Act;
- (b) the class or series and number of shares in the capital of the Corporation which are controlled or which are owned beneficially or of record by the person as of the record date for the meeting of shareholders (if such date shall then have been made publicly available and shall have occurred) and as of the date of such notice;
- (c) any relationships, agreements or arrangements, including financial, compensation and indemnity related relationships, agreements or arrangements, between the person or any of its affiliates and the nominating shareholder, any person acting

jointly or in concert with the nominating shareholder or any of their respective affiliates;

- (d) any other information relating to the person that would be required to be disclosed in a dissident's proxy circular in connection with solicitations of proxies for election of directors pursuant to the Act and Applicable Securities Laws; and
- (e) as to the nominating shareholder proposing a nomination and giving the notice:
  - (i) the name and residential or registered address of the nominating shareholder,
  - (ii) the class or series and number of shares in the capital of the Corporation which are controlled or which are owned beneficially or of record by the nominating shareholder as of the record date for the meeting of shareholders (if such date shall then have been made publicly available and shall have occurred) and as of the date of such notice;
  - (iii) any derivatives or other economic or voting interests in the Corporation and any hedges implemented with respect to the nominating shareholders' interests in the Corporation;
  - (iv) any proxy, contract, arrangement, understanding or relationship pursuant to which the nominating shareholder has a right to vote any shares of the Corporation;
  - (v) whether the nominating shareholder intends to deliver a proxy circular and form of proxy to any shareholders of the Corporation in connection with the election of directors; and
  - (vi) any other information relating to the nominating shareholder that would be required to be made in a dissident's proxy circular in connection with solicitations of proxies for election of directors pursuant to the Act and Applicable Securities Laws.

The Corporation may require any proposed nominee to furnish such other information as may reasonably be required by the Corporation to determine the independence, or lack thereof, of such proposed nominee pursuant to applicable securities laws and provided that such disclosure request does not go beyond that required of management nominees for election as directors of the Corporation. Reference to "nominating shareholder" in this Section 6.4 shall be deemed to refer to each shareholder that nominates a person for election as director in the case of a nomination proposal where more than one shareholder is involved in making such nomination proposal. All information provided in a nominating shareholder's notice will be made publicly available to shareholders of the Corporation.

## **6.5 Determination of Eligibility**

No person shall be eligible for election as a director of the Corporation unless nominated in accordance with the provisions of this Section VI; provided, however, that nothing in this

Section VI shall be deemed to preclude discussion by a shareholder (as distinct from the nomination of directors) at a meeting of shareholders of any matter in respect of which it would have been entitled to submit a proposal pursuant to the provisions of the Act. The chair of the meeting of shareholders at which an election for directors is held shall have the power and duty to determine whether a nomination was made in accordance with the procedures set forth in the foregoing provisions and, if any proposed nomination is not in compliance with such foregoing provisions, to declare that such defective nomination shall be disregarded.

## **6.6 Terms**

For purposes of this Section VI:

- (a) “**public announcement**” means disclosure in a (i) press release reported in a national news service in Canada, or (ii) a document publicly filed by the Corporation or its transfer agent and registrar under the Corporation’s profile on the System for Electronic Document Analysis and Retrieval at [www.sedar.com](http://www.sedar.com); and
- (b) “**Applicable Securities Laws**” means the applicable securities legislation of each relevant province and territory of Canada, as amended from time to time, the written rules, regulations and forms made or promulgated under any such legislation and the published national instruments, multilateral instruments, policies, bulletins and notices of the securities commission and similar regulatory authorities of each province or territory of Canada.

## **6.7 Delivery of Notice**

Notwithstanding any other provision of the by-laws of the Corporation, notice given to the corporate secretary of the Corporation pursuant to this Section VI may only be given by personal delivery, facsimile transmission or by email (at such email address as may be stipulated from time to time by the corporate secretary of the Corporation for purposes of this notice), and shall be deemed to have been given and made only at the time it is served by personal delivery to the corporate secretary of the Corporation at the address of the principal executive offices of the Corporation, email (at the address as aforesaid) or sent by facsimile transmission (provided that receipt of confirmation of such transmission has been received); provided that if such delivery or electronic communication is made on a day which is a not a business day or later than 5:00 p.m. (Toronto time) on a day which is a business day, then such delivery or electronic communication shall be deemed to have been made on the subsequent day that is a business day.

