

COVID-19: THE IMPACT ON UK ANNUAL GENERAL MEETINGS

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UK Corporate Alert

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INTRODUCTION

At this time of year, many public limited companies are preparing to convene and host their annual general meetings ("AGMs"), but the current COVID-19 pandemic has thrown into question how they will be able to do so in light of the current, and escalating, travel restrictions and social distancing requirements in both the UK and worldwide. In particular, on 23 March 2020, the UK government published compulsory measures (the "Stay at Home Measures") prohibiting, among other things, public gatherings of more than two people, which were passed into law in England and Wales with immediate effect on 26 March 2020. Details of the Stay at Home Measures are set out here.

The potential options available to UK-incorporated companies in the current circumstances, as well as some further practical considerations, are set out below.

DELAYING OR POSTPONING THE AGM

Companies may want to consider delaying (where they have not yet convened the AGM) or postponing (where they have already sent out the notice calling the meeting) their AGMs in the hope that the effects of COVID-19 will ease in the coming months.

A company will only be able to postpone its AGM if permitted to do so by its articles of association. If postponement is not possible, the meeting will need to be held on the original date, although the company could open the meeting and then immediately adjourn it to a later date. If it intends to adjourn its AGM, the company will need to comply with the provisions of its articles and it should release an announcement prior to the date of the meeting informing its shareholders of the proposed adjournment. Its website should also be updated accordingly.

Companies will need to consider the potential effects that delaying or postponing the AGM may have on their businesses, as a result of delaying the resolutions that were to be passed at the meeting (for example, authorising the company to allot new shares or to dis-apply pre-emption rights).

In any event, UK public limited companies are legally required to hold an AGM within six months of their accounting reference date. This means that any companies with financial years ending on 31 December will have to hold their AGM by 30 June 2020. There is currently no indication that the government will extend this deadline and so companies should continue to plan their AGMs on the basis that they will need to be held by the end of June.

'HYBRID' AND 'VIRTUAL' AGMS

Companies should consider the possibility of holding a 'hybrid' meeting for their AGM, which combines a physical meeting with electronic participation. This will be permitted only if the company's articles allow for it. In order to be valid, electronic participation in the meeting must allow attendees to speak and vote at it. There will also be practical considerations, such as ensuring the security of the electronic communication and that the identity of participants in the meeting can be checked.

A 'virtual' AGM is one which is held electronically via purely online forums. There is legal uncertainty over whether virtual-only AGMs contravene the notice provisions of the Companies Act 2006 and, specifically, the need to specify the "place" of the meeting. As a result, only a very limited number of companies have held virtual AGMs.

In response to the COVID-19 outbreak and the Stay at Home Measures, the London Stock Exchange has called for emergency legislation to be passed to enable companies to hold virtual general meetings. On 25 March 2020, the Department for Business, Energy and Industrial Strategy released a joint statement with Companies House confirming that the government is in "close consultation with company representative bodies, legal practitioners and others, to look at solutions for the impact COVID-19 may have on companies' ability to hold Annual General Meetings", and will be posting updated guidance on this "in due course". They have not given any further indication as to when such guidance will become available.

OTHER PRACTICAL CONSIDERATIONS IN LIGHT OF COVID-19

UK public companies should also consider the following practicalities when convening and holding their AGMs in light of social distancing restrictions:

- *Appointing Proxies:* in order to reduce the number of attendees, shareholders should appoint a proxy to attend and vote at the AGM in their place. Ideally, the shareholders should all appoint the same person, ideally the chairman of the meeting, as their proxy to ensure that the number of attendees is limited. In its updated guidance published on 27 March 2020, the Financial Reporting Council ("FRC") states that companies should use unambiguous wording which makes it clear that shareholders are required, rather than just encouraged, to appoint proxies and are restricted from attending the AGM in person, unless they are required to do so for quorum purposes.
- *Restricting the Number of Attendees:* companies should prevent non-shareholders (e.g. directors and employees) from physically attending the AGM. This is particularly important given the UK government's recent ban on gatherings of more than two people. Whilst the ban does not apply where larger gatherings are essential for work purposes, the FRC's guidance states that, unless a person is required to attend the AGM for quorum purposes, physical attendance at the AGM is not "essential" and so will not be permitted.
- *Enforcing Restrictions:* under UK common law, the chairman has broad powers to preserve order at general meetings and ensure the safety of attendees. This means that they will be able to validly refuse entry to any person whose attendance would breach the Stay at Home Measures. In addition, the company's articles of association may provide the directors with express powers to enforce appropriate security restrictions and measures at the meeting.

- **Quorum:** companies must ensure that a quorum is present throughout the AGM in order for it to be validly held. The number of shareholders required to form a quorum for public limited companies is generally small and is usually limited to two shareholders present in person or by proxy. Where companies require more than two shareholders or proxies to be physically present to constitute a quorum, the FRC's updated guidance states that the presence of shareholders or persons who are required to attend the AGM in order to constitute a quorum is "essential for work purposes" and so their attendance will not breach the Stay at Home Measures.
- **Social Distancing:** companies must ensure that all attendees observe the social distancing requirements (i.e. remaining at least two metres apart) at all times during the meeting and the AGM must not last any longer than is absolutely necessary. If a company is intending to host its AGM outside of the UK, it must ensure that it is complying with that country's rules and guidance on social distancing.
- **Appropriate Systems:** if companies are able and willing to hold a hybrid or virtual AGM, they will need to ensure that suitable systems are in place to enable electronic participation. Technology providers and company registrars should be contacted as soon as possible in order to implement an appropriate system in advance of the meeting. Notices, correspondence and company websites should set out details of the arrangements that are in place, including clear instructions on how all participants can access, speak and vote at the meeting.
- **Regular Updates:** companies should ensure that they notify their shareholders of any changes as soon as they become aware of them. All communications with shareholders should make it clear that the situation is changing regularly and advise them to check the company's website regularly for further announcements as the AGM date nears.
- **Alternative Venue:** companies should consider organising an alternative location for the physical meeting just in case the original venue is forced to close. If the location does change after the AGM has been convened, the company will need to notify its shareholders as soon as possible prior to the AGM.
- **Live-streaming:** companies could consider live-streaming the AGM on their websites and/or making a recording of the AGM available to all of their members after the meeting, although, if they choose to do so, they must make it clear that such facilities are for information purposes only and do not constitute formal attendance or participation at the AGM.
- **Shareholder Q&A Forums:** companies should encourage their shareholders to submit questions in advance of the AGM and/or establish an online shareholder Q&A forum so that they can deal with shareholders' concerns effectively and efficiently.
- **Further General Meeting Later in the Year:** companies should consider holding a separate general meeting later in the year, once the effects of COVID-19 have hopefully eased. This meeting would not be a substitute AGM but would provide shareholders with the opportunity to ask the board any questions that they were unable to raise at the AGM.

This alert reflects the position as at 6 April 2020. We are continuing to monitor developments and the increasing institutional guidance regarding the impact of COVID-19 on AGMs. Please do not hesitate to contact us with any questions you may have regarding your company's 2020 AGM.

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