

Client Alert

March 2020

Coronavirus – Electronic Annual Meetings for Texas Companies

As we start the proxy and annual meeting season, Texas companies are making plans for their annual meetings in light of heightened concerns about the outbreak of the coronavirus, or COVID-19. Should they schedule a physical, in-person meeting of a substantial number of shareholders or other owners? Are there alternatives for the annual meeting that can be considered to avoid the potential spread of the virus at such a meeting? Fortunately, the Texas Business Organizations Code (TBOC) provides substantial flexibility to Texas entities by authorizing alternative methods of holding annual meetings.

The TBOC specifically permits the holding of meetings of owners of a Texas entity by use of conference telephone or similar communications equipment or another suitable electronics communication system, including video conferencing technology or the internet, or any combination of the foregoing. Any such communication system, however, must permit each person participating in the meeting to communicate with all other persons participating in the meeting. In addition, the TBOC requires that, if voting is to take place at the meeting, the entity must implement reasonable measures to verify that every person voting at the meeting by means of remote communications is sufficiently identified.

For an annual meeting of owners to be held by means of an electronic communication system, in addition to the other timing and record date requirements, the TBOC requires the notice of the meeting to specify the form of communication systems to be used for the meeting and the means of accessing the communication system. For a Texas corporation the meeting notice must also include information on how to access the required list of shareholders entitled to vote at the meeting. This list of shareholders can be made available through a reasonably accessible electronic data system if the information required to gain access to the list is provided with the notice of the annual meeting. All of these provisions of the TBOC authorizing electronic meetings are subject to any contrary provisions in the governing documents of the entity.

Accordingly, assuming the governing documents of the Texas entity are sufficiently flexible, annual meetings of owners of a Texas entity can be held through electronic communication systems (for example, telephone or video conference calls or internet chatrooms), without having to arrange for a physical location to hold an in-person meeting.

As an alternative to holding virtual meetings via an electronic communication system, Texas entities may want to consider postponing their annual meetings to later dates if their management believes that the virus outbreak will wane later in the year. Of course, it is expected that a Texas corporation will hold an annual meeting of its shareholders at least once a year.

Contact

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