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Insights

Further Relief for Indiana Businesses During the Time of COVID-19: Remote Meetings and Suspending Five-Year Limit on Reinstatements

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Governor Eric Holcomb recently signed Executive Order 20-23, which provides further relief for Indiana businesses in light of COVID-19.

A. Remote Annual Meetings for Corporations and Meetings for Nonprofit Organizations

Remote annual meetings of shareholders are now authorized during the public health emergency for corporations formed under the Indiana Business Corporation Law and subject to reporting requirements of the Securities Exchange Act of 1934, as amended.

Prior to Executive Order 20-23, Indiana law allowed a corporation's articles of incorporation or bylaws to dictate the time and place of an annual meeting of the shareholders, which could require such annual meetings to be held at the physical office of the corporation. Now, if the corporation's board of directors wishes to change an annual meeting currently noticed for a physical location to a meeting conducted solely by remote communication, it can do so by notifying the shareholders of the change by a document publicly filed by the corporation with the Securities and Exchange Commission and issuing a press release, which must be promptly posted on the corporation's website.

Further, if it is impracticable to convene a currently noticed meeting of shareholders at the physical location for which it has been noticed due to COVID-19, Executive Order 20-23 allows a corporation to adjourn such meeting to another date or time, to be held by remote communication, by providing notice of the date and time and the means of remote communication in a document publicly filed by the corporation with the Securities and Exchange Commission and a press release, which must be promptly posted on the corporation's website.

Nonprofit organizations are also allowed to hold remote meetings. If the organization wishes to hold a meeting of members, of the board of directors, or of committees of the board of directors by remote communication, or change a meeting already noticed for a physical location to a meeting conducted solely by remote communication, it may do so in accordance with its articles of incorporation or bylaws. If remote meetings are not authorized by the articles of incorporation or bylaws, such remote meetings may be held using any means of communication by which all members, directors, or committee members, who are participating may simultaneously hear each other during the meeting, and whoever participates in such remote meeting will be considered to be present in person at such meeting.

B. Reinstatement of Administratively Dissolved Businesses

In 2018, Indiana adopted the Uniform Business Organizations Act, codified at I.C. 23-0.5 et seq. By its adoption, the reinstatement process of businesses administratively dissolved was changed significantly. Specifically, a domestic filing entity administratively dissolved may apply to the Indiana Secretary of State for reinstatement not later than five (5) years after the effective date of dissolution and a registered foreign entity administratively revoked may apply to the Secretary of State for reinstatement not later than five (5) years after the effective date of the revocation. If an entity missed their five (5) year window, they could not reinstate their entity and would have to start with a new entity.

For those entities still eligible for reinstatement, part of the reinstatement process currently includes filing an Application for Reinstatement with the Indiana Secretary of State and a Certificate of Clearance from the Indiana Department of Revenue reciting that the taxes owed by the entity have been paid, as well as a completed Business Entity Report, and Certificate of Existence (if a foreign entity). Historically, there has been some delay in receiving a Certificate of Clearance from the Indiana Department of Revenue.

With Executive Order 20-23, however, Governor Holcomb has relaxed the five (5) year reinstatement window in an effort to allow entities to employ Indiana workers and qualify for federal assistance programs, namely the Paycheck Protection Program and the Economic Injury Disaster Loans. Now, entities that have been administratively dissolved for more than five (5) years may seek reinstatement, and the requirement to obtain a Certificate of Clearance from the Indiana Department of Revenue is suspended for the duration of the public health emergency.

While we noted **in 2018 in a previous article** that Indiana entities had only a one-time chance to seek reinstatement prior to five (5) years past administrative dissolution, one upside for Indiana businesses to come out of the COVID-19 crisis is that entities that missed that opportunity will now be able to seek reinstatement, and can do so in an expedited manner.

If you have any further questions, comments or concerns, please feel free to contact **Brian M. Heaton**, **Micah J. Nichols** or a member of our **Business, Acquisitions & Securities team**.