

Practical considerations: the impact of Covid-19 on the holding of annual general meetings

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The steps recommended by the Government to combat the effects of the Coronavirus (“**COVID-19**”), in particular the recommendation to avoid large public gatherings, are likely to have an impact on the format of annual general meetings for UK-incorporated listed companies.

UK-incorporated listed companies are permitted to hold “hybrid” or “virtual” annual general meetings. This checklist identifies the key points a UK-incorporated listed company should take into account when considering whether to hold a hybrid or virtual meeting and the options available in the event that such a format of meeting is not possible or feasible.

Maintain status-quo or hold a hybrid/virtual meeting?

- Consider what form of meeting is appropriate, do you want to:
 - combine a main, physical meeting with a form of electronic participation (hybrid meeting); or
 - convene a meeting with no physical location, held purely electronically via an online meeting tool (virtual meeting); or
 - maintain the status-quo and continue to hold only a physical meeting if historically you have a low shareholder attendance at your AGM.
- Consider views of investor groups on any decision taken. Investor groups have generally not supported virtual meetings to date although they do tend to support hybrid meetings.
- Review articles to check whether a hybrid or virtual meeting is permitted. It is recommended that a hybrid or virtual meeting is only held where expressly permitted by the articles.

Considerations if your articles permit hybrid or virtual meetings

- If you have not held a hybrid or virtual meeting before, consideration will need to be given to what changes need to be made to your usual form of notice of general meeting, in particular:
 - the notice should contain clear instructions on how to access, speak and vote at the meeting;
 - the notice should make it clear that all votes will be taken on a poll; and

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- there should also be a helpline number to the registrar or technology provider, or both, for those shareholders who need assistance with using the technology before or at the meeting.
 - If a company has already issued its AGM notice for a physical-only meeting but its articles allow for a hybrid AGM, it can change to a hybrid AGM. An announcement should be made to reflect this decision and the website should be updated.¹
 - In terms of the conduct and running of a hybrid or virtual meeting, it will be necessary to also consider the following:
 - how technology will be used to support the meeting. Engage an appropriate AGM technology solutions provider to ensure that the AGM satisfies legal requirements and provides a user-friendly experience to the company and shareholders;
 - ensure the technology provider and registrar work together to develop and implement an appropriate solution;
 - whether a virtual meeting will exclude some of your shareholder base less familiar and with less access to technology (e.g. will the AGM be accessible from all common devices);
 - whether the meeting will be audio only or audio and video;
 - the “YouTube culture” and the reputational issues associated with a minor mishap being recorded and going viral;
 - whether the cost of a video meeting is proportionate;
 - what processes will be in place to ensure that technology is secure and effective and works seamlessly without interruption;
 - how to ensure robust validation of shareholder entitlement to participate and vote;
 - how Q&A will be managed and what protocols will be put in place; will questions need to be submitted in writing in advance of the meeting, through an online message board during the meeting, or both;
 - who will review the questions to facilitate board response? Transparency in the shareholder question process is critical to maintain investor confidence;
 - whether the chosen technology accommodates your company’s specific requirements (e.g. allowing voting throughout the meeting or showing presentation slides);
 - that there is sufficient time for testing of technology and rehearsals;
 - that in the case of a hybrid meeting there must be a quorum of shareholders physically present at the meeting; and
 - consulting with key shareholders to ensure they are comfortable with what is proposed (particularly in the case of virtual meetings).

Alternative options if your articles do not permit a hybrid or virtual meeting

Delay of AGM

If the notice for an AGM has not already been circulated, the company may wish to change the usual date on which it holds the AGM to later in the year.

Postponement of AGM

- If the company has issued its AGM notice, it can postpone its AGM if its articles permit it to do so.
- The articles will govern the process for postponing the AGM, but there is no statutory minimum notice period for rearranged meetings. As a matter of good practice, ICSA recommend that a company should provide 21 clear days’ notice.

