

October 22, 2020

ARTICLE

Ontario extends temporary suspension period to May 31, 2021 to allow for virtual AGMs

Updated April 26, 2021:

On April 6, 2021 the Ontario government passed O. Reg. 250/21 amending O. Reg. 542/20 – Extension of Temporary Suspension Period, made under the Business Corporations Act (Ontario). Following the passage of the new regulation, the Temporary Suspension Period (defined below) is now extended to December 31, 2021. All other parts of O. Reg. 542/20 remain the same.

On Oct. 1, 2020 the Ontario government passed O. Reg. 542/20 – *Extension to temporary suspension period* (Regulation 542), made under the *Business Corporations Act (Ontario)* (the OBCA).

Regulation 542 extends the application of some, but not all, of the temporary amendments (the Temporary Amendments) that were made to the OBCA due to COVID-19. The Temporary Amendments are only in effect during the Temporary Suspension Period (defined below), which ends on Nov. 21, 2020. Regulation 542 extends the Temporary Suspension Period to May 31, 2021 for Temporary Amendments related to the ability to hold director and shareholder meetings electronically and the manner of voting at such meetings.

The Ontario government also issued further restrictions for gatherings. As of Oct. 16, 2020, in-person shareholder and director meetings held in jurisdictions considered to be in Stage 3 are limited to 50 people if held indoors and 100 people if held outdoors. In-person shareholder and director meetings held in jurisdictions considered to be in Stage 2 are limited to 10 people if held indoors and 25 people if held outdoors. Businesses holding any such meetings must comply with the general restrictions on gatherings that have also been issued by the government.

Extensions of temporary amendments

On March 17, 2020 the Ontario government declared a state of emergency due to COVID-19. In parallel, the OBCA was amended to add a Schedule to provide additional flexibility with respect to shareholder and director meetings during the state of declared emergency. The Schedule contains Temporary Amendments for certain sections of the OBCA, regarding:

- timing of shareholder meetings;
- notice of shareholder meetings;
- voting at shareholder meetings;
- director meetings; and
- the information to be laid before the annual meeting.

The Temporary Amendments (which were described in detail in our articles from [April 9, 2020](#) and [May 8, 2020](#)), are only in effect during the Temporary Suspension Period. The Temporary Suspension Period is defined in the OBCA as "the period of the emergency and a further period that ends on the 120th day after the day the declared emergency is terminated and, if the regulations so provide for the section, a further prescribed period of time immediately following the end of the 120-day period."¹

The declared emergency was terminated on July 24, 2020, bringing the Temporary Suspension Period to an end as of and including Nov. 21, 2020, absent any further prescribed extension. With Regulation 542 now in force, the Temporary Suspension Period has been extended to May 31, 2021.

May 31, 2021 extension applies

The following Temporary Amendments are now in effect until May 31, 2021:

- 1. Shareholder and director meetings by electronic means

Pursuant to Sections 94(2) and 126(13) of the OBCA, shareholder meetings and director meetings, respectively, may be held by phone or electronic means, unless the bylaws or articles provide otherwise. The Temporary Amendments acknowledge that not all corporations may permit for electronic or phone meetings in their bylaws or articles, and therefore allow corporations to hold shareholder and director meetings electronically regardless of whether their bylaws or articles provide otherwise. This Temporary Amendment has been extended to May 31, 2021.

The legislative requirements for an electronic meeting remain the same, and are outlined in Sections 94 and 126(13) of the OBCA, as well as O. Reg. 463/97 – *Electronic Meetings*. Please refer to our previous article, "[Virtual and hybrid shareholder meetings in response to COVID-19](#)."

- 2. Manner of voting

Pursuant to Section 103(1) and (2) of the OBCA, unless the bylaws provide otherwise, voting at a meeting of shareholders shall be by show of hands, or by ballot if demanded by a shareholder entitled to vote at the meeting. The Temporary Amendments with respect to Section 103 acknowledge that a ballot or show of hands may not be possible if the meeting is held by phone or electronic means. The Temporary Amendments provide that the chair of the meeting may direct voting by alternate means if a vote by show of hands or ballot is not possible. This Temporary Amendment has been extended to May 31, 2021.

May 31, 2021 extension does not apply

The Temporary Suspension Period does not apply to the following Temporary Amendments:

- 1. Extension of meeting dates

Pursuant to Section 94 of the OBCA, corporations are required to hold a shareholder meeting within 18 months of formation and within every 15-month period thereafter. The Temporary Amendments provided extended meeting deadlines, which remain unaffected by the extension of the Temporary Extension Period. This is because the extended meeting deadlines are tied to the date that the declared state of emergency was lifted, which happened on July 24, 2020.²

The extended meeting deadlines for shareholder meetings vary depending on when the meeting was originally supposed to have been held, and must comply with the following timeframes:

- If the meeting was required to be held within the period of the declared emergency (*i.e.*, between March 17, 2020 and July 24, 2020), corporations must now hold the shareholder meeting within 90 days of the termination of the state of emergency, up to and including Oct. 22, 2020.
- If the meeting was required to be held within the 30-day period following the termination of the declared emergency (*i.e.*, the period of July 25, 2020 to August 24, 2020), the meeting must be held within 120 days of the termination of the state of emergency – *i.e.*, before Nov. 22, 2020.

