

COVID-19 RESOURCE CENTER

Information Bulletin for BC Societies in the time of Covid-19

April 7, 2020

This bulletin contains general information pertaining to societies registered under the *Societies Act* (British Columbia). We encourage directors and officers to reach out for specific legal advice.

Members of the Charities and Not-for-profit section of the Canadian Bar Association have estimated that there are in excess of 10,000 BC societies that hold their annual general meetings (“AGM”) between March and June each year. Due to the current outbreak of the Covid-19 pandemic, many of these in-person members’ meetings will be unable to proceed on their normal schedule. While some of our clients are familiar with holding remote meetings and using electronic means to engage with members, we have created the following summary to provide guidance to societies regarding how they can meet their minimum governance obligations during these unusual times.

Societies are generally required to hold an annual general meeting once in each calendar year. Unless the bylaws of the society require that meeting to be held while the current physical distancing measures are in place, it may be appropriate to postpone in-person meetings where possible. We note, however, that members have a right to be presented with the financial statements within 6 months of the financial year end, and so meetings by electronic means may be appropriate for some organizations.

In all cases, the directors of the organization should first review the bylaws of the society, and in particular those bylaws concerning how to hold members’ meetings. Directors should check whether the bylaws prescribe a specific month during which the AGM must be held, and if there is any limitation in the bylaws on the ability to hold members’ meetings using electronic means or to obtain member attendance by way of proxies submitted electronically or by mail. In this bulletin, when we refer to electronic means, we mean a meeting held by video or tele-conference. There are numerous services that can be used for this purpose, such as Zoom, Skype, Google Hangouts, or an old-fashioned phone-in. All societies may hold meetings by electronic means as long as all of the people in attendance at a meeting can communicate with each other, unless the bylaws prescribe that electronic meetings are not permitted.

The following is an outline of general steps to hold an AGM by electronic means. There may be circumstances unique to your organization, and we encourage clients to reach out for legal advice where necessary and, as noted above, to review the bylaws of your organization.

Step 1: After checking the bylaws to ensure there are no unique rules or prohibitions concerning members meetings for your organization, the directors and officers can compile the meeting details to ensure that they'll be able to hold the meeting as planned, specifically:

- The meeting agenda.
- The minutes of the AGM from the previous year.
- The financial statements and auditor's report (if any). Check the bylaws to determine whether a full audit of the society is required, and in any case reach out early to the society's accountant or other financial services provider to determine the timeline to prepare the financial statements. While many accountants may continue to work remotely during the pandemic, there may be a delay in producing reports. Obtaining a full audit requiring a site visit during the pandemic may not be possible. Societies unable to meet the requirements provided in their bylaws may need to seek legal advice on how they can proceed.
- The directors' or other reports to be presented to the members.
- Details regarding the nomination or election of directors. Ensure that the nomination process and voting requirements for appointing new directors as provided in the bylaws can be complied with.
- Any special resolutions that cannot wait for a later meeting.

Step 2: Once the directors and officers have confirmed that the necessary information can be compiled to present to the members, they may send a notice of meeting. The notice must be sent at least 14 days before the meeting, and not more than 60 days before the meeting, unless the bylaws provide for a shorter notice period. If the meeting is going to proceed by electronic means, directions to the members on how they may participate in the meeting must be included in the notice. Practically speaking, in order to send out meeting login-details for a remote video-conference, the society is likely to need current email contact details for all of the members. If the society typically sends out its notice of meeting by mail or another method, consider whether a phone meeting is the appropriate approach.

If there is any cost to participating in the meeting it should be borne by the society. As always, any special resolutions that are to be considered at the meeting other than ordinary business should also be included in the notice of meeting – the full language of the special resolution should be included in the notice, not just a shortened description.

Step 3: Hold the meeting using electronic means.

We suggest that the meeting be kept as short as possible, and deal with only essential matters. As always, it will be necessary to ensure that the meeting is attended by a quorum of members. The secretary of the meeting will need to have a means of confirming the number of individuals who are remotely attending the meeting in order to monitor quorum.

Likewise, the secretary will need to be able to count the votes of the members in attendance, either by show of hands using a video conference tool, or by voice vote that systematically allows the members to express their vote to be recorded by the secretary. Minutes of the meeting should be kept, and the annual report should be filed following the meeting. At the time of writing, societies are still able to file their annual report with Societies Online during the pandemic.

Special Voting Requirements

We caution that if the bylaws include a requirement that votes be held by secret ballot, the remote meeting will likely need to be supplemented by additional technology that allows a secret ballot to be taken in accordance with the *Societies Act*. If the bylaws of the society provide for this kind of voting, we recommend reaching out for legal advice to ensure that the voting requirements are properly met.

Unanimous Member Consent

Some societies have very few members, and it may be feasible in such circumstances to avoid holding a meeting altogether. Where there are few members, the necessary information may be circulated to the members who may each sign a unanimous members' resolution confirming that the annual requirements for an AGM have been met. As with any AGM, the members should be presented with the AGM minutes from the previous AGM, and the members must receive the financial statements and auditor's report (if any) in order to meet the minimum requirements under the *Societies Act*. In addition, the directors may wish to circulate the directors' report, and a method of voting or approving of the director appointments for the forthcoming year will most likely need to be included in the resolutions, depending on the society's bylaws. Directors should review the bylaws or consult legal counsel to determine if there are additional requirements in respect of their specific organization.

Mere quorum will not be sufficient to pass the necessary consent resolutions; rather, every member of the organization will be required to sign and return the unanimous consent resolutions to the secretary in order to meet the statutory requirements. The meeting will be deemed to have been held on the date the last of the members has signed the consent resolution. Practically speaking, it may be convenient to organize a phone or video conference to discuss issues relevant to the society, but then obtain written consent from each of the members as described above. An additional benefit to passing a consent resolution instead of holding an in-person meeting is that the notice requirements are deemed to have been met, so formal advance notice of the meeting need not be sent.

Societies with a small membership who prefer to use this method should advise their legal counsel of that fact, and the annual resolutions can be drafted accordingly.

Special Note for Charities

A notice has been distributed by the Charities Directorate advising that the Charities Directorate has shut down operations for the time being, including the Charities Directorate call centre as well as all registration and audit activities. The Charities Directorate has also advised that the T3010 filing deadline has been postponed to December 31, 2020 for all charities whose filing deadline falls between March 18, 2020 and December 31, 2020.



Krista Isberg
Associate
250 405 1999
kisberg@farris.com
Bio

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