



## Alerts

### Options for Conducting Annual Shareholder Meetings and Director Meetings During a Time of COVID-19 Shelter in Place Orders

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*Hinshaw Alert*

As social distancing policies and mandates continue to take hold across the country, companies are grappling to understand the implications of these measures on their business. One compliance issue to resolve is that companies are generally required to hold annual meetings of their shareholders. We consider options for private companies when it comes to conducting their annual shareholder meeting and director meetings.

#### 1. Postponing the Annual Meeting

A company should review its bylaws (and, if necessary, its articles of incorporation) with respect to its annual shareholder meeting requirements to determine what steps need to be taken in order to postpone the meeting. Most bylaws provide that a company shall hold an annual meeting and usually specify the date of the meeting (e.g., the first Monday in May).

If the board determines that the meeting will be postponed, it should send out a notice to the shareholders advising them of the postponement and the new date (if one has been set). Postponing the date should not present any issues for the board considering the current crisis.

In Illinois, the Illinois Business Corporation Act (section 7.05) states that the failure to hold the annual meeting at the designated time shall not work a forfeiture or dissolution of the company nor affect the validity of any corporate action.

#### 2. Postponing the Annual Meeting if the Meeting Has Already Been Called

If a company has already set the meeting date and mailed the meeting materials, it can still postpone the meeting. The board would need to approve the postponement. Notice of the postponement and the new meeting date (if one has been set) should be promptly mailed to shareholders. The board should also review the bylaws to determine if a new record date needs to be set for the meeting.

#### 3. Scheduling a Virtual Meeting

Another option is to conduct a meeting over the internet. A company would have to review its bylaws (or articles of incorporation) to determine if it is permitted to do so. If the governance documents are silent, a company should

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check its state's business corporation act to see if it allows shareholders to participate in meetings by electronic means.

For example, section 7.05 of the Illinois Business Corporation Act provides that unless prohibited by the bylaws or articles of incorporation, a company "may allow shareholders to participate in and act at any meeting of the shareholders through the use of conference telephone or interactive technology, including but not limited to electronic transmission, Internet usage, or remote communication, by means of which all persons participating in the meeting can communicate with each other."

If a virtual meeting is permitted, the mechanics would have to be worked out, including a method by which a company can ensure that only shareholders have access to the meeting and any meeting materials. The company should give notice of the format of the meeting and solicit proxies for the meeting, advising shareholders that there will not be a physical meeting and how to access the meeting through the internet.

It might make sense to post on the internet a video of the meeting for some time after the meeting to allow shareholders who could not participate to watch the meeting at a later date.

#### **4. Scheduling a Phantom Meeting**

As a third option, a company can call the meeting and advise shareholders that there will be a short meeting held on the meeting date, while encouraging shareholders not to attend the meeting in person due to the COVID-19 crisis.

Shareholders would be asked to return their proxies so the business of the meeting (the election of directors) can be handled in a few minutes on the day of the meeting. As long as enough proxies are delivered prior to the meeting to satisfy the quorum requirements, the meeting can be conducted even if no other shareholders, other than management, attend the meeting.

The company would advise shareholders in the meeting materials that it would notify them of the results of the vote after the meeting. This is basically option 3 without an internet meeting.

A company pursuing this option should include a more detailed shareholder report letter with its annual report. It might also consider preparing a video providing a discussion of what is in the report letter and discussing the outlook for 2021. This video would be posted on the internet for viewing by shareholders for a few days before and after the meeting.

#### **5. Guidance for Publicly-Held Companies**

The SEC has issued guidance to public companies conducting annual meetings in light of the COVID-19 crisis. This guidance can be accessed [on the SEC's website](#).

#### **6. Scheduling Director Meetings**

A company should review its bylaws (and their articles of incorporation) to make sure that they permit directors to attend meetings by electronic means.

Section 8.15(d) of the Illinois Business Corporation Act states that unless prohibited by the articles or bylaws, directors may participate in and act at any meeting through the use of a conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other.

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Note that Hinshaw has created [a resources page](#) as part of our efforts to keep clients informed of the rapidly evolving circumstances and the potential impacts they may face with the COVID-19 pandemic. You can [opt-in to receive updates](#) in the future.