

BILL 91 AMENDMENTS

THE MODERN AGE OF SHAREHOLDERS' AND DIRECTORS' MEETINGS AND CORPORATE RECORDS



On October 1st, 2023, Bill 91 made amendments to the Business Corporations Act (Ontario), the Corporations Act, the Corporations Information Act, the Limited Partnerships Act, and the Partnership Act (the “Acts”). Despite Bill 91 amending over thirty different acts – ranging from the Art Gallery of Ontario Act to the Highway Traffic Act – the changes to the Acts can be generally summarized as an attempt to modernize Ontario corporations and corporate governance in light of our digital world.

This article will focus on the amendments made to the Business Corporations Act (Ontario) (the “OBCA”).

Shareholders' and Directors' Meetings

Similar amendments are made to the Corporations Act and the Not-for-Profit Corporations Act.

The OBCA has been amended to allow for shareholders' and directors' meetings to be held entirely electronically or telephonically, or a combination of both. While the OBCA had already permitted this, the Bill 91 amendments now offer further guidance and instructions to conduct meetings in this manner.

As of October 1st, 2023, if a shareholders' or directors' meeting is to be held entirely by virtual means, then the notice requirements for the meetings do not necessitate a physical meeting location. However, if attendance is permitted via electronic or telephonic means, then notice of the meeting must include instructions for attending, participating, and where applicable, voting at the virtual meeting. These meetings are considered the same as attending a meeting in-person.

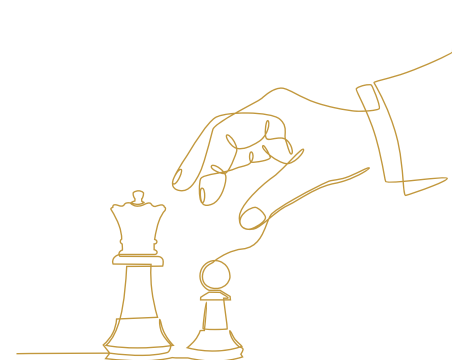
Further, the newly added subsection 94(4) states that all persons entitled to attend a shareholders' meeting must be able to "reasonably participate". Similarly, subsection 126(15) governs that all persons attending a directors' meeting must be able to "communicate with each other simultaneously and instantaneously".

While the amendments do not define "reasonably participate" or "communicate with each other simultaneously and instantaneously", one thing for certain is that there are endless platforms, tools, and

services available to organize virtual meetings with shareholders and directors that abides by the Business Corporations Act's amendments. This will continue to make attendance more accessible and should reduce the need for proxy voting.

As the practice of virtual meetings has been increasingly popular since the COVID-19 pandemic, the additional guidance will be welcomed by directors, shareholders, and corporate secretaries alike.

And for those business owners who prefer the 'traditional' in-person shareholders' and directors' meetings, the OBCA also includes new amendments permitting a corporation's articles and/or by-laws to limit the manner of virtual meetings.



Corporate Records

Similar amendments pertaining to the examination and copying of corporate records are made in the Corporations Information Act, the Limited Partnerships Act, the Not-for-Profit Corporations Act, and the Partnerships Act.

Apart from shareholders' and directors' meetings, Bill 91 also amends the record keeping requirements under the OBCA. Whereas previously section 139(1) mandated:

“where this Act requires a record to be kept by a corporation, it may be kept in a bound or looseleaf book or may be entered or recorded by any system of mechanical or electronic data processing or any other information storage device.”.

Section 139(1) has now been amendment and simplified as:

“where this Act requires a record to be kept by a corporation, it may be kept in any form.”.

While seemingly insignificant, this amendment to the OBCA promotes a shift to electronic record keeping, which brings with it a more efficient and modern method of organizing corporate documents, a slow move away from bulky minute book binders

For example, under subsection 145(1), creditors of a corporation are permitted to review certain records such as a corporation's minutes of meetings, by-laws, and director and securities registers.

Effective October 1st, 2023, under subsection 145(1.1), a corporation is able to (but are not compelled to) permit a creditor to examine and make copies of the desired corporate records by any technological means.

While on one hand the ability to access various corporate documents has been simplified and could lead to more examinations; on the other hand, this accessibility reduces the monetary and time costs of a corporation that are otherwise associated with traditional records inspection.

Consistent with the amendments to the shareholders' and directors' meetings, Bill 91 acknowledges the intersection of corporate law and technology and aims to adapt the OBCA (and the related Acts) to the modern world we live in.

RJS LAW has experience with corporations big and small, and regularly advises boards of directors on corporate governance matters. We would be happy to provide you and your business with tailor-made solutions and advice to help you smoothly navigate any challenges you may face.

