

The Ontario *Business Corporations Act* (the “**OBCA**”) requires all Ontario corporations to hold a shareholders meeting at least once annually. Additional shareholder meetings are held, as necessary.

Not surprisingly, some corporations forego an annual shareholder meeting and instead, pass written resolutions signed by all shareholders entitled to vote on the agenda matters. This is an alternative acceptable practice that avoids the need for a formal meeting of the shareholders and is a common occurrence in closely held private companies. This practice is not one we recommend where there are multiple shareholdings and diverse shareholder interests. Meetings provide a forum for discussion of diverse interests and opinions.

If your corporation does not hold shareholders meetings or pass unanimous written resolutions at least annually, we recommend you consult with legal counsel to discuss how you can ensure you meet all appropriate OBCA requirements.

The Shareholders Meeting

In principle, shareholders meetings may be straightforward; in practice they follow a mandated and strictly regulated process. Slight mistakes and oversights can potentially cause significant problems.

For example, failure to provide each shareholder who is entitled to vote at a meeting of shareholders with sufficient notice of that meeting, can render all business conducted at that meeting null and void.

Rules are not often strictly enforced when there are a small number of shareholders and everyone gets along. However, we always recommend prudent practice. Even if the relationship among all shareholders is friendly, conducting shareholders meetings in accordance with the prescribed rules protects the corporation against future challenges regarding the validity of a meeting. This can save both time and money.

The Basics of Holding a Shareholder Meeting:

Timing

Most shareholder meetings are held as an annual general meeting (an “**AGM**”) or as a special general meeting, called by the directors of the corporation, to conduct business that is not required to be conducted at an AGM.

A corporation is required to hold an AGM not later than 18 months’ after the corporation comes into existence and subsequently not later than 15 months’ after holding the last preceding annual meeting.

The directors of a corporation may also convene special general meetings of shareholders at any time, provided, as always, that proper notice is given.

Business Conducted

The business transacted at an AGM is restricted to (i) considering the minutes of an earlier meeting; (ii) receiving the financial statements and auditor's report; (iii) the election of directors; and (iv) the appointment of an auditor. If the shareholders want to waive the appointment of an auditor, then all of the shareholders must consent to the waiver.

All other business is considered to be special business, which must be conducted at a special meeting of shareholders. An AGM and special general shareholders meeting are often combined.

Notice

The notice of a meeting of shareholders must be sent to (i) each shareholder entitled to vote at the meeting; (ii) each director; and (iii) the auditor of the corporation.

For privately held companies (non-public), notice must be sent not less than 10 days and not more than 50 days before the meeting.

The notice of the meeting must, at a minimum, include the following items:

- (i) Date, time and place of meeting;
- (ii) Purpose of the meeting;
- (iii) Notice of any special business to be conducted;
- (iv) Nature of special business in sufficient details;
- (v) The text of any special resolution or by-law to be submitted to the meeting; and
- (vi) Any additional details required by the by-laws or corporate statutes of the corporation.

Unless the resolutions are self-explanatory, the notice should include any background information necessary for the shareholder to determine whether he or she should attend the meeting or appoint a proxy holder.

For most corporations, some details regarding shareholders meetings are captured in the corporation's by-laws and articles. However, these documents do not typically provide information on how to conduct the meeting and deal with procedural issues.

Procedural aspects of shareholders meetings are beyond the scope of this document.

We recommend that you have legal counsel help you organize a shareholders meeting. You may also want legal counsel to attend the meeting to provide procedural and other guidance to the chairman, if required.

Conclusion

Shareholders meetings are a cornerstone of corporate governance. It is important to conduct such meetings correctly in order to protect your corporation from unnecessary disputes and potential litigation.

With a bit of planning, foresight and help from HH&S LLP, shareholders meetings can be a constructive corporate process, rather than a stressful endeavour.

About Houser Henry & Syron LLP

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