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What's Next? COVID-19 and Corporate Governance while Business is on Pause

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The following scene is perhaps all too familiar for business owners these days: you are sitting in your home office, your kids are bouncing off the walls, and you are trying to navigate through the COVID-19 crisis. You have scheduled brainstorm sessions with your staff, reviewed your insurance policies and cash reserves, applied for government assistance, and worked out solutions with your suppliers and customers. You ask yourself, "What's next?" With no end in sight to the shutdown of *business as usual*, consider that there has never been a better time to work on your business rather than in your business. At a time like this when business is paused, an opportunity exists to tackle the ever-growing "To Do" list of tasks required to continue your business's forward and upward momentum. **One of those tasks is corporate governance and maintenance.**

Far from simply "maintaining the books," corporate governance refers to the structure of rules, practices, and processes that define how the affairs of a corporation are conducted and controlled. Practically, this includes the act of keeping an up to date minute book, complying with the provisions of the relevant enabling legislation such as Ontario's *Business Corporations Act* or the *Canada Business Corporations Act*, managing and balancing the interests of stakeholders against those of the corporation, and establishing and maintaining appropriate internal controls.

A business's success in attracting investors or leveraging opportunities can be helped or hindered by its corporate governance and maintenance. For example, investors and lenders may be interested in reviewing any or all of the following policies and documentation: Board of Director guidelines, code of conduct, conflict of interest policies, diversity policies, ethical sourcing policies, privacy policies, risk management policies, shareholder engagement policies, and more. Without the proper assistance in preparing these governance documents, they can become time consuming and onerous projects. Blaney McMurtry LLP can advise on which

policies should be developed, depending on the nature of your business and standard industry practice.

Here are three practical corporate governance and maintenance steps you can implement for your business to better prepare for the opportunities that await following the COVID-19 crisis:

1. Catch up on all directors and shareholder resolutions required but not yet diarized.

As I've written about in the past, keeping accurate records of important corporate decisions is not only good business, it's also legally required. Events such as the appointment or resignation of a director or officer, resolutions by shareholders, taking and recording minutes of meetings, and purchasing interests in land are common and often not properly documented. Improper documentation can dissuade an investor from buying shares or a lender from loaning money and can hold up the purchase of a new business, the sale of your business, or a reorganization. Any downtime created by the COVID-19 crisis is an excellent time to take stock of the resolutions and other minute book documents which need to be executed and placed into the minute book. Not sure what corporate actions require resolutions or if your minute book is up to date? Blaney McMurtry LLP can assist in reviewing corporate minute books and advising on necessary corporate records.

2. Hold a virtual Annual General Meeting ("AGM").

The shareholders of a corporation must meet at least once a year to discuss, among other things, the performance of the business in the previous year, the performance of the appointed directors, executive compensation, and dividend declarations. Various reports, including financial statements, are reviewed. The actions of directors from the previous year are ratified, and directors for the upcoming fiscal year are elected. Regardless of the size of your business, now may be an ideal time to hold an AGM. Doing so will provide an opportunity for directors and the senior leadership team to get out in front of any business downturn caused by COVID-19, manage shareholder expectations, and solicit ideas and options at a time when there is likely to be great uncertainty. Moreover, holding the meeting now frees up the time later in the year when you may be busier trying to steer your business back towards greater profitability. Here are a couple of items to consider about holding a virtual AGM now:

- In Ontario, an AGM is required within the first 18 months of incorporating and within 15 months of the previous AGM. If the expiry of the first 18-month period falls within the state of emergency declared by the Province of Ontario, the deadline is extended to 90 days after the state of emergency ends;
- The Province of Ontario has issued an order providing for corporations to hold AGMs by telephone or videoconference notwithstanding anything to the contrary contained in the articles of incorporation or bylaws. The temporary amendment to the Ontario *Business Corporations Act* deems shareholders that establish a communications link to the AGM (i.e. by telephone or videoconference) or vote thereat to be present at the AGM;
- Different platforms on which to hold a virtual AGM offer different levels of security and, depending on your business's circumstances, it may form a part of the fiduciary obligations of the director to ensure that the chosen platform is completely secure from virtual intrusion.

- There has been no change to the law with respect to providing notice of an AGM. If your business's by-laws do not permit providing notice of an AGM electronically, the directors may need to amend the by-law appropriately. Note that for private corporations, notice must be provided at least 10 days and no later than 50 days in advance of the AGM.

3. Begin preparation for tax filings and/or an audit.

If your business's fiscal year end is approaching in the next two quarters, this is a great time to begin preparation for filing corporate tax returns. The Canada Revenue Agency has implemented certain deferrals of tax filings and remittances due to the COVID-19 crisis. Even so, it is advisable to commence collecting the necessary documents and reviewing the appropriate financial statements now. Tax filing can be a grueling, time consuming matter and even clearing up half of the amount of work required to undertake this project will save you that time in the future when you will be more focused on bringing your business out of the crisis and back into normal operations.

Many corporations focus on near-term needs and addressing immediate problems, and developing effective corporate governance often falls to the wayside as a result. The COVID-19 crisis presents a unique opportunity to catch up and delve into corporate strategic planning. The crisis will recede in the coming months and it is critical that your business is prepared to come out of it at full capacity. Proper corporate governance is one essential component of gearing up to full capacity. Need help with your business's corporate governance? At Blaney McMurtry LLP, we assist businesses of all sizes with organizing and maintaining corporations.

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