

Revisions to New Jersey Statute Permit Virtual Shareholders' Meetings in COVID-19 Times

Coronavirus Legal Advisory

04.02.2020

On March 20, 2020, Governor Phil Murphy signed into law a bill to amend the New Jersey Business Corporation Act to permit New Jersey corporations to hold shareholders' meetings solely by means of remote participation (*i.e.*, a virtual-only shareholders' meeting) if a state of emergency is in effect in New Jersey on the date of the meeting. Prior to its amendment, Section 14A:5-1 of the New Jersey Business Corporation Act permitted the shareholders of a New Jersey corporation to participate in meetings by means of remote communication provided that a physical location in or outside New Jersey where the shareholders could attend in person was designated for the meeting. On March 9, 2020, in an effort to combat the spread of COVID-19, Governor Murphy declared a state of emergency in New Jersey and imposed statewide restrictions on public gatherings, thereby rendering an in-person shareholders' meeting untenable.

Pursuant to the New Jersey Business Corporation Act, as revised, a virtual-only shareholders' meeting may now be held during a state of emergency in New Jersey to the extent that the board authorizes and adopts guidelines and procedures governing such a meeting. To prepare for a shareholders' meeting that involves remote participation, either in whole or in part, the board of directors of a New Jersey corporation must implement reasonable measures to (a) verify that each person participating remotely is a shareholder or a shareholder's proxy; (b) provide each such shareholder or shareholder's proxy with a reasonable opportunity to participate in the meeting, including an opportunity to vote on matters submitted to the shareholders, and to read or hear the proceedings substantially concurrently with the conduct of the proceedings; and (c) record, and maintain a record of, any shareholder votes or other action taken at the meeting.

Any New Jersey corporation contemplating a virtual shareholders' meeting must consider the following. First, the corporation should confirm that its certificate of incorporation and bylaws do not limit or prevent it from authorizing shareholders to participate in shareholder meetings by remote communication. If any such restrictions are contained in the certificate of incorporation or bylaws, they may require amendment before proceeding with a virtual meeting. Second, a New Jersey corporation's ability to conduct a virtual-only shareholders' meeting exists only so long as a declaration of a state of emergency exists in New Jersey at the time of the meeting. Accordingly, a New Jersey corporation

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contemplating a virtual-only shareholders' meeting should plan for the possibility that the state of emergency may no longer be in effect on the date of the meeting, in which case a physical location for the meeting would be required.

New Jersey corporations that are public companies preparing to file their proxy statements with the Securities and Exchange Commission (SEC), required to deliver proxy materials to voting shareholders in advance of the meeting, should be especially vigilant. These corporations should consider preparing for and noticing a virtual meeting and, concurrently, as an alternative in the event that the state of emergency is no longer in effect in New Jersey at the time of the proposed virtual-only meeting, a "hybrid" meeting (*i.e.*, an in-person meeting that permits shareholder participation through electronic means). Both require robust disclosures according to the guidelines published by the SEC, and the corporation is expected to disclose clear directions in its proxy materials as to the logistical details of the virtual or hybrid meeting, including how shareholders can remotely access, participate in and vote at such a meeting. (See SEC Guidance for Conducting Annual Meetings in Light of COVID-19 Concerns, available [here](#).)

Finally, the existence of a state of emergency in any state other than New Jersey is not relevant, as the revised statute allows New Jersey corporations to hold a virtual-only meeting in reliance upon Subsection 14A:5-1(1) only if the state of emergency exists in New Jersey. If a New Jersey corporation planned to hold a shareholders' meeting outside New Jersey in a state that later declares a state of emergency, the corporation cannot hold a virtual-only meeting if there is no state of emergency in the State of New Jersey at the time of the meeting.

Given the public health and safety concerns related to COVID-19 during this proxy season, the amendments to Section 14A:5.1 provide welcome relief to New Jersey corporations by giving them greater flexibility to conduct virtual-only shareholders' meetings. They may also result in potentially sizable savings by eliminating the expense of arranging for and facilitating meetings at a physical location.

We are available to answer any questions you have about this change in law, including questions related to holding or converting your shareholders' meeting to a hybrid or virtual-only meeting.