

Chapter 6 — Other Obligations of the Corporation

6.1 Corporate Records

Your corporation must keep certain corporate records at its registered office or at some other location elsewhere in Canada as set out by the directors.

Upon request, a corporation's shareholders and creditors (such as suppliers) may examine the following records:

- Articles of Incorporation, by-laws and their amendments and any unanimous shareholder agreements;
- minutes of meetings and resolutions of shareholders;
- copies of certain forms that have been filed, for example Initial Registered Office Address and First Board of Directors, Change of Registered Office Address and Changes Regarding Directors; and
- a share register showing the names and addresses of all shareholders and details of shares held.

The corporation must also prepare and maintain accounting records. Although there is no requirement for these accounting records to be available for consultation by shareholders, financial statements must be available for consultation. This ensures that shareholders can obtain information about the financial situation of the corporation, so that they are able to make appropriate decisions regarding the corporation.

For more information on:

Corporations often maintain their corporate records in a single book, referred to as the "Minute Book" of the corporation. While the CBCA does not require it, it is a good practice to maintain a "Minute Book."

6.2 Appointment of Auditors

At the shareholders' meeting, shareholders must, by ordinary resolution, appoint an auditor to audit the corporation's financial statements. However, shareholders may decide by a unanimous resolution (voting and non-voting shares) not to appoint an auditor.

The requirement for an auditor increases the reliability of the financial statements and improves protection for stakeholders.

6.3 Financial Statements

A corporation must prepare financial statements. There is no requirement to file these statements with Corporations Canada.

Financial statements must be prepared in accordance with the Generally Accepted Accounting Principles, as set out in the Canadian Institute of Chartered Accountants Handbook.

You must provide copies of your financial statements to your shareholders at least 21 days before your corporation's annual meeting each year.

6.4 Shareholders' Meetings

The CBCA states that a corporation "... must hold a shareholders' meeting on a date that is no later than 15 months after holding the last preceding annual meeting, but no later than six months after the end of its preceding financial year." Alternatively, shareholders may pass a resolution in lieu of meeting. A resolution in lieu of a meeting may be useful for small corporations that have only one or a few shareholders.

For more information on:

A resolution in lieu of meeting is a written resolution signed by all shareholders who would have been entitled to vote at the meeting that deals with all matters required to be dealt with at a shareholders' meeting. This resolution is just as valid as it would be if passed at a meeting of shareholders. This resolution should be retained in the corporation's records.

The shareholders' meeting (or resolution in lieu of a meeting) allows shareholders to obtain information about the corporation's business and to make appropriate decisions regarding this business. The date of the meeting, or of the resolution, must be indicated on your Annual Return.

Agenda

At minimum, the agenda of an annual meeting must include the following items:

- consideration of the financial statements;
- appointment of an auditor (or a resolution of all shareholders not to appoint an auditor); and
- election of directors.

Often, the agenda includes an additional item, "any other business." This portion of the meeting allows shareholders to raise any other issues of concern to them. If directors want shareholders to consider a matter, it should be listed in the agenda prior to the meeting and not raised as "any other business."

Calling a shareholders' meeting

The directors must notify voting shareholders of the time and place of a shareholders' meeting. They must do so no more than 60 days and no fewer than 21 days before the meeting date. For example, if the meeting is to be held on May 20, the notice of the meeting should be sent no earlier than March 22 and no later than April 30.

Unless otherwise provided by the by-laws or the articles, this notice can be sent electronically to shareholders if they have previously consented to receiving such notices electronically and if they have designated a system for receiving them. You will find an example of a Notice of Annual Shareholders' meeting in Annex D.

Location of the shareholders' meeting

The annual meeting may be held in Canada at a place specified in the by-laws. Or, if the by-laws do not specify a location, directors may choose one. An annual meeting may be held outside Canada only in cases where the corporation's articles permit it or if all voting shareholders agree.

Also, where the corporation's by-laws permit it, the directors of a corporation may decide that a meeting of shareholders will be held entirely by means of a telephonic, electronic or other communication means that will permit all participants to communicate adequately with each other during the meeting. In such cases, it is the responsibility of the corporation to make these facilities available.

Unless otherwise provided by the by-laws, a corporation can allow shareholders to attend the meeting electronically. The communications system used must permit all participants to communicate adequately with each other during the meeting.



Other requirements of the shareholders' meeting

Quorum

Unless a quorum of shareholders is present or represented at annual or special shareholders' meetings, no business that is binding on the corporation can be conducted. A quorum is present at a meeting when the holders of a majority of the shares entitled to vote at the meeting are present in person or represented by proxy, regardless of the number of persons actually present at the meeting. Note, however, that a corporation's by-laws can provide for a different type of quorum.

Electronic voting

Unless the corporation's by-laws specifically forbid it, electronic voting is allowed, as long as it is possible to verify the vote without knowing how each shareholder voted.

Minutes of the meeting

The corporation must keep a written record of the meeting. This record usually includes such information as:

- where and when the meeting was held;
- who attended; and
- the results of any voting.

These records are commonly referred to as the "Minutes" of the meeting and are kept in the corporation's Minute Book. (See Section 6.1 Corporate Records.)

You will find an example of Minutes of an Annual Shareholders' Meeting in Annex D.



6.5 Special Meetings

Shareholders may also be called to special meetings. The notice for a special meeting must state the time and place of the meeting and provide shareholders with enough information in advance so that they know what they will be asked to consider and vote on at the meeting.

Agendas for special meetings of shareholders usually deal with specific questions or issues, such as whether to approve a fundamental change proposed by the corporation's directors. A fundamental change could include such actions as amending the Articles of Incorporation to change the corporation's name. Generally, a corporation's directors will call a special meeting of the shareholders when they would like to undertake a particular activity or to consider a special issue that requires shareholder approval.

It is often convenient to combine special meetings with annual meetings. The notice for such a meeting must clearly indicate what special business will be considered.