All time periods above include the start and end dates.

- 2. Financial statements

Pursuant to Section 154(1) of the OBCA, the directors are required to deliver financial statements at an annual shareholder meeting that are aged less than six months. This requirement was waived by the Temporary Amendments during the Temporary Suspension Period. The Temporary Amendments with respect to financial statements remain unaffected by the May 31, 2021 extension.

Therefore, for an annual meeting of shareholders between now and Nov. 21, 2020 (being the 120th day following the end of the declared emergency), the financial statements tabled at the annual meeting must be for the period that began immediately after the end of the corporation's last completed financial year (or the date the corporation came into existence if it has not completed a financial year) and ended before the annual meeting.

Practically speaking, since the period of financial reporting can end at any time before the annual meeting, directors can now deliver financial statements that are older than six months at the annual meeting for shareholder meetings that were held for the period of time that started on March 17, 2020 and ended on Nov. 21, 2020.

For meetings held after Nov. 21, 2020, the financial statements delivered at the annual meeting must not be aged more than six months.

Restrictions on gatherings

As the number of COVID-19 cases continue to spike across the province, in an effort to keep the economy open, the government moved certain areas from Stage 3 (meant to be the most lenient and the closest to the economy being fully reopened) back to Stage 2. In parallel, the government also tightened restrictions for in-person gatherings with respect to both Stage 3 and Stage 2.

Stage 3

Recent amendments to *O. Regulation 364/20 – Rules for Areas in Stage 3* (the Stage 3 Regulation)³, which was amended as recently as Oct. 16, 2020, further restricts the size of gatherings in areas across the province that are in Stage 3. Pursuant to the Stage 3 Regulation, no person shall attend an "organized public event" of more than: (i) 50 people if the event is held indoors, or (ii) 100 people if the event is held outdoors.⁴

Although the language "organized public event" is not defined in the Stage 3 Regulation, a shareholder or director meeting is arguably an "organized public event" and therefore the above limits likely apply.

While the Stage 3 Regulation also states that no person shall attend an organized public event held at the place of more than: (i) 10 people if the event is held indoors, or (ii) 25 people if the event is held outdoors, it provides an exemption for "places that are operated in accordance with this Order by a business or organization."⁵ Therefore, it is unlikely that the 10-person limit on indoor gatherings applies to shareholder or director meetings held by a corporation that are located in a jurisdiction that is in Stage 3.

Stage 2

The Ontario government also amended *O. Regulation 263/20 – Rules for Areas in Stage 2* (the Stage 2 Regulation) on Oct. 16, 2020 to tighten the restrictions put in place for organized public events. The amended Stage 2 Regulation limits organized public events to 10 people if the event is held indoors and 25 people if the event is held outdoors, and applies for any area of the province that is in Stage 2.⁶

General compliance

Under each of the Stage 3 Regulation and Stage 2 Regulation, attendees of in-person shareholder and director meetings have to, among other general compliance measures for businesses or organizations that are open to the public:

- follow the recommendations of public health officials, including the Chief Medical Officer on screening individuals;
- subject to certain exceptions, ensure that any person in the indoor area of the business is wearing a mask; and
- limit the number of persons in the place of business to ensure that the two-metre distancing rule can be met.

Takeaways

The Ontario government has extended some of the temporary measures that allow OBCA corporations to hold electronic meetings and voting thereat. However, by not extending the temporary measures that extend the date to hold annual shareholder meetings and the tabling of financial statements aged less than six months, the government is signaling that businesses are expected to have adjusted to the new normal and should be prepared to meet legislative timelines and disclosure obligations for their shareholders.

Strict measures continue to be in place to regulate in-person gatherings. Corporations should continue to hold virtual meetings if possible. In doing so, the obligations outlined in *O. Reg. 463/97* with respect to virtual meetings need to be met. BLG can provide legal advice on this issue and others related to COVID-19. Reach out to your BLG lawyer or any of the key contacts listed below for assistance.

BLG has created a [COVID-19 Resource Centre](#) to assist businesses on a variety of topics, including [investment management](#), [labour and employment](#), contractual risks, public disclosure requirements, education and criminal law.

¹ OBCA, s. 280(2).

² On July 21, 2020, the province of Ontario gave Royal Assent to [Bill 195, *Reopening Ontario \(A Flexible Response to COVID-19\) Act, 2020*](#). Bill 195 came into force on July 24, 2020, bringing Ontario's declared State of Emergency to an end.

³ *O. Regulation 364/20 – Rules for Areas in Stage 3* made under the *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020*

⁴ Stage 3 Regulation, Sched 3, s. 1.

⁵ Regulation 364, Sched 3, s. 2 and 2.1.




⁶ See O. Regulation 573/20, O. Regulation 572/20 and O. Regulation 574/20 made under the *Reopening Ontario Act*.

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