

AGMs and General Meetings: Current Options for UK Companies

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In an effort to contain the COVID-19 outbreak, the British Prime Minister announced a number of restrictions on individuals' ability to leave their homes and meet with others (**Measures**).¹ These Measures present obvious difficulties for UK companies with upcoming annual general meetings (**AGMs**). The UK Government announced that legislation would be introduced to ensure companies required to hold an AGM can comply with this legal obligation, whilst also adhering to the COVID-19-related restrictions.² The Corporate Insolvency and Governance Act, passed on 25 May 2020, contains these temporary measures (**Act**).³ The legislation has retrospective effect from 26 March 2020 and will apply until 30 September 2020. Regulation may expedite or extend this deadline, but not beyond 5 April 2021. Importantly, these temporary flexibilities are available to companies irrespective of their articles of association (**Articles**). Q&A published by the UK Department for Business, Energy and Industrial Strategy (**BEIS**) and the Financial Reporting Council (**FRC**) on 8 June 2020 (**June Q&A**)⁴ explains, the "legislation will give [companies] the ability temporarily to override certain requirements in [their] constitutional documents or rules relating to the mode of [their] meeting." The Chartered Governance Institute (**ICSA**) has issued separate guidance for holding meetings under the Act.⁵

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¹ UK Cabinet Office, Staying alert and safe (social distancing) guidance, accessible at: <https://www.gov.uk/government/publications/staying-alert-and-safe-social-distancing>

² UK Department for Business, Energy & Industrial Strategy, press release (28 March 2020), accessible at: <https://www.gov.uk/government/news/regulations-temporarily-suspended-to-fast-track-supplies-of-ppe-to-nhs-staff-and-protect-companies-hit-by-covid-19>

³ UK Corporate Insolvency and Governance Act, accessible at: <http://www.legislation.gov.uk/ukpga/2020/12/contents/enacted>

UK Department for Business, Energy & Industrial Strategy, Corporate Insolvency and Governance Bill Explanatory Notes, accessible at: <https://publications.parliament.uk/pa/bills/cbill/58-01/0128/en/20128en.pdf>

⁴ Measures in respect of Company filings, AGMs and other general meetings during Covid-19, Q&A, 8 June 2020, accessible at: <https://www.frc.org.uk/getattachment/e3224310-c39c-4b48-b56b-cc703936beeb/Updated-QA-AGMs-Best-Practice-Final.pdf>

⁵ Shareholder meetings under the Corporate Insolvency and Governance Act, accessible at: <https://www.icsa.org.uk/knowledge/resources/share-meet-insolvency-govact2020>



Under the Act, companies required to hold an AGM between 26 March 2020 and 30 September 2020, whether pursuant to their Articles or statute, have until 30 September 2020 to do so. Regulation may further extend this deadline.

In cases where a company has already issued notice of its AGM, and it is preferable to make use of the extended time period provided by the Act, consider postponing or adjourning the AGM. There is no statutory minimum notice period for rearranged meetings, however a company should have regard to its Articles. Generally speaking, 21 clear days' notice should be sufficient, however shorter notice may be acceptable.

- *Postponement.* A company requires specific provisions in its Articles to postpone an AGM. Although the Act enables companies to convene an AGM at a later date, it does not enable already-convened AGMs to be postponed. In the absence of postponement permissions, a company should adjourn its AGM in this instance.
- *Adjournment.* Subject to a company's Articles allowing for greater flexibility, a quorate AGM is generally required for its adjournment. UK companies typically have modest quorum thresholds: subject to a company's Articles, the quorum is two members present in person or by proxy. This includes the chair of the meeting, and can typically be satisfied by two directors or employee shareholders. Further information on adjourning an AGM is included in guidance published by the ICSA, which was reviewed by BEIS and which speaks as of the close of business on 16 March 2020 (**Guidance**).⁶

When considering whether to avail of the extended time period in which to hold an AGM, companies should have regard to the expiration dates of standing authorities and the timing of final dividend payments (including whether payment of an interim dividend in lieu is appropriate). If a company's annual report and

accounts include listing rule and disclosure and transparency rule statements, and notice of the delayed or postponed AGM is issued more than one month after their publication, updates will be needed. On these bases, convening an AGM in some form in the immediate term will be necessary for some companies.

Companies have two options for holding an AGM: (1) convene a virtual AGM pursuant to the temporary measures under the Act, irrespective of their Articles or other statutory provisions, or (2) convene an AGM and restrict the physical attendees to those required to achieve the quorum.

Option 1: Virtual AGM.

Until 30 September 2020, an AGM “*need not be held at any particular place*”, and “*may be held, and any votes may be permitted to be cast, by electronic means or any other means.*” The Act also states that “*the meeting may be held without any number of those participating in the meeting being together at the same place.*” These provisions suggest that notice does not need to specify the place of the meeting, the meeting can be held and votes can be cast by wholly-electronic means, and there is no need for a quorum to be achieved through physically present attendees.

Notice of a virtual AGM (or, if already issued, a regulatory news announcement and update to the company's website) should make shareholders aware that:

- They are not allowed to physically attend the AGM owing to the Measures.
- Voting will be via poll vote. The notice should also encourage the submission of proxy forms by all shareholders to mitigate the effect of a shareholder(s) falling ill and being unable to vote in person. Companies should ensure that the proxy form appoints the chair of the AGM. Shareholders who have already appointed someone other than the chair of the AGM as their proxy should submit a new proxy form accordingly. Alternatively,

⁶ AGMs and impact of Covid-19, Guidance Note, accessible at:

<https://www.icsa.org.uk/assets/files/pdfs/guidance/agms-and-impact-of-covid-19-web.pdf>

another attendee can be appointed corporate representative.

