

Governance... in Times of Emergency

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Ted Ramirez

Corporate Governance and Business Transactions

Third in a Series

Ohio's Governor declared a State of Emergency (SOE) this week. Today, POTUS did also. Such declarations may invoke conditions that improve certain options for corporate governance in your home state.

Delaware law provides, "The board of directors of any corporation may adopt emergency bylaws" to use "during the existence of any catastrophe or similar emergency condition as a result of which a quorum of the board... or standing committee... cannot readily be convened for action." 8 Del. C. 110.

Ohio corporations enjoy a dual benefit. Their statutes, as those of Delaware, permit companies to prepare and enact bylaws to use during emergency declarations. Further, Ohio law includes default provisions for use by companies whose bylaws don't yet include emergency governance provisions.

Such "corporate emergency" provisions may facilitate governance functions, decisions and actions during the effective period of an SOE. They enable officers and directors to shortcut certain rules such as (a) methods and time of notice, (b) quorum, (c) executive officer chain of command and (d) succession. Some may even permit officers and available directors to relocate the principal place of business during the SOE. These laws protect fiduciaries who act during an SOE by expedited means and preserve their right to indemnification while acting in good faith outside the normal course of business.

Evolving means of communication in the tech age now enable continuation of corporate governance (*e.g.*, "virtual meetings" and attendance by telephone or other electronic device) beyond that which was available just a few years ago when states enacted corporation emergency statutes. Even so, companies may need to streamline

decision-making for meeting notices, quorum, *etc.*, during an SOE when it falls at a time of transactional or existential urgency for the company.

So, check the corporation statutes of your home state. There may be “emergency” provisions to ease the basic mechanics of governance during an SOE.

Yours for Better Governance

(cough, cough)

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