

## **Governor Baker Provides Relief to Massachusetts Public Companies by Permitting Virtual-Only Annual Meetings amid COVID-19 Pandemic**

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What do Massachusetts public companies need to know now?

### **Q: Why was an emergency order necessary?**

A: Section 7.08 of the Massachusetts Business Corporation Act, or MBCA, prohibits public companies incorporated in Massachusetts from holding annual or special meetings of shareholders solely by means of remote communication (commonly referred to as virtual meetings). In light of the outbreak of COVID-19 and the declaration of a state of emergency, a traditional in-person meeting would make it difficult, if not impossible, for public companies to comply with the Commonwealth's existing [order](#), currently in effect through May 4, 2020, closing many brick-and-mortar facilities and prohibiting gatherings of more than 10 people. An in-person meeting would also complicate efforts to abide by current guidance from public health officials to practice social distancing.

### **Q: What does the order do?**

A: The emergency order suspends the provision of Section 7.08 of the MBCA that prohibits public companies from holding virtual meetings.

### **Q: How long will the emergency order be in effect?**

A: The order went into effect on March 30, 2020 and will remain in effect until 60 days after the end of the state of emergency in Massachusetts or such earlier date that the order is rescinded by the Governor.

### **Q: Was Section 7.08 of the MBCA affected by the new legislation (Chapter 53 of the Acts of 2020) enacted on April 2, 2020?**

A: Yes, Section 15 of Chapter 53 of the Acts of 2020 confirms that Massachusetts public corporations can hold virtual meetings until 60 days after the end of the state of emergency.

### **Q: What if the company has already provided notice of its annual shareholder meeting (or provides notice on or before April 9, 2020)?**

A: The company may notify its shareholders of a change in the location of the annual shareholder meeting without mailing further written notice, provided it also:

- issues a press release announcing the change through media reasonably expected to reach the company's shareholders;
- provides notice via email to all shareholders that have provided an email address to the company; and
- takes all other reasonable steps to notify shareholders of the change.

Companies that first provide notice of an annual shareholder meeting after April 9 and that later wish to change to a virtual meeting must provide notice in accordance with the usual rules. Chapter 53 of the Acts of 2020 did not address this notice requirement, so Massachusetts public corporations wishing to rely on the order should consult with counsel.

### **Q: Does the MBCA currently allow public companies to conduct hybrid shareholder meetings?**

A: Yes, hybrid meetings that allow shareholders to participate via remote communications are currently permitted by the MBCA so long as the meeting is also being held at a physical meeting location and shareholders have the opportunity to attend in-person rather than virtually if they so choose.

**Q: I'm all set with the MBCA, what else do I need to worry about?**

A: You should review the company's charter and by-laws to confirm that a virtual (or hybrid) meeting may be conducted under the terms of those organizational documents.

**Q: What about the SEC?**

A: The Securities and Exchange Commission provided guidance on March 13, 2020 on how public companies that have already provided notice of annual shareholder meetings should notify shareholders of a change in location. See our earlier post, [SEC Gives Issuers Added Flexibility to Adjust Annual Meetings in Light of COVID-19](#).

A copy of the Governor's Order Regarding the Conduct of Shareholder Meetings by Public Companies (COVID-19 Order No. 19) is available [here](#).

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