## **6.8 Waiver**

Notwithstanding the foregoing, the board of directors of the Corporation may, in its sole discretion, waive any requirement in this Section VI.

## **SECTION VII DIVIDENDS**

### **7.1 Declaration of Dividends**

Subject to the Act, the directors may from time to time declare dividends payable to the shareholders according to their respective rights and interests in the Corporation.

### **7.2 Wire Transfers or Cheques**

A dividend payable in money shall be paid, at the Corporation's option, by (a) wire transfer, or (b) cheque to the order of each registered holder of shares of the class or series in respect of which it has been declared, and (i) sent, if by wire transfer, to such registered holder as per the wire instructions provided by such holder in the Corporation's securities register, or (ii) mailed by prepaid ordinary mail, if by cheque, to such registered holder at the address of such holder in the Corporation's securities register, unless such holder otherwise directs. In the case of joint holders, the wire transfer or cheque shall, unless such joint holders otherwise direct, be made payable to the order of all of such joint holders and transferred to them as per the wire instructions, or mailed to them at their address, in the Corporation's securities register. The issuance of the wire transfer or the mailing of such cheque as aforesaid, unless the same is not paid on due presentation, shall satisfy and discharge the liability for the dividend to the extent of the sum represented thereby plus the amount of any tax which the Corporation is required to and does withhold.

### **7.3 Non-Receipt of Wire Transfers or Cheques**

In the event of non-receipt of any dividend wire transfer or cheque by the person to whom it is sent as aforesaid, the Corporation shall issue to such person a wire transfer or a cheque for a like amount on such terms as to indemnity, reimbursement of expenses and evidence of non-receipt and of title as the directors may from time to time prescribe, whether generally or in any particular case.

### **7.4 Unclaimed Dividends**

To the extent permitted by applicable law, any dividends unclaimed after a period of six years from the date on which the same has been declared to be payable shall be forfeited and shall revert to the Corporation.

## **SECTION VIII EXECUTION OF INSTRUMENTS**

### **8.1 Execution of Instruments**

Contracts, deeds, mortgages, hypothecs, charges, conveyances, transfers, assignments or other documents or instruments in writing requiring the signature of the Corporation may be signed by any one director or officer of the Corporation, and all contracts, documents or instruments in writing so signed shall be binding upon the Corporation without any further authorization or formality. The directors are authorized from time to time by resolution to appoint any one or more officers or other persons on behalf of the Corporation either to sign contracts, documents or

instruments in writing generally or to sign specific contracts, documents or instruments in writing.

## **SECTION IX NOTICE**

### **9.1 General**

A notice mailed to a shareholder, director, auditor or member of a committee shall be deemed to have been received at the time it would be delivered in the ordinary course of mail unless there are reasonable grounds for believing that the shareholder or director did not receive the notice or the document at that time or at all.

### **9.2 Electronic Delivery**

The Corporation may satisfy the requirement to send any notice or document referred to in Section 9.1 by creating and providing an electronic document in compliance with the Act and the regulations thereunder.

### **9.3 Computation of Time**

Except as otherwise provided, in computing the date when notice must be given under any provision of the articles or the by-laws requiring a specified number of days' notice of any meeting or other event, the date of giving the notice shall be excluded and the date of the meeting or other event shall be included.

### **9.4 Omissions and Errors**

Accidental omission to give any notice to any shareholder, director, auditor or member of a committee or non-receipt of any notice or any error in a notice not affecting the substance thereof shall not invalidate any action taken at any meeting held pursuant to such notice.

## **SECTION X FORUM SELECTION**

### **10.1 Forum of Adjudication of Certain Disputes**

Unless the Corporation consents in writing to the selection of an alternative forum, the Superior Court of Justice of the Province of Ontario, Canada and the appellate Courts therefrom (or, failing such court, any other “court” (as defined in the Act) having jurisdiction and the appellate Courts therefrom), shall, to the fullest extent permitted by law, be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Corporation; (ii) any action or proceeding asserting a claim of breach of a fiduciary duty owed by any director, officer, or other employee of the Corporation to the Corporation; (iii) any action or proceeding asserting a claim arising pursuant to any provision of the Act or the articles or the by-laws of the Corporation (as either may be amended from time to time); or (iv) any action or proceeding asserting a claim otherwise related to the “affairs” (as defined in the Act) of the Corporation. If any action or proceeding the subject matter of which is within the scope of the preceding sentence is filed in a Court other than a Court located within the Province of Ontario (a “**Foreign Action**”) in the

