

## *Annual Shareholder Meetings in the Time of Coronavirus*

The novel coronavirus, COVID-19, is impacting every aspect of doing business, and annual meetings of shareholders are no exception. Each corporation is required by state corporation law, and usually its own bylaws, to hold an annual meeting of its shareholders to elect the members of its Board of Directors and to conduct such other business as may be properly brought before its shareholders, with most corporations holding these meetings in March through June. This year's meetings face unprecedented challenges however: How do you hold a meeting, when you are under government mandate to not actually meet? Luckily, corporations have options.

### **Virtual Meeting**

*How it works.* For a virtual meeting, or a meeting by remote communications, the Company will host a webcast of the meeting, instead of hosting the meeting in-person.

*Legal requirements.* A virtual meeting is only an option if permitted by the laws of the state of incorporation of the corporation. Most states now permit these types of meeting, but the requirements associated with holding a virtual meeting vary widely and may or may not be practical to achieve. For example, California only permits virtual meetings where every shareholder has consented to that type of meeting, where Oregon will generally permit a virtual meeting so long as there is shareholder verification and effective means of participation. Legal requirements may also be ambiguous or vague, both because of the speed of changes in technology and the fact that until very recent, virtual meetings were a seldom utilized alternative. In general though, all states will require that shareholders be able to participate through being able to hear the meeting and voting. In addition, corporations in highly regulated industries may be subject to additional restrictions by virtue of the regulations to which they are subject.

*Governance requirements.* A corporation's governance documents, for example its bylaws, may or may not specifically address a virtual meeting, and may need to be amended to facilitate a meeting without a physical location. In any event, the Board will likely be required to take action, potentially to approve bylaw amendments, but also to authorize the conduct of the meeting virtually, along with other aspects of conducting a meeting by remote communications.

*Other considerations.* Holding a virtual meeting has the benefit of avoiding the uncertainty of choosing a new meeting date when it remains unclear when in-person meetings will resume. Virtual meetings have been a popular alternative for many publicly traded companies that are subject to governance and

regulatory requirements that increase the obstacles involved with moving a meeting date. Virtual meetings also have burdens though. Because of the technical challenges, especially with respect to shareholder participation, usually an outside vendor must be involved, which creates issues with respect to expense and vendor availability, especially in light of the exponential rise in demand for these types of meeting. A virtual meeting may not be feasible.

### **Adjournment/Postponement**

*How it works.* If COVID-19 prevents holding an in-person meeting on the date scheduled for an annual meeting, another alternative is moving the date. Adjournment, which is commonly used to address a meeting that fails to have sufficient participation to reach a quorum, involves opening the meeting, but then determining to close the meeting until a later rescheduled time. Postponement, on the other hand, involves just providing notice, prior to the meeting, that the meeting is going to be held at a later time.

*Legal Requirements.* In setting an annual shareholder meeting, state corporation law usually identifies specific requirements with respect to when meetings must be held, when notice must be provided and when to set the record date for identifying which shareholders are entitled to vote. Moving the meeting date means re-examining all of these time frames. Notice dates and record dates that may have worked for an original meeting date, may need to be refreshed, depending on how far a meeting is delayed. While state law usually prescribes specific parameters for an adjournment, often allowing use of the same record date or notice for meetings adjourned within a set number of days, there is much less guidance with respect to postponement. Some states do not even include a concept of postponement in their corporation laws. Corporations can likely follow the principles and parameters set out for adjournment, but a certain amount of uncertainty remains.

*Governance requirements.* Most bylaws closely follow state law with respect to notice and record requirements for adjournment (and are similarly silent with respect to postponement). Bylaws or other governance documents will not likely require amendment in an adjournment or postponement situation, but the Board of Directors will likely need to act to reset the meeting date, and to potentially make other adjustments for the record date or other logistical needs.

*Other considerations.* Given the mandates surrounding avoiding public gatherings as well as public health concerns, it currently seems problematic to call a meeting in-person, even if only for purposes of adjournment. Postponement seems the preferable option, even if less statutory guidance is available.

Either postponement or adjournment however fails to eliminate the uncertainty as to what amount of (or how much) delay is necessary to get passed the current public health circumstances.

### **Written Consent**

Generally under state corporation laws, as permitted by applicable governing documents, shareholders, either anonymously or by majority, can act by executing a written consent, instead of holding a meeting. This generally is not available for the purposes of electing directors or being designated as the “annual” shareholder meeting, but it is an alternative to consider in the event that shareholder action is necessary, but other options are not feasible.

### **RECOMMENDATIONS**

COVID-19 is changing the way we engage in business, and the way corporations engage with shareholders. Annual meetings may not go on as usual, but they can go on through the pursuit of various options. The right option is a matter of considering the laws and regulations applicable to that corporation, the corporation’s governing documents, as well as the practical situations influencing that corporation’s particular situation. If we can be of assistance and to discuss various options and specific situations, please feel free to contact any of the Buchalter Corporate Attorneys.



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