

Locke Lord QuickStudy: Massachusetts Temporary “Virtual ?Meeting” Relief Extended

Locke Lord LLP

WRITTEN BY

[Warren F. Myers](#)

The Massachusetts Legislature recently extended the provisions of a special act that allows Massachusetts public companies and Massachusetts non-profit corporations to hold shareholder and member meetings entirely remotely. Initially enacted in response to the COVID-19 pandemic, these special rules permitting “virtual” meetings were set to expire on July 15, 2022 but have been extended through March 31, 2023.

Under normal circumstances, Massachusetts law requires public corporations and non-profit corporations to have an in-person component to meetings of shareholders and members. Absent the special legislation adopted during the pandemic, a fully virtual annual or special meeting of shareholders or members would be prohibited. This is in contrast to a number of states that now permit fully virtual shareholder and member meetings as a matter of course.

Recognizing the risk posed to some individuals by large group meetings, Massachusetts and a number of other states (including California, Connecticut, Georgia, Louisiana, New Jersey, and New York), temporarily suspended in-person meeting requirements for public corporations and non-profit corporations at the onset of COVID-19. In Massachusetts, in-person meeting requirements were first suspended for public corporations through an Executive Order on March 30, 2020 and then for non-profit corporations through legislation that was signed into law on April, 3 2020. Although these provisions were set to expire 60 days after the State’s declaration of a public health emergency expired, the Legislature extended these temporary measures until July 15, 2022 and more recently extended them again through March 31, 2023.

Under the current temporary rules, Massachusetts public corporations and non-profit corporations are permitted to hold fully virtual meetings provided that: (1) reasonable measures are in place to verify a remote participants’ identity, (2) remote participants have a reasonable opportunity to participate in the meeting, and (3) any votes, questions, or other actions by remote participants must be recorded by the corporation.

Although these provisions remain temporary, the Massachusetts legislature may opt to follow a recent trend among states by making these provisions permanent at some point in the future. Any potential change to the current law is not likely to be taken up by the Legislature, however, until shortly before the current March 31, 2023 “sunset” date.

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