

Ontario Emergency Order Permits Virtual Meetings and Extends Statutory Meeting Timelines under Corporations Act and Business Corporations Act

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While many Ontario corporations' by-laws require shareholder, member and director meetings to take place in person, holding these meetings during the COVID-19 pandemic would be in direct contradiction to public health advice to practice social distancing and avoid large gatherings.

On March 30, 2020, the Ontario Government addressed this concern with an [emergency Order](#) permitting mandatory meetings to occur via electronic means and extending the statutory timeline for meetings under the *Corporations Act* and the *Business Corporations Act*. This Order is retroactive to March 17, 2020, the date the declaration of emergency came into effect under the *Emergency Management and Civil Protection Act*.

Virtual Meetings Permitted

Some corporations' by-laws prohibit meetings between its shareholders, members or directors from being held virtually (i.e. electronically or via telephone). The emergency Order therefore permits meetings to be held virtually even where the corporation's by-laws, letters patent, or supplementary letters prohibit these meetings from being held via electronic means. In particular, the emergency Order permits the following meetings to be held virtually:

- Shareholders' or members' meetings under the *Corporations Act* or *Business Corporations Act*; and
- Directors' meetings under the *Corporations Act* or *Business Corporations Act*.

Statutory Meeting Timelines Extended

In addition, the following timelines for meetings as set out under the *Corporations Act* and *Business Corporations Act* have been extended beyond the period of the declared emergency:

- Annual meetings of the shareholders or members of Insurance Corporations for the election of directors as set out at subsection 159(1) of the *Corporations Act*;
- General annual meetings of shareholders or members under section 293 of the *Corporations Act*;

- Annual meetings of shareholders under section 94 of the *Business Corporations Act*.

For example, under section 293 of the *Corporations Act*, a corporation must hold an annual meeting of its shareholders or members within 18 months of its incorporation, and not more than 15 months after its last annual meeting was held. A 90-day extension is provided under the emergency Order if the last day on which the annual meeting is required to be held falls within the period of the declared emergency. The last day on which the annual meeting is instead required to be held, is 90 days after the emergency is terminated. In addition, if the last day on which the annual meeting is required to be held falls within the 30-day period after the emergency is terminated then a 120-day extension is provided for holding the annual meeting.

No advance approval is required for corporations to access these extensions.

In Our View

Jurisdictions across Canada have taken different approaches to addressing the public health concerns raised by in-person meetings of shareholders, members and directors. Compared to approaches taken by other jurisdictions, we believe the Ontario Government's emergency Order is a welcome and pragmatic response to the realities of the present COVID-19 crisis where holding large meetings is practically infeasible.

The Federal Government, for example, took a relatively unresponsive approach to the realities of the COVID-19 crisis on this issue, instead limiting its response to an educational guidance document: [Annual meetings of federal corporations during the COVID-19 outbreak](#).

For example, where the Ontario Government's emergency Order permits meetings to take place virtually where usually prohibited by a corporation's by-laws, the Federal government limits its response to a guidance document that sets out the steps a corporation can take to amend its by-laws to permit virtual meetings.

Similarly, while the emergency Order extends the timeline for meetings under the applicable statutes, the Federal Government's guidance only provides a delay for not-for-profit corporations. Other federally incorporated businesses will need court approval to delay their own annual general meetings.

Emond Harnden LLP's Not-For-Profit Governance Group will continue to monitor the ongoing changes to both the provincial and federal corporate governance regimes as it becomes available to assist corporations in navigating the ongoing pandemic. For further questions pertaining to governance at the provincial or federal level, please contact [Raquel Chisholm](#) at [613-940-2755](#).