

Annual general meetings (AGMs) and COVID-19

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Please note: the information contained in our legal updates are correct as of the original date of publication

Traditional AGM season is fast approaching - with many listed companies having December 31 year ends preparing to send AGM notices to shareholders over the coming week and months (if they haven't done so already). With this in mind, how will AGMs proceed in light of current restrictions on movement and gatherings introduced by the Government to battle COVID-19?

On 28 March 2020, the Government issued a press release confirming measures aimed at supporting business, which included the introduction of legislation to enable companies to hold AGMs in a way which is consistent with the ban on public gatherings of more than two people and the compulsory stay at home measures.

The Chartered Governance Institute continues to publish and update its guidance on how listed companies can still hold a valid general meeting during the current lockdown. The latest guidance includes the following best practice advice:

- **Attendance:** shareholders will not be able to attend AGMs while the stay at home measures are in force as attendance (other than as required to form a valid quorum) is unlikely to fall within the "essential for work purposes" exception to the restrictions. Companies should make clear in their notice of meeting, or by RIS announcement and updating the information on their website where the notice has been published, that shareholders may not attend in person, will be refused entry and should vote by proxy. The company can prevent shareholders and proxies from attending under the chair's common law powers, likely to be backed up in the company's articles of association.
- **Communication:** when sending out notices, shareholders should be encouraged to continue to check the company's website for updates to AGM arrangements as changes may well be required to comply with new guidance and/or Government measures. Information should also be offered about how they can remain engaged through voting and ask questions of directors – this can include providing a mechanism for shareholders to pose questions prior to the meeting which can be answered at the AGM and included in subsequent publications on the website.
- **Quorum:** the quorum should be able to be satisfied by two director and/or employee shareholders attending (where appropriate), with resolutions passed by proxy votes (or by appointing one of those employees as a corporate representative) and the votes of those in attendance. If the physical presence of more than two is required, the number should be kept to the minimum.
- **Chair:** the proxy form should appoint the chair of the meeting (not the chair of the board or a specific director who may be unable to attend) as proxy. Where shareholders have already appointed someone other than the chair of the meeting, they should be encouraged to submit a new proxy form.
- **Venue:** if a meeting has already been convened for a venue that has become unavailable, and the articles allow the board to postpone the meeting or move it, directors should consider moving it to a more controlled venue. Companies that do not have such articles should adjourn the meeting to an alternative venue, which could be achieved by the employees/others who plan to form a quorum (as outlined above) attending the planned venue and adjourning to another venue.

Adopting an approach consistent with this guidance seems the simplest solution to allow compliant meetings to take place. An alternative, if permitted by a company's articles of association, might be to hold an AGM exclusively online – although it should be noted that in

normal circumstances these have not previously been endorsed by various investment/shareholder representative bodies. Practical and logistical challenges may lessen the adoption of virtual AGMs for the 2020 season - particularly choosing the right technology/communication forum, establishing rules and practices for virtual meetings and ensuring everyone has access by providing clear joining instructions. If not done before, holding a virtual AGM would mean adapting AGM documentation, incurring additional cost and taking up greater management time.

In addition to measures applying to the holding of AGMs, it is also worth noting that the FCA is allowing listed companies and regulated markets six months instead of four to publish annual financial information and AIM Regulations are allowing AIM companies nine months instead of six, provided the company seeks the 3-month extension from Companies House ([see our update on this here](#)).

Companies planning to hold their AGM in the coming weeks and months will need to stay up to date with changes in legislation and guidance - both of which can change quickly. Moving forwards, more companies are likely to consider making changes to their constitutional documents to permit virtual or hybrid meetings as a means of dealing with some of the practical issues currently arising from the need to hold a purely physical AGM, although such changes are unlikely to be of assistance for the 2020 AGM season.

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