¹ See guidance note issued by ICSA as of 16 March 2020 “AGMs and the impact of Covid-19”
<https://www.icsa.org.uk/assets/files/pdfs/guidance/agms-and-impact-of-covid-19-web.pdf>

Call and adjourn AGM

- In the event that a notice of an AGM has already been circulated and a meeting called, and it is not possible to postpone or cancel the meeting, the meeting will need to be held. It may be possible to open the meeting (with the minimum quorum) and then adjourn it to a later date.
- Each company will need to check their own articles, but under the Model Articles for a public company, a meeting can be adjourned as follows:
 - if there is not a sufficient quorum within half an hour of when the meeting is due to start, the chairman must adjourn the meeting;
 - if there is sufficient quorum, the chairman can adjourn the meeting:
 - with the consent of the meeting; or
 - if it appears to the chairman of the meeting that (i) an adjournment is necessary to protect the safety of any person attending the meeting or (ii) to ensure that the business of the meeting is conducted in an orderly manner.
 - In our view, in light of the advice issued by the Government in relation to large public gatherings, a chairman could legitimately adjourn a meeting on the basis that it is necessary to protect the safety of a person attending. However, you should be aware that given that this provision is largely untested in the current circumstances, there is a risk of a challenge that it has been postponed for an “improper purpose”.
 - If this route is followed, ahead of the adjournment, you will need to consider when the meeting will be adjourned to. When adjourning the meeting, the Chairman will need to specify the time and place for the adjourned meeting.
 - If the adjourned meeting is to take place more than 14 days after the original meeting, notices must be resent.
- The following should be considered in the event of a delay, postponement or adjournment:
 - whether the proposed revised date for holding the AGM satisfies the legal requirement for when the AGM must be held. Ordinarily an AGM must be held within 6 months of the end of the financial year and the annual report and accounts must be laid before the AGM²;
 - whether the market expects you to hold your AGM on a particular date. If so, you may need to issue a revised financial calendar and update the market with the new provisional AGM date;
 - whether there are any time limits included in resolutions granted at the last AGM which will expire before the AGM is held (usually the earlier of the date of the following AGM and 15 months after the AGM in which they are granted):
 - when will your authority to allot shares expire?
 - when will your authority to disapply statutory pre-emption rights expire?
 - when will your authority to buy-back shares expire?
 - when will your authority to make political donations expire?
 - liaise with the AGM venue to determine whether it has availability for dates later in the year and consider back-up venues if the preferred venue is not available;
 - liaise with all AGM participants (autocue providers, caterers, etc.);
 - carefully review termination provisions and force majeure clauses in existing and future contracts involving AGM service providers; and
 - consider declaring an interim dividend in lieu of a final dividend, if the company’s final dividend would not be paid on the expected date and the timing of the dividend is important.

² On 17 March 2020, the FCA in their primary markets bulletin noted that they support the effective exercise of the rights of shareholders, while recognising that as a result of coronavirus this may need to involve the use of virtual methods <https://www.fca.org.uk/publications/newsletters/primary-market-bulletin-issue-no-27-coronavirus-update>. As of yet there is no intention to extend the timeframe by which a company must hold its AGM (as has been done in Singapore).

Adapt basis on which AGM is held

In the event that it is not possible to hold a hybrid or virtual meeting, you may wish to take action to: (i) ensure the company is in a position to hold such meetings next year; and (ii) limit the number of people attending the AGM this year. To achieve this, you could consider the following:

Revise Articles

- Revise articles to incorporate language required to permit a hybrid or virtual meeting, including:
 - remove provisions which directly or indirectly prohibit the holding of meetings entirely in electronic form (e.g. any requirement that the notice states the place of a general meeting);
 - include a provision which expressly permits a hybrid or virtual AGM;
 - change the quorum requirements to make it clear that members attending a meeting who are not in the same location as each other may form part of the quorum;
 - provide that all votes will be taken on a poll (electronic participation will generally mean the votes must be taken on a poll);
 - add language which addresses the impact and powers of adjournment in the event of technological breakdown or other impediments to participation. In particular, articles should give the chair the discretion to adjourn the meeting as the chair would not be able to put a resolution to adjourn to the shareholders.
- A resolution to adopt the revised articles will need to be included in the notice of meeting at the upcoming AGM.

Encourage proxy submissions

- You may wish to make an RIS announcement ahead of the AGM encouraging shareholders to submit a proxy vote rather than attend the meeting in person.

Live stream the AGM

- Consider setting up a live-stream or phone link for the AGM. We recommend giving consideration as to how to message the fact that shareholders watching the live-stream will not be formally participating in the non-hybrid/non-virtual meeting (in terms of quorum or voting). They might not fully understand the distinction between viewing the meeting and actually formally participating.

Additional suggested steps are set out in the guidance note issued by ICSA as of 16 March 2020 [“AGMs and impact of Covid-19”](#)

If you would like to discuss any of the above, please speak to a member of your White & Case team.

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