



LEGAL ALERT

March 26, 2020

ARE YOU CONSIDERING POSTPONING YOUR ANNUAL SHAREHOLDERS MEETING?

As a result of economic disruptions caused by the COVID-19 outbreak, corporations across the country are considering different options for how to conduct their annual shareholders meetings. While some companies are exploring options such as holding virtual or hybrid meetings, others are debating whether to postpone their annual meetings to later dates. We have addressed virtual and hybrid shareholders meetings in a previous legal alert. Postponing annual shareholders meetings for Pennsylvania corporations will be the subject of this legal alert.

Pennsylvania Law

According to Section 1704(a) of the Pennsylvania Business Corporation Law (“the BCL”), meetings of shareholders may be held at any geographic location within or without the Commonwealth of Pennsylvania as provided in or fixed pursuant to the corporate bylaws. Furthermore, Section 1755(a) of the BCL provides that the bylaws of a business corporation may provide for the number and the time of meetings of shareholders. Section 1755(a) also provides that at least one meeting of the shareholders shall be held in each calendar year for the election of directors at such time as shall be provided in or fixed pursuant to authority granted by the bylaws.

Finally, Section 1755(a) provides that failure to hold the annual meeting at the designated time shall not work a dissolution of the corporation or affect otherwise valid corporate acts – if the annual meeting is not called and held within six months after the designated time then any shareholder may call the meeting at any time thereafter.

Based on these statutes of the BCL, Pennsylvania corporations have a tremendous amount of flexibility in when and where they decide to have their annual shareholders meetings. Most Pennsylvania corporations set the time and place of their annual shareholders meetings in their bylaws or give authority to the Board of Directors to set the time and place.

Corporate Bylaws

Many Pennsylvania corporations have bylaws which require an annual shareholders meeting to be held no later than a certain date, usually May 31. Postponement of a scheduled annual shareholders meeting generally requires action by the Board of Directors. Boards interested in postponing their annual meetings due to concerns about the COVID-19 outbreak must be careful that they do not violate their bylaws. If there are provisions in the corporate bylaws for an annual shareholders meeting by a certain deadline and the Board is concerned that the current COVID-19

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outbreak will require a shareholders meeting after that deadline, then the bylaws must be amended. Corporate bylaws contain specific provisions that describe the procedure for amending, altering or repealing existing bylaws, but usually a majority vote of the Board is required. It is strongly recommended that Boards work with their corporate counsel to properly amend their bylaws if this is required to postpone their annual shareholders meetings beyond a set date.

Public Companies and SEC Disclosures in Connection with Postponement

The Securities and Exchange Commission (“the SEC”) recently streamlined disclosure and notice obligations of public companies in connection with changing the time and place of their annual shareholders meetings. Care must be taken to properly disclose the postponement of the annual meeting to the SEC, the public and, most importantly, the shareholders. Please see our previous legal alerts in connection with these disclosure obligations.

If you have any questions, the following members of our office are available to discuss these matters with you at your earliest convenience:

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