

C L I F F O R D

C H A N C E



CORONAVIRUS: IMPLICATIONS FOR AGMS

The outbreak of Coronavirus (Covid-19) and the potential risks of aiding the spread of the virus by holding an AGM where a large number of people gather, coupled with the potential for either travel restrictions or the closure of any pre-booked AGM venue should the current situation deteriorate, mean that this AGM season may see some disruption. Time spent planning ahead now in order to minimise any potential disruption will be well spent.

It is worth a reminder that public companies must hold an AGM within six months of the end of the relevant financial year. Companies might want to consider making full use of that period depending on when their year-end falls.

Given the legal uncertainties over the validity of virtual-only meetings (with no physical meeting of any shareholders), we do not see these as a viable option.

At the moment, most companies seem to be pressing ahead with planning for or convening physical meetings, but that will mean thinking through a number of potential contingency scenarios as discussed below.

Companies that have not yet finalised their AGM notice might want to consider whether it is possible – or indeed feasible – at this stage for them to switch to holding a hybrid AGM (that is, a meeting which enables shareholders to attend either in person or electronically without the need to be physically present). If this is a possibility then companies may want to explore the additional logistics (and related costs) in more detail. In recent years, a number of companies have amended their articles to enable them to hold hybrid AGMs. Companies intending to hold a hybrid AGM this year ought to consider whether in the AGM notice they should encourage shareholders to participate electronically rather than attend the physical meeting, so as to minimise the likelihood of there being a large gathering. However, it is not possible to avoid the need to have at least a quorum of shareholders physically present at the designated place for the meeting. As a result, in an extreme situation, the contingency planning considerations highlighted below will still be relevant.

For those companies that do not have the necessary powers to hold hybrid AGMs, or where they have already finalised and despatched their AGM notice convening a physical or hybrid meeting, they will need to continue to monitor the development of the virus and any Government guidance or directions published ahead of the AGM.

Assuming the continued spread of the virus, companies may wish to make a regulatory news service (RNS) announcement both in the coming weeks and shortly ahead of the AGM encouraging shareholders to make use of their right to submit a proxy to ensure their vote is counted at the meeting rather than attend the meeting in person.

Where a company has convened a physical-only meeting but is discouraging attendance, it may want to consider putting in place arrangements to enable shareholders both to submit questions electronically or in writing ahead of the meeting (to the extent this is not already in place) and watch the meeting via a live-stream webcast. The company could publish responses to the questions on its website and/or have the directors respond to them at the AGM, which could be live-streamed for shareholders to watch. Whilst live-streaming would not enable shareholders to formally participate in the AGM (in order for their vote to count they would need to submit a proxy ahead of the meeting), it would go some way to making shareholders who do not wish, or who are unable, to attend in person feel that they were still a part of the AGM. However, for a number of companies (particularly small companies who usually have a low turnout of shareholders) the costs and logistics of this may mean it is a disproportionate step.

Where the Government issues guidance or directions that gatherings of over a certain number should not go ahead, and which would thereby affect the AGM, then a different approach may have to be adopted.

Where a company's articles permit, the company may be able to postpone the AGM to a later date, being mindful of the statutory requirement to hold the AGM within six months of the company's financial year-end. Companies should also be aware of the date of expiry of their share allotment and other share capital resolutions passed at their 2019 AGM. Typically, these would remain valid until the deadline for holding the AGM in 2020, but this will depend entirely on the terms of the resolutions themselves.

In the event of a Government direction which would impact on the convening of the AGM, we would expect that the company would need to make a RNS notification ahead of the meeting referring to the relevant direction and confirming that the meeting could no longer go ahead as planned, and to update shareholders on the proposed course of action.

Where the company has powers to postpone the AGM in its articles and it believed that it may yet be able to hold the AGM by the end of the six month window, then it might look to postpone the meeting. However, where the company's articles do not contain powers to postpone, other options will need to be considered. So long as the terms of the Government direction would not prohibit it, the company could consider opening the AGM (ensuring that a bare quorum was present) and then immediately adjourn it to a later date, details of which would be notified to shareholders. This could be an option in circumstances where the company believed that it might still be possible to hold the AGM at a later date within the six month window. However, if the company considers that it would not be feasible to either postpone or open and adjourn the original AGM to a later date within the six month window because Coronavirus related restrictions are expected to still apply, the company would need to consider carefully its remaining options.

These would include whether it could or should proceed with the AGM on the basis of a very minimal but quorate attendance and seek to pass the resolutions by voting the proxy votes received, or possibly even on a show of hands in an extreme scenario.

Also consider that in an extreme scenario where the Government has legislated to impose restrictions on public gatherings, legislation may also provide extensions of any statutory deadlines for holding events such as AGMs. That would not, however, have the effect of preventing the expiry of the authorities taken at the previous AGM which are stated to expire by a specified date.

As will be appreciated this is a very technical area of law and practice. In each of the various scenarios highlighted above there are a number of legal, practical and investor relationship issues that will need to be carefully thought through in order to determine the most appropriate course of action.

Actions for Company Secretaries:

- Contact your registrars and AGM venue provider to discuss what contingency plans they have in place
- Review the company's articles of association for powers to hold hybrid meetings and/or to postpone and/or adjourn the AGM
- Prepare or update the Chair's AGM script to reflect any AGM contingency plans
- Prepare draft RNS for use in the event of a postponement or adjournment of the AGM or a deterioration in the current situation such that shareholders should be discouraged from attending
- Review the authorisations obtained at last year's AGM to check any relevant expiry dates and consider the implications of not being able to renew them.

If you would like assistance with your AGM contingency planning or any broader issues relating to the impact of Coronavirus, please speak to your usual Clifford Chance contact or any of the authors of this note.

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