

CLIENT ALERT

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ONTARIO GOVERNMENT ISSUES ORDER TO TEMPORARILY EASE SHAREHOLDER AND DIRECTOR MEETING REQUIREMENTS DUE TO THE COVID-19 PANDEMIC

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THE ORDER

Pursuant to the *Emergency Management and Civil Protection Act*, the Ontario Government recently issued an order (the “**Order**”) that provides corporations governed by the *Business Corporations Act* (Ontario) (the “**OBCA**”) and the *Corporations Act* (Ontario) (the “**Corporations Act**”) with temporary relief in connection with **when** and **how** annual shareholder and/or member meetings must take place.

The relief measures offer flexibility to ensure that shareholders and directors have the ability to attend, participate in, and vote at meetings while remaining in compliance with public health recommendations and rules.

THE EMERGENCY PERIOD

The Ontario Government declared an emergency period in connection with the COVID-19 Pandemic on March 17, 2020. For the purposes of this article, the period from March 17, 2020 until the date that the Ontario declaration of the emergency is terminated, is referred to as the “**Emergency Period**”.

TIMING OF SHAREHOLDER MEETINGS

Under the OBCA and the *Corporations Act*, a corporation is required to hold an annual meeting not later than 18 months after the company comes into existence and subsequently not later than 15 months after its last annual meeting.

The Order provides temporary relief in connection with the Emergency Period as set out below.

- If the normal deadline day for the annual meeting falls within the Emergency Period, the Order extends that deadline to the day being 90 days after the Emergency Period.
- If the normal deadline day for the annual meeting falls within the 30-day period immediately after the Emergency Period, the Order extends that deadline to the day being 120 days after the Emergency Period.

VIRTUAL MEETINGS FOR SHAREHOLDERS AND DIRECTORS

Under normal circumstances, shareholders and directors meetings can only be held electronically if the corporation's articles or by-laws allow it. The Order provides temporary relief in that the Order temporarily suspends and eliminates this requirement enabling corporations to hold their meetings electronically during the Emergency Period, regardless of whether such virtual meetings are provided for in the corporation's articles or by-laws.

In contrast, federal corporations under the *Canada Business Corporations Act* and the *Canada Not-for-profit Corporations Act* are expected to comply with all statutory requirements for annual meetings during the COVID-19 outbreak. That being said, Corporations Canada has encouraged corporations to hold virtual meetings to the extent that their by-laws allow.

NOTICE OF SHAREHOLDER MEETINGS

Section 96(1) of the OBCA requires that notice of the time and place of a meeting of shareholders shall be sent, in the case of an offering corporation, not less than 21 days and, in the case of any other corporation, not less than 10 days, but, in either case, not more than 50 days, before the meeting,

- a. to each shareholder entitled to vote at the meeting;
- b. to each director; and
- c. to the auditor of the corporation.

The Order provides that during the Emergency Period, if: (i) a notice of meeting has already been sent for a meeting to be held on a day that falls within the Emergency Period; and (ii) after the notice is sent, the date, time or place of meeting is changed in order to hold the meeting by telephone or electronically, another notice of meeting is **not** required to be sent but the person entitled to receive the notice must be informed of the change in a reasonable manner given the circumstances.

VOTING AT SHAREHOLDER MEETINGS

Section 103(1) of the OBCA provides that, unless the by-laws of the corporation otherwise provide, voting at a meeting of shareholders shall be by show of hands, except where a ballot is demanded by a shareholder or proxy holder entitled to vote at the meeting. Section 103(2) of the OBCA provides that a shareholder or proxy holder may demand a ballot either before or after any vote by show of hands.

During the Emergency Period, when a meeting of shareholders is held virtually (i.e. by telephone or electronically), the Chair may direct voting by alternative means if a show of hands or by a ballot is infeasible.

It is important that corporations intending to hold a virtual annual meeting should ensure their shareholders have the ability to attend, participate in, and vote at the meeting to the same extent that they otherwise would if it were held in person.

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