- They can participate fully in the AGM electronically. Instructions on how to join, speak during and vote electronically should also be provided.

Companies can facilitate electronic AGM participation through:

- An online Q&A process for shareholders to raise questions related to the business of the AGM, and for directors to publish their responses prior to voting.
- Directors joining the AGM by telephone or video link to answer shareholders' questions.

Answers to any questions raised should be made available during the AGM and in written form afterwards.

As a corollary to the flexibilities afforded by the Act, members' rights are expressly temporarily curtailed. The Act states that members do not have a right to attend an AGM in person, participate other than by voting or to vote by particular means. The June Q&A Guidance on Best Practice annex nevertheless makes clear that good practice includes "*giving all members the opportunity to ask both questions and receive responses to those questions prior to voting either at a real time on-line meeting or via proxy*".

Accommodating shareholder engagement should remain a priority.

Option 2: Restrict AGM Attendees to the Minimum Quorum.

A supplement to the Guidance, that speaks as of the close of business on 26 March 2020 (**Supplement**),⁷ outlines a contingency that is relevant for companies who are unable to hold wholly-virtual AGMs for technical, technological reasons. This approach involves a company convening an AGM and, owing to the Measures, restricting physical attendees to the

number required to achieve a quorum (and any others as are essential to ensure the AGM's proper conduct and safe operation, for example, security staff or technicians to facilitate live streaming).

Whilst this option means only the minimum number of shareholders attend the AGM in the formal sense (unlike Option 2), the input and involvement of others may nonetheless be facilitated through:

- An online Q&A process for shareholders to raise questions related to the business of the AGM, and for directors to publish their responses prior to voting.
- Directors joining the AGM by telephone or video link to answer shareholders' questions. There is no legal requirement for directors to attend an AGM, and so they are not necessarily permitted to attend under the Measures.
- Answers to any questions raised should be made available during the AGM and in written form afterwards.
- Other shareholders joining the AGM using remote means (however this will be insufficient to constitute formal attendance at the AGM).
- Shareholders voting by proxy. Companies should ensure that the proxy form appoints the chair of the AGM. Shareholders who have already appointed someone other than the chair of the AGM as their proxy should submit a new proxy form accordingly. Alternatively, an employee formally attending the AGM and forming part of the quorum can be appointed a corporate representative.

Similar to the notice requirements of Option 2, companies should clearly explain in their notice or, where notice has already been issued, regulatory news announcement and company website update, that:

- Shareholders are not allowed to physically attend the AGM because of the Measures. This explanation should be clear and firmly-worded. It

⁷ AGMs and impact of Covid-19, Supplement to previous AGM Guidance, accessible at:

<https://www.icsa.org.uk/assets/files/pdfs/guidance/agms-and-impact-of-covid-19-supplement-web.pdf>

should unambiguously outline that shareholders attempting to attend the venue will be refused entry under the chairperson’s common law powers.

- Shareholders should vote by proxy. The mechanics of proxy appointment should be outlined and the proxy form provided.
- Shareholders’ involvement can be accommodated electronically. Details of the online Q&A process and instructions on how to join the meeting by telephone or web link should also be provided.

Regarding the physical meeting that is relevant for Option 2, the Act states that an AGM need not be held at a particular place. If notice has already been issued, any change of location should be communicated to shareholders via regulatory news announcement and company website update.

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A designated strategy for AGMs in the present climate is unavoidable. The circumstances in relation to COVID-19 remain fluid and the nature of government restrictions and guidance may change. June Q&A Best Practice Considerations annex states that “[a]s a minimum, organisations should consider exemplary member communication as the key element of good practice.” The June Q&A advises companies to design AGM processes and timelines so that as wide a range of shareholders and members as reasonably practicable can engage with, and provide feedback to, the company, and exercise their voting rights. The Investment Association’s Chair of Stewardship and Corporate Governance has encouraged FTSE 350 companies to consider ways of effectively engaging with shareholders in the absence of their normal AGM.⁸ The Guidance and the June Q&A all suggest holding shareholder days or other events later in the year. ICSA Policy & Research Director, Peter Swabey,

⁸ The Investment Association, Letter to FTSE 350 Chairs (7 April 2020), accessible at: https://www.theia.org/sites/default/files/2020-04/Letter%20to%20FTSE%20Chairs%20-%20April%202020_0.pdf

stated that despite the evolving circumstances surrounding the Covid-19 pandemic, “as a general rule, [companies] cannot go very far wrong if they try to maximise the opportunity for stakeholder engagement within the facilities available to them.”⁹

In cases where notice of an AGM has been issued and there are subsequent changes to the logistical arrangements, supplementary regulatory news announcements should be published. Companies should also consider creating dedicated repositories on their websites for AGM information and logistical updates, including details of the mechanics of proxy voting, means of electronic participation and proposed safety measures for physical meetings (as applicable). Amendment of company articles to ensure AGMs can be held more flexibly in future may also be advisable. The FRC is due to release an assessment of best practice later this year.

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⁹ P. Swabey, A Season Disrupted (8 April 2020), accessible at: <https://www.icsa.org.uk/knowledge/governance-and-compliance/features/a-season-disrupted>