

CLIENT ALERT

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COVID-19 BUSINESS ALERT – ELECTRONIC CORPORATE FILINGS AND VIRTUAL SHAREHOLDER MEETINGS FOR ONTARIO CORPORATIONS

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On May 12, 2020, Bill 190 (the “**Bill**”) received royal assent, providing temporary and necessary relief to Ontario businesses to permit corporations to conduct virtual meetings, (regardless of inconsistent provisions in corporate by-laws); to defer certain annual meetings in specified circumstances; and to allow the Ministry of Government and Consumer Services (the “**Ministry**”) to accept copies of documents, electronic signatures on documents, and electronic filing of documents.

A. COPIES OF DOCUMENT, ELECTRONIC SIGNATURES, AND ELECTRONIC FILINGS

The Bill enacted the *Alternative Filing Methods for Business Act, 2020* (the “**AFMBA**”) which permits documents that are required or permitted to be filed by in-person delivery or mail under certain “business statutes” to be filed by alternative electronic methods instead. The definition of “business statutes” under the AFMBA is broad and includes the *Business Corporations Act* (Ontario) (the “**OBCA**”), the *Business Names Act*, the *Corporations Act*, the *Co-operative Corporations Act*, the *Corporations Information Act*, the *Extra-Provincial Corporations Act*, and the *Limited Partnerships Act*. These statutes have also been amended to reflect the new changes under the Bill.

In relation to corporations governed under the OBCA or the Corporations Act, companies may now submit notices and other documents to the Ministry electronically. Articles, letters patent, or applications that are otherwise required to be filed in-person or by mail can be filed as copies and deemed originals, including documents with photostatic or electronic signatures. In practice, electronic filings were already available for certain forms through private service providers. However, the amendment under the Bill will allow corporations to directly file forms electronically with the Ministry, thereby reducing the need for using private service providers.

Corporations filing articles, applications, or other forms approved under the new provisions of the OBCA, whether electronically or by another method, are still required to keep properly executed versions of such documents at the registered office in paper or electronic format, including records related to electronic signatures if such are used. Corporations may be “audited” and required at a later date to provide copies of such executed versions, including records related to the use of an electronic signature.

B. VIRTUAL SHAREHOLDER AND DIRECTOR MEETINGS

The Bill provides that despite any provisions in the articles, by-laws or a unanimous shareholder agreement of a corporation that provides otherwise, a shareholder meeting may be held by telephonic or electronic means. A shareholder who, through these means, votes at the meeting or establishes a communications link to the meeting is deemed for the purposes of the OBCA to be present at the meeting. The same applies to directors’ meetings, provided that the method “permits all persons participating in the meeting to communicate with

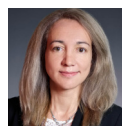
each other simultaneously and instantaneously.”

Shareholder meetings under the OBCA required to be held within the period of the declared emergency can be deferred but no later than the 90th day after the day the Declaration of Emergency is terminated. If the shareholder’s meeting is required to be held within the 30-day period that begins on the day after the day the Declaration of Emergency is terminated, the last day on which the meeting is required to be held is no later than the 120th day after the day the Declaration of Emergency is terminated. The Declaration of Emergency is currently set to expire on June 2, 2020, unless further extended by the Ontario government. The amendments under the *Corporations Act* offers similar extensions and relief provisions to the OBCA.

Under both the OBCA and the *Corporations Act*, if a notice of a meeting of shareholders has been sent for a shareholder meeting to be held on a day that falls within the period of the declared emergency, and, after the notice is sent, the date, time, or place of the meeting is changed in order to hold a virtual meeting, another notice of meeting is not required to be sent. However, the persons entitled to receive the notice must be informed of the change in a manner and within a time that is reasonable in the circumstances.

The above-referenced amendments offer much-needed flexibility during the COVID-19 pandemic and provide a continuation of some of the earlier repealed corporate measures under Ontario Regulation 107/20 pursuant to the *Emergency Management and Civil Protection Act* (Ontario). It is the hope of all Ontario business owners and advisers that these new provisions will cause the government to adopt and allow for greater electronic filings and virtual meetings following the COVID-19 pandemic.

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Please Note: These materials do not constitute legal or medical advice. Government initiatives, announcements, and regulations in response to the COVID-19 situation continue to evolve and change frequently.