

ANNUAL GENERAL MEETINGS DURING THE COVID-19 PANDEMIC

Many not-for-profit corporations (NFPs) hold their annual general meetings (AGMs) in the Spring. With a number of provinces issuing directives and advisories relating to the COVID-19 pandemic, including with respect to meeting sizes and venues, a number of NFPs are considering their options with respect to their Spring AGMs.

A variety of factors make it difficult for NFPs to change the timing of their Spring AGMs. First, federally-incorporated NFPs must hold their AGMs within six (6) months of their financial year-ends. Many NFPs use December 31 as their financial year-end, so they must hold their AGMs by the end of June in each year. Often, this translates into a Spring AGM. Second, AGM dates are driven by past practices, including the timing of a related annual conference or director election cycles. Third, corporations with large memberships often determine the locations of their AGMs at least one or two years in advance of an AGM so that venues and hotel rooms can be booked and members can make travel arrangements. These factors, together with sizable deposits for venues or hotel rooms, make it difficult for NFPs to change the timing of their AGMs.

The traditional format of AGMs often involves a number of members meeting in a physical location and voting on a show of hands. With meetings over a certain number of attendees now prohibited in most provinces (e.g., 50 people in Ontario) and leaving home now strongly discouraged, the traditional format of AGMs is no longer viable for most organizations.

Further, if the requisite number of members fail to attend a meeting, there will be no quorum so no business can be transacted. Smaller organizations face similar issues.

The question then becomes what are the options available to NFPs with respect to their Spring AGMs?

Delay the AGM

As discussed, corporations with December 31 financial year-ends are obliged by the *Canada Not-for-profit Corporations Act* (the “Act”) to hold their AGMs by the end of June in each year. In practice, this could mean moving an April AGM to a June AGM. However, we do not know when the pandemic will subside and when the various meeting restrictions will be lifted. Postponing a meeting by one or two months may not be the solution, but it is worth considering.

Under the Act, it is possible to apply to Corporations Canada for an extension to permit a corporation to hold an AGM at a later date. For instance, a corporation that must hold its AGM by the end of June could apply to hold its AGM in September in the same year. Given the circumstances, we would hope that reasonable extension requests would be granted. This would permit an NFP to hold its AGM in the traditional format, but at a later date. Again, at this time, we do not know when meeting restrictions and advisories will end, but this approach would buy the organization some time.

Virtual Meetings

Under the Act, if a corporation's by-laws permit it, a meeting of the members may be called and may be held *entirely* by means of a telephonic, electronic or other communication facility that permits all participants to communicate adequately with each other during the meeting. A person participating in the meeting by such means is deemed present at the meeting. Some refer to such meetings as "virtual meetings".

Virtual meetings would permit the members to attend and participate in a meeting from their homes. The business to be transacted at a virtual meeting could be, by and large, the same business that is transacted at a traditional AGM. In addition, the Spring timing of the AGM could be preserved. In a pandemic, this model offers a number of advantages, but it is only available to corporations whose by-laws permit it.

Hybrid Meetings

A "hybrid meeting" is a meeting where some members attend the meeting electronically and others attend in-person at a physical location. The benefit of this approach is that a corporation could implement it without by-laws that permit meetings to be held entirely by electronic means.

An additional benefit is that many AGMs are already structured in this way, except that the proportion of members attending the meeting

electronically during a pandemic would likely exceed the number of members attending the meeting in-person.

Using this format, the traditional timing of an AGM could also be preserved.

Additional Considerations:

- Legal counsel should be consulted to determine (1) what the governing statute of the NFP permits or prohibits, and (2) what the NFP's by-laws permit or prohibit, with respect to the timing of AGMs and the use of virtual meetings.
- If a corporation elects to hold a virtual meeting or a hybrid meeting, it will likely be necessary to retain a third party service provider or platform to deal with electronic registrations, broadcast the meeting over the Internet, and administer electronic voting.
- If a corporation wishes to postpone an in-person meeting or move to a virtual meeting, legal counsel should review any existing AGM-related hotel and venue contracts to provide advice on how to terminate or amend those contracts.
- What business will be transacted at the meeting? Contentious matters are often best addressed in-person.

If the corporation will be convening a virtual meeting, it may be advisable to defer the contentious business to a later date when an in-person meeting can take place (if this is possible).

- If a virtual meeting or hybrid meeting will take place, the notice of the meeting should include instructions for how to use the electronic platform.
- If a notice for an in-person meeting has already been issued, but the corporation wishes to move to a virtual meeting, it may be advisable to cancel the in-person meeting and to call a virtual meeting at a later date instead of trying to change an existing notice.
- If an in-person meeting or hybrid meeting will take place, the corporation should give consideration to including a statement in the notice of the meeting regarding the potential health risks associated with attending the meeting in-person.
- NFPs explain to their members any proposed changes to the format of their AGMs due to the pandemic.

This article is intended to provide an overview of issues that may arise in connection with convening an AGM this Spring due to the COVID-19 pandemic. With the large amount of uncertainty and challenges associated with COVID-19, as well the unique nature of every corporation, there is no “one-size fits all approach”.

We recommend consulting with legal counsel and other advisors at an early stage to help find the approach that works best for your NFP while ensuring the safety of your directors, officers, employees and members.

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