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California Governor Signs AB 663, Enabling California Corporations to Hold Virtual Shareholder Meetings During Emergencies

On October 5, 2021, California Governor Gavin Newsom signed into law AB 663, which provides corporations with greater flexibility to hold virtual-only shareholder meetings during emergencies, and also expands corporations' ability to permit remote participation at physical meetings, even absent an emergency. AB 663 also expands the definition of an "emergency" to include pandemics, and provides boards of directors with greater powers to act during emergencies, although they may not take any action that requires the vote of shareholders. AB 663 seeks in part to eliminate difficulties imposed by COVID-19 travel and gathering restrictions, which created problems for corporations trying to adhere to in-person meeting requirements under the corporate laws of many states, including California. AB 663 takes effect on January 1, 2022.

Shareholder Meetings. AB 663 amends Section 600 of the California Corporations Code to permit a virtual-only shareholder meeting when the board of directors has determined it is necessary or appropriate due to an emergency; under existing Section 600, a virtual-only shareholder meeting is permitted only with the consent of all shareholders, an impractical standard for most corporations. The definition of "emergency" has been amended to include pandemics, as well as epidemics or disease outbreaks more generally. AB 663 also makes it easier for corporations to allow virtual participation in a hybrid shareholder meeting, including by permitting telephonic participation and relaxing certain procedural requirements.

Board of Directors. The changes to the California Corporations Code also expand boards' ability to take actions during an emergency. Under existing law, boards are only granted emergency powers to take actions that are in the corporation's "ordinary course of business." In contrast, under AB 663's amendments, boards are permitted to take any actions they deem necessary to respond to emergencies, mitigate the effects of emergencies, or comply with lawful government orders, regardless of whether such actions are in the corporation's "ordinary course of business." Although AB 663 expands the scope of

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actions boards may take during emergencies, boards are still prohibited from taking any action that requires the vote of shareholders, unless prior shareholder approval was obtained.

Next Steps. The COVID-19 pandemic has demonstrated the need for many states to update their laws to enable greater flexibility for corporations to conduct shareholder meetings and to communicate with shareholders, particularly in times of emergency. In light of AB 663, California corporations should review their existing charters and bylaws, as well as board committee charters, to ensure that they take advantage of the new flexibility afforded to corporations, both in emergency and non-emergency situations.

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