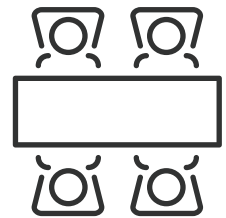


CORPORATE GOVERNANCE

Nonprofit and charitable organizations are adjusting to limitations on the usual methods of gathering to make decisions and meet corporate governance requirements. There are a number of considerations and extensions of the law to be aware of as long as the COVID-19 pandemic continues to influence the operating environment.

Meetings

- Consider whether ongoing business can be conducted by means of unanimous written resolutions instead of meetings.
- If holding an in-person meeting, be mindful of laws that limit the size of gatherings and ensure proper safety precautions are taken. Attendance should be limited to those required. Limit business to what is necessary. Food or drinks should generally not be provided.
- It may be necessary to hold virtual/hybrid meetings, to allow electronic participation, if permitted.
- The requirements with respect to electronic communications during meetings vary by statute.
- Review the organization's articles, bylaws, and other documents to confirm if there are any other requirements that apply, such as a requirement to hold meetings in a specific location or manner and methods of voting. Consider amending the articles or bylaws if needed.
- If proceeding with an electronic meeting, ensure that the circulated meeting materials explain why the meeting is being held virtually and provide clear instructions about the means of voting and asking questions. Consider simplifying the typical formal scripts used for an in-person meeting.
- Consider whether a hybrid meeting (which allows both in-person and electronic attendance) may work better than a fully virtual meeting, especially if there are complex issues to be raised at the meeting or specific voting requirements.



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Legal Considerations Series:

Legal Considerations for Nonprofits of Changes to Work and Workplace Related to COVID-19



CORPORATE GOVERNANCE

Annual Returns

The Canadian government has announced that the deadline for filing annual returns for federally incorporated Not-for-profit Corporations whose anniversary date is between February 1 and July 31 has been extended until September 30, 2020.

The Alberta government ministerial order temporarily suspended obligations for certain entities such as Alberta societies, cooperatives, and nonprofit companies to file annual returns, however, these annual return filing timelines were reinstated as of August 15, 2020.



Are fully virtual meetings permitted?

Entities must generally be authorized by their articles or bylaws to hold fully virtual meetings. There is a specific provision in the Canada Not-for-profit Corporations Act for a federally incorporated Not-for-profit Corporations to hold a meeting entirely by electronic means if their bylaws so state and then it can be permitted as long as all participants can communicate adequately with each other. Note that Corporations Canada has recommended that a hybrid meeting may be more appropriate for federally incorporated Not-for-profit Corporations when their bylaws do not expressly permit virtual meetings or are silent.

The Government of Alberta, by way of an Alberta ministerial order, issued on April 9, 2020, did provide for some flexibility in this regard for certain entities such as Alberta societies, cooperatives, and nonprofit companies, to hold their meetings through remote means such as videoconference, teleconference or other means despite any provision in their articles, bylaws, rules or memorandum. However, since this order lapsed on August 14, 2020 Alberta incorporated organizations now need to review and comply with provisions in their governing documents for meetings and voting requirements.

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CORPORATE GOVERNANCE

Delaying Annual General Meetings (AGMs)

Federally incorporated Not-for-profit Corporations have always had the ability to delay the calling of their AGM when it would be detrimental to call the meeting at the usual time by applying to Corporations Canada. This year, they have an extended deadline for calling their AGM and presenting financial statements. The Government of Canada has extended the time to call a 2020 AGM to the shortest of 21 months after the previous AGM and 12 months after the last financial year-end OR December 31, 2020. There is no need to apply to Corporations Canada for these extensions.

An Alberta ministerial order, issued by the Alberta government on April 9, 2020, did provide for some flexibility in this regard for certain entities such as Alberta societies, cooperatives, and nonprofit companies to suspend their AGM but that flexibility ended after August 14, 2020. The Registrar of Corporations can relieve a nonprofit company incorporated under the Companies Act of AGM timing restrictions; however, an Alberta society is not granted this relief under the Societies Act.

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