

May 1, 2020

## UPDATE: COVID 19: Temporary Relief of Corporate Requirements for Shareholder and Director Meetings

The emergence of the ongoing COVID-19 pandemic and the response from all levels of government has required many businesses to make radical, and rapid, changes to their day-to-day commercial operations. However, as businesses work to adjust to social-distancing and other directives meant to “flatten the curve”, it is also important for companies to consider the impact such measures have on their ability to meet routine corporate obligations and to make significant decisions that might require holding shareholder or director meetings.

This is especially important for companies with older or less flexible constating documents. Typically, newer corporations’ articles and bylaws will allow for meetings to be held by telephone or electronic means so long as all participants can communicate adequately. However, some corporations contain provisions in their constating documents that require in-person attendance at shareholder and/or director meetings. Corporate statutes also mandate the specific time periods for when various annual meetings must be held. For instance, under both provincial and federal legislation, corporations must hold their first annual general meeting not more than 18 months after incorporation. Subsequent annual general meetings must be held at least once in each calendar year and not more than 15 months after the last annual meeting and no later than six months after the end of the corporation’s preceding financial year. While annual matters can generally be dealt with by written

unanimous resolutions, this is may not be practical in many situations and an actual meeting will be required.

As such, a number of provinces and the federal government have been proactive and announced temporary measures or amendments meant to ease corporate compliance with legislative requirements and facilitate corporate decision-making during this ongoing emergency.

Below is a summary of these measures by jurisdiction.

## 1. Federal

Corporations Canada has announced that it still expects corporations under the *Canada Business Corporations Act* (the "**CBCA**") and the *Canada Not-for-profit Corporations Act* (the "**CNCA**") to comply with all statutory requirements for annual meetings during the COVID-19 outbreak. While no further relief was provided, Corporations Canada encouraged virtual meetings to the extent allowed by a corporation's bylaws. Alternatively, CBCA corporations may seek relief from the courts to delay their annual general meeting. Likewise, not-for-profit corporations may apply to Corporations Canada to delay their annual general meeting.

In contrast, Corporations Canada has provided some relief related to annual returns and extended the filing deadline. CBCA corporations and CNCA organizations that were required to file an annual return between February 1 and June 20 of 2020 may now file their annual return by September 30, 2020.

## 2. Alberta

By [ministerial order](#) under Alberta's declared state of public health emergency, Alberta has modified certain provisions of its Business Corporations Act (the "**ABCA**"). The order temporarily suspended the ABCA requirements for in-person meetings, in-person inspection of documents, and the obligation of filing reports and annual returns. The suspensions apply until the earlier of either 60 days after the public health emergency has ended or the date this order is terminated.

### 3. British Columbia

The BC Registrar of Companies has allowed corporations under BC's *Business Corporations Act* (the "**BCBCA**") to postpone their annual general meeting for six months. To request an extension, a corporation must email BC Registries and Online Services with the request alongside its name and incorporation number. The corporation must also inform its shareholders that the annual general meeting has been delayed.

BC has also issued a [ministerial order](#) under its *Emergency Program Act* to further enable virtual meetings for business corporations, cooperative associations, and societies. The order provides that corporate meetings may occur virtually, regardless of any enactment otherwise under the *BCBCA*, the *Cooperative Association Act*, or the *Societies Act* or the entity's own articles, bylaws, or rules. The order adds that if a corporate meeting is fully virtual, it is deemed to take place in BC and those that attend it are deemed present in person. The order applies for the duration of BC's state of emergency.

### 4. Nova Scotia

Nova Scotia, by a [Direction of the Minister under a Declared State of Emergency](#) (the "**Ministerial Direction**"), has prohibited corporations under its *Companies Act*, *Co-operative Associations Act*, and *Societies Act* from holding statutorily required meetings in person if a gathering of more than five people is required. Instead, whether or not it would be otherwise permitted, a virtual meeting, or a hybrid of a virtual and in-person meeting, may be held in place of a required in-person meeting. The virtual meeting will be deemed an in-person meeting held at a place permitted by any applicable enactment or agreement. Any person entitled to be present that attends the meeting virtually is also deemed to be present at the meeting.

Alternatively, the Ministerial Direction also provides that a required in-person meeting may be deferred until 90 days after Nova Scotia is no longer in a declared state of emergency. In the case of a deferral, all persons entitled to be present at the meeting must be appropriately notified.

The Ministerial Direction applies for the duration of Nova Scotia's state of emergency unless otherwise terminated and failure to comply could result in a summary conviction with fines up to \$10,000 for individuals and up to \$100,000 for a corporation per incident.

## 5. Ontario

Ontario has issued an order under its *Emergency Management and Civil Protection Act*, [Ontario Regulation 107/20](#) (the "**Ontario Order**"), to temporarily amend its *Business Corporations Act*, *Corporations Act*, *Co-operative Corporations Act*, and *Condominium Act*. These amendments provide extensions for member, shareholder, and owner meetings of corporations under those Acts and enact further amendments to facilitate virtual meetings.

Under the Ontario Order, such Ontario corporations may reschedule virtual shareholder, member, or owner meetings that were to be held in person while Ontario is in a period of declared emergency without issuing new notices so long as those entitled to notice are informed in a reasonable manner and time.

Ontario corporations required to hold annual shareholder, member, or owner meetings during the emergency period may now hold the meetings up to 90 days after the emergency period ends. Ontario corporations required to hold such meetings within 30 days after termination of the declared emergency may now hold their meetings up to 120 days after the emergency period ends. Corresponding amendments relax the currency requirements for financial information that must be laid before such annual meetings.

The Ontario Order also allows Ontario corporations to hold virtual director, shareholder, member, or owner meetings regardless of any provision in the corporation's articles, bylaws, letters patent or unanimous shareholders' agreements. Directors, shareholders, members, or owners that attend such virtual meetings are deemed present in person for any requirements of the meeting.

Other amendments under the Ontario Order provide more flexibility in conducting polls and voting at such meetings under the Acts.

## 6. Quebec

Quebec has issued a [Ministerial Order](#) that permits any meeting that is to take place in person to be held using any means that provides immediate communication between participants. This allows companies, co-operatives, and partnerships to conduct virtual meetings regardless of their internal rules and regulations.

The Canadian Securities Administrators have also provided guidance specifically for public companies that are conducting annual general meetings of shareholders. While this is outside of the scope of this bulletin, we discussed the guidelines in a previous bulletin: "[CSA Provides Guidance on Conducting Shareholder Meetings During COVID-19 Pandemic](#)".

Should you have any questions related to holding virtual corporate meetings or obtaining an extension for your corporation's annual general meeting, McMillan's Business Law Group would be delighted to assist.

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### [a cautionary note](#)

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