

Ontario amends Emergency Order to provide corporations with additional relief and clarity for delayed and virtual AGMs

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Ontario has amended its March 30, 2020 order (the Original Order)¹ under the Emergency Management and Civil Protection Act to provide additional relief and clarity to corporations subject to the Business Corporations Act (Ontario) (the OBCA). The Original Order temporarily extended the deadlines to hold annual shareholder meetings and allowed corporations to hold virtual shareholder and director meetings, regardless of whether their articles or by-laws provided otherwise. Under the new amendments, corporations subject to the OBCA have been temporarily granted additional flexibility regarding: (i) tabling of financial statements at the annual meeting, (ii) notice requirements for virtual annual meetings, and (iii) voting at virtual director and shareholder meetings.

What you need to know

On April 24, 2020, the Ontario government amended the Original Order by issuing an amending regulation under the Emergency Management and Civil Protection Act. The [amended order](#) (the Amended Order) provides additional relief and clarifies certain issues for OBCA corporations:

- **Financial Statements** : The requirement for a corporation to deliver financial statements at an annual shareholder meeting that are aged less than six months has been temporarily waived. Instead, the financial statements tabled at the annual meeting must be for the period that began immediately after the end of the **corporation's last completed financial year (or the date the corporation came into existence if it has not completed a financial year)** and ended before the annual meeting.
- **Meeting Notice**: If the corporation sent notice for an annual shareholder meeting that fell on a date within the period of the declared emergency, and after the notice is sent, the date, time or place of the meeting is changed **in order to hold the meeting virtually**, a new notice for the virtual meeting does not have to be sent. Rather, the corporation must inform persons entitled to receive notice of the change in a manner and within a timeframe that is reasonable. This change is consistent with the Canadian Securities Administrators' recent guidance that

permits issuers to provide notice by way of press release for any changes to the date, time, location or format of an annual shareholder meeting.

- **Voting**: If a vote by show of hands or ballot is not possible at a virtual meeting, the chair can direct voting by alternate means.

Amendments

- As noted in our [client bulletin dated April 9, 2020](#), the Original Order extended the timelines for corporations to hold their annual shareholder meetings, and provided for directors and shareholders to hold virtual meetings notwithstanding by-laws or articles that state otherwise.

While the Original Order provided for the extension of the time period to hold shareholder meetings, it did not directly address the requirement under Section 154(a) of the OBCA that the financial statements tabled at the annual meeting must be aged less than six months. The Original Order also lacked clarity around meeting notices and voting at virtual meetings. The Amended Order addresses these technical omissions.

Extended meeting dates

Under the Original Order, the extended deadlines for shareholder meetings varied depending on when the meeting was originally supposed to have been held:

- If the meeting was required to be held within the period of the declared emergency, corporations must now hold the meeting within **90 days** of the termination of the state of emergency.
- If the meeting was required to be held within the 30-day period following the termination of the declared emergency, the meeting must be held within **120 days** of the termination of the state of emergency.

All time periods above start running the day after the state of emergency is lifted. These extended timeframes continue to apply in the Amended Order. However, the Amended Order clarifies that the directors of an OBCA corporation may call the annual meeting of shareholders at a time that enables the corporation to comply with the extended meeting **deadlines and that is reasonable in the circumstances**. The addition of “reasonableness” in the Amended Order is putting directors on notice that annual meetings should not be pushed out to the end of the extended timeframes, being 90 or 120 days, but rather should be held as soon as possible within the extended timeframe provided that it is reasonable to do so.

Financial statements

For an annual meeting of shareholders held on a date that is in the period that begins on March 17, 2020, and ends on the 120th day after the day the declared emergency is terminated, the requirement that the directors place before the meeting financial statements for a period ended not more than six months before the meeting has been temporarily relaxed. Instead, the financial statements tabled at the annual meeting must **be for the period that began immediately after the end of the corporation’s last** completed financial year and ended before the annual meeting. If the corporation is newly formed and has not completed a financial year, the tabled financial statements

must be for the period that began the date the corporation came into existence and **ended before the annual meeting**. Practically speaking, since the period of financial reporting can end at any time before the annual meeting, directors can now deliver financial statements that are older than six months at the annual meeting.

Notice of meeting

Notice requirements for annual meetings, including the time period to deliver the notice, determination of eligibility for receipt of the notice and the notice content requirements, are prescribed by the OBCA. The Amended Order provides that if the corporation sent a notice for an annual shareholder meeting that fell on a date within the period of the declared emergency (which began on March 17, 2020), and after the notice has been sent, the date, time or place of the meeting is changed **in order to hold the meeting by electronic or telephonic means**, another notice does not need to be sent. Rather, the corporation must inform persons entitled to receive notice of the change in a manner and within a timeframe that is reasonable. Note that if the directors proceed with an in-person meeting following the end of the declared emergency, a new notice will need to be sent in accordance with the OBCA. This change is consistent with the Canadian Securities Administrators' recent guidance on virtual shareholder meetings for public companies, which allows issuers changing the date, time, location or format of their shareholder meetings in the 2020 proxy season to do so by way of issuing a press release announcing any such changes.

Voting

Pursuant to the OBCA, unless the by-laws provide otherwise, voting at a meeting of shareholders shall be by show of hands, except where a ballot is demanded by a shareholder entitled to vote at the meeting. The Amended Order acknowledges that a ballot or show of hands may not be possible, for example if the meeting is held by conference call. The Amended Order provides that the chair of the meeting may direct **voting by alternate means if a vote by show of hands or ballot is not possible**.

Takeaway

The Ontario government has made changes designed to provide OBCA corporations with additional certainty and flexibility regarding their annual shareholder meetings and director meetings during the declared emergency. Importantly, the amendments temporarily ease the rules around the time period for financial statements delivered at the annual meeting to allow tabling of financial statements that are dated more than six months prior to the meeting date.

BLG has created a [COVID-19 Resource Centre](#) to assist businesses on a variety of topics, including investment management, labour and employment, contractual risks, public disclosure requirements, education and criminal law.

¹ O. Reg 107/20 made under the Emergency Management and Civil Protection Act, Order under subsection 7.1(2) of the Act - Meetings for Corporations

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