

### *Virtual or Hybrid Shareholder Meetings During the COVID-19 Pandemic*

May 11, 2020

One of the challenges that companies face during the COVID-19 pandemic is how to comply with corporate law requirements relating to annual general meetings (“AGMs”) in light of government imposed restraints on public gatherings and physical distancing constraints. An option is for a company to hold either a virtual shareholder meeting or a hybrid meeting.

A virtual shareholder meeting is wholly by electronic means. In the normal course, whether a company can hold a virtual meeting is dependent on various factors. Whether a company can hold a virtual meeting depends on both corporate legislation and their articles or bylaws.

Under section 132 of the *Canada Business Corporations Act*, it is possible to hold a virtual shareholder meeting if the bylaws expressly permit it and all participants can communicate with each other.

Section 174 of the British Columbia *Business Corporations Act* (the “BCBCA”), unless the articles provides otherwise, allows for a shareholder to participate by electronic means, and that a shareholder participating is deemed to be present for quorum, provided the shareholders can communicate with each other. Unless however, the BCBCA requires that shareholder meetings be held at a “location” in British Columbia, or outside British Columbia, in certain circumstances under section 164. One alternative to hold a virtual AGM in BC, was to seek a court order under section 186. However, on April 21, 2020, [an order](#) was passed under the *Emergency Program Act* in BC to allow for electronic attendance at corporate meetings, provided that all shareholders can communicate with each other, the meeting need not be held at a physical location, the notice of meeting need not specify a location, and the meeting is deemed to be held in BC. The order applies until the state of emergency in BC ends, and as such, it is not necessary to obtain a court order for a virtual meeting during the COVID-19 pandemic in BC.

However, virtual meetings should be used with some caution. In [Glacier Media Inc. 2020 BCSC 591](#) the court commented on the practical limitations of a virtual meeting namely, that it may not provide the same level of participation, particularly for those shareholders who are not computer literate or who do not own a computer.

On [March 20, 2020 the Canadian Securities Administrators](#) (“CSA”) provided guidance on conducting AGMs during the outbreak. The CSA suggested that for companies involved in proxy contests, holding special meetings for mergers and acquisition transactions, or obtaining securityholder approval under Multilateral Instrument 61-101 *Protection of Minority Securityholders in Special Transactions*, those companies should contact their principal regulator to discuss what steps are appropriate in the circumstances. Similarly, companies should consider whether a virtual AGM is appropriate in those circumstances.

In addition to the concerns noted above, there are practical difficulties in holding virtual meetings in Canada given the limited number of services that have the resources available to hold meetings that are compliant with legislation.

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Despite the concerns associated with virtual AGMs, proxy advisors Institutional Shareholder Services and Glass Lewis have advised that they will avoid negative recommendations for companies who hold a virtual only meeting, provided that the reasons for doing so are clearly disclosed, during the COVID-19 pandemic.

A hybrid meeting is where a company has a physical location as well as offering an electronic element. A hybrid meeting allows for participation by virtual means, including voting, unlike broadcasting an in-person meeting on a webcast, which is more common. In BC, prior to the recent order allowing for virtual AGMs many companies were planning hybrid AGMs, as they avoided the need for a court order. For companies that are holding hybrid meetings, some companies have advised in their circular that shareholders are discouraged from attending in person and anyone wishing to attend, is required to notify the company in advance so that the company can ensure it will be possible to maintain physical distancing requirements and will not exceed restrictions on mass gatherings.

The CSA stated in its guidance of March 20, 2020, that if a company plans to conduct a virtual AGM or hybrid AGM, the company is to notify its securityholders, the parties involved in the proxy infrastructure (transfer agents and intermediaries), in a timely manner and clearly disclose directions relating to logistical details including how securityholders can remotely access, participate in and vote at such an AGM. If the company has not yet sent its proxy related materials, it must disclose the details in the proxy materials. If the materials have already been sent, the company does not need to send additional materials but can issue a news release with the required information.



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