

Emergency Order Gives Ontario Corporations **Flexibility with Meetings of Shareholders/Members & Directors Amid COVID-19**

By Alexander Levy & Alessandro Perri

As many of our clients continue to practice social distancing amid COVID-19, some have been concerned about hosting annual meetings because:

1. the company's by-laws do not allow or provide for electronic or telephonic meetings; and/or
2. the company is unable to find virtual meeting service providers who have capacity to host a meeting.

Fortunately, the Ontario Government has responded to these concerns by making temporary changes to the rules regarding meetings of corporations incorporated under or governed by the *Corporations Act* (Ontario), the *Ontario Business Corporations Act*, the *Co-operative Corporations Act*, or the *Condominium Act, 1998*.

CHANGES TO LEGISLATION

On March 30, 2020, Ontario passed an [Order](#) under the *Emergency Management and Civil Protection Act*, which made these temporary changes, effective March 17, 2020:

1. Despite what is stated in the corporation's by-laws, letters patent or supplementary letters patent, meetings of shareholders, of members or of directors can be held electronically or by telephone;

- 2.** Annual meetings can be delayed if the last day on which the annual meeting must be held falls within: (i) the period of Ontario's declared emergency; or (ii) the 30-day period after the declared emergency is terminated by the Province.

If situation (i) occurs, the annual meeting may be delayed up to 90 days after the declared emergency ends.

For example, if the corporation's last day to hold its annual meeting is April 30, 2020 and the declared emergency ends on June 1, 2020, then the corporation may delay its annual meeting up to August 29, 2020.

If situation (ii) occurs, the annual meeting may be delayed up to 120 days after the declared emergency ends.

For example, if the declared emergency ends on June 1, 2020, and the corporation's last day to hold its annual meeting is June 30, 2020, then the corporation may delay its annual meeting up to September 28, 2020.

The original Order did not apply to corporations governed by the *Co-operative Corporations Act* (Ontario) or the *Condominium Act, 1998*. But, on April 24, 2020, the Ontario Government amended its Order to make similar changes to these statutes.

HOLDING MEETINGS BY TELEPHONE OR ELECTRONIC MEANS

Although these legislative changes have made holding shareholders meetings more convenient, they do not relieve corporations of other formalities for these meetings.

We have written about this topic previously in [SHAREHOLDERS MEETINGS: THE BASICS](#).

Here are a few important reminders:

- (1) Notice:** Proper notice must be given to all persons entitled to vote at the meeting in the manner prescribed by legislation and the corporation's constating documents. Failure to provide proper notice may invalidate resolutions passed at the meeting.
- (2) Proxies:** Individual shareholders who are participating electronically will be deemed to be present at a meeting. However, it is important to note, all corporate shareholders and shares held by trusts must submit a valid proxy to vote. The validity of proxies are generally determined by the Chair of the meeting. Proxies must be submitted in writing and cannot be expressed orally at the meeting.
- (3) Voting:** While most resolutions in closely held corporations can be decided by a simple voice vote, this is slightly more difficult when holding a meeting by telephonic or electronic means. The Chairman must be able to ascertain reasonably how each shareholder voted on each resolution. Further, any shareholder is entitled to demand votes by poll/ballot. That would require the Chairman to circulate ballots to the participants which they would then complete and submit for tabulation of votes.

- (4) **Technology:** It is imperative that all participants are able to communicate and vote without difficulty. As a practical measure, we recommend a test-run of the chosen technological means in advance of the meeting.
- (5) **Order:** The Chair of the meeting is responsible for running an organized and efficient meeting. This is made more difficult when the meeting is held by electronic means. Rules and procedures for the meeting should be communicated to attendees in the meeting notice package. Further, the Chair should be familiar with or have advisors on hand to guide him/her on procedural issues at the meeting.

For more details about how this order may affect your business, or how we can help you with your shareholders or directors meetings, please contact:

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