

Goodmans^{LLP} Update

Government Grants Ontario Corporations Additional Flexibility For Corporate Meetings During COVID-19 State of Emergency

On March 30, 2020, the Government of Ontario issued an order (the “**Emergency Order**”) that will (i) allow all Ontario corporations to hold meetings of directors, shareholders, and members virtually (i.e., electronically or by telephone), and (ii) extend the timeframe by which Ontario corporations must hold annual shareholder meetings in certain circumstances related to the emergency. The Emergency Order comes on the heels of measures adopted by Canadian securities regulators and stock exchanges to provide public companies with additional flexibility to postpone shareholder meetings and hold them virtually due to concerns arising from the COVID-19 outbreak.

The Emergency Order

On March 17, 2020, the Ontario Government declared a State of Emergency in the Province of Ontario. Subsequently, on March 24, 2020, the Ontario Government ordered the mandatory closure of all non-essential workplaces in Ontario. Municipal, provincial and federal health authorities continue to strongly advocate public health measures, such as social distancing. Against this backdrop, many Ontario corporations are evaluating options to delay their annual meetings and/or hold them virtually.

The Emergency Order temporarily suspends the application of a number of provisions of Ontario’s corporate legislation, and replaces them with more flexible provisions that apply during the State of Emergency. With respect to corporations governed by the *Business Corporations Act* (Ontario) (the “**OBCA**”):

- **Annual Meeting Deadline.** Under the OBCA, a corporation is generally required to hold its annual shareholder meeting within 15 months of its previous annual meeting. The Emergency Order extends that deadline to either (i) the 90th day after the State of Emergency ends, if the regular deadline would occur during the State of Emergency, or (ii) the 120th day after the State of Emergency ends, if the regular deadline would occur within 30 days following the end of the State of Emergency.
- **Conduct of Shareholder Meetings.** Despite anything to the contrary in a corporation’s articles or bylaws, a shareholder meeting may be held by telephonic or electronic means, and shareholders who participate through those means are deemed to be present at the meeting (including for the purpose of establishing quorum).

Similar relief has been granted to not-for-profit corporations and other organizations governed by the *Corporations Act* (Ontario).

In contrast, the guidance to date from Industry Canada maintains that virtual-only shareholder meetings are permitted under the *Canada Business Corporations Act* (CBCA), subject to an issuer’s by-laws and provided that the meeting allows for shareholders to communicate with each other through the digital platform. Court approval is still required in order to delay an annual meeting for CBCA incorporated issuers.

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In March, Canadian securities regulators issued guidance for issuers that decide to change the date, time or location of their annual shareholder meeting, or to hold their meeting electronically (see our March 23 Update, *Canadian Securities Regulators Offer Guidance on Conducting Annual General Meetings During COVID-19 Outbreak*). Subsequently, the Toronto Stock Exchange provided blanket relief allowing listed issuers to delay their annual shareholder meetings until December 31, 2020 (normally, the deadline is six months following an issuer's fiscal year end) (see our March 27 Update, *Canadian Securities Regulators and TSX Issue Temporary Exemptions From Certain Requirements in Response to COVID-19*).

The duration and extent of protective measures to combat the spread of COVID-19 in Ontario remain uncertain. The Emergency Order and the other measures adopted by securities regulators and stock exchanges remove virtually all legal barriers to holding a virtual shareholder meeting in 2020, and a number of service providers in Ontario are offering platforms that permit the orderly and efficient conduct of virtual shareholder meetings.

To discuss options for your 2020 annual shareholder meeting or for further information regarding this Update, please contact any member of our [Corporate Finance and Securities Group](#).

All Updates are available at www.goodmans.ca. This Update is intended to provide general comment only and should not be relied upon as legal advice.

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