

AGMs and General Meetings: Current Options for UK Companies

30 April 2020

On 23 March 2020, the British Prime Minister announced a number of restrictions on individuals' ability to leave their homes in an effort to contain the COVID-19 outbreak (**Measures**).¹ Among the Measures, work-related travel and public gatherings of more than two people are prohibited unless essential for work purposes. These Measures present obvious difficulties for UK companies with upcoming annual general meetings (**AGMs**). The UK Government announced on 28 March 2020 that legislation will 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 (**Announcement**).² The Announcement explains that “[c]ompanies will temporarily be extended greater flexibilities, including holding AGMs online or postponing the meetings”, however there is no indication of when such extensions become effective.

In the present circumstances, subject to their articles of association (**Articles**), companies required to hold an AGM have three principal options.

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¹ UK Cabinet Office, Social distancing guidance, accessible at: <https://www.gov.uk/government/publications/full-guidance-on-staying-at-home-and-away-from-others>

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>



Option 1: Delay / Postpone / Adjourn AGM.

The Chartered Governance Institute (ICSA) published guidance on each alternative, which was reviewed by the UK Department for Business, Energy and Industrial Strategy and which speaks as of the close of business on 16 March 2020 (**Guidance**).³

- *Notice not yet issued: consider delaying the AGM.* The usual notice requirements apply (21 clear days absent contrary provision in a company's Articles). An update announcement may be needed if the AGM's originally scheduled time and date were publicised.
- *Notice already issued: 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. The Announcement suggests that all companies might be able to postpone an AGM irrespective of whether their Articles contain an express permission. However, is it unclear from the Announcement whether the temporary flexibility of postponement is granted with immediate effect pending the introduction of legislation, or whether it will be the subject of the anticipated legislation and therefore inapplicable until its formal enactment.

In the situation where a company has already issued notice of an AGM and does not have postponement provisions in its Articles, adjournment is appropriate. Subject to the 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 the Guidance.

When considering any of the iterations of Option 1, 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. Delay, postponement and adjournment also remain subject to public companies' statutory six-months-after-financial-year-end deadline for holding an AGM. The Financial Reporting Council (FRC) published a Q&A on 17 April 2020⁴. In addition to outlining several of the possibilities discussed below, the Q&A indicates that the legislation referred to in the Announcement is unlikely to extend the deadline to hold AGMs. On these bases, Option 1 may relieve some of the pressure of the present situation for some companies, however may not be viable for others, particularly as the COVID-19-related circumstances remain uncertain. In this case, convening an AGM in some form will be necessary.

Option 2: Hybrid AGM.

Notwithstanding the Measures, AGMs held only virtually may not be valid meetings, therefore some physically present attendees are needed. A hybrid physical and electronic AGM enables shareholders to formally attend, participate in and vote at an AGM by electronic means, in parallel to others in physical attendance. A hybrid AGM can be convened if permissible under a company's Articles.

Companies considering a hybrid AGM should limit the physical attendees to the number required to achieve a quorum. In light of the Measures' passage

³ 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>

⁴ Measures in respect of Company filings, AGMs and other general meetings during Covid-19, Q&A, accessible at: <https://www.frc.org.uk/getattachment/51dec8c7-7820-402b-b3a1-222db7220157/AGM-QA-Final-Version-Apr-2020.pdf>

into law on 26 March 2020, The Chartered Governance Institute published supplementary guidance (also reviewed by the UK Department for Business, Energy and Industrial Strategy) that speaks as of the close of business on 26 March 2020 (**Supplement**).⁵ The Supplement explains that other than shareholders specifically required to form the quorum, shareholders' attendance at an AGM is not essential for work-related purposes and is prohibited by the Measures.

Notice of a hybrid AGM (or, if a company has already issued notice of a physical-attendance-only AGM, 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 because public gatherings of more than two people are prohibited by the Measures, and that shareholders attempting to attend the venue will be refused entry under the chairperson's common law powers.
- 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.
- They can participate fully in the AGM electronically. Instructions on how to join, speak during and vote electronically should also be provided.

Option 3: Restrict AGM Attendees to the Minimum Quorum.

The Announcement that “[c]ompanies will temporarily be extended greater flexibilities, including holding AGMs online” could refer to an ability to convene AGMs entirely electronically, or to hold a hybrid AGM (Option 2) irrespective of whether permitted by a company's Articles. The precise nature of such flexibilities and when they become effective are unknown, however a FRC press

release⁶ describes the legislative measures as “*being developed urgently*” by the UK Government.

The Supplement outlines a contingency for companies that do not wish or are unable to avail of either Option 1 or 2. This approach involves a company convening an AGM as originally scheduled, however, owing to the Measures, restricting 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.

- A company can introduce an online Q&A process for shareholders to raise questions related to the business of the AGM, and for directors to publish their responses.
- Directors can join 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.
- Other shareholders can also join the AGM using remote means (however this will be insufficient to constitute formal attendance at the AGM).
- Shareholders can vote 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

⁵ 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>

⁶ Financial Reporting Council, press release (17 April 2020), accessible at: <https://www.frc.org.uk/news/april-2020/measures-in-respect-of-company-filings-agms-and-ot>

news announcement and company website update, that:

- Shareholders are not allowed to physically attend the AGM because public gatherings of more than two people are prohibited by the Measures. This explanation should be clear and firmly-worded. It 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.
- Shareholder 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 required under both Options 2 and 3, a company’s Articles are likely to permit implementation of safety measures reflective of current government guidance. For example, it may be appropriate to physically distance attendees and introduce self-certification requirements even if for only the minimum quorum. The venue initially booked by a company for its AGM is likely to now be unnecessarily large (depending on the number of shareholders ordinarily in attendance) or may be closed. A company’s head office or the home of a director or employee may be a more controlled, alternative venue. Companies with Articles permitting the AGM to be postponed or its location to be changed should consider exercising this power. Companies lacking such Articles should adjourn the AGM from its original location and rearrange it at an alternative venue. Changes of location should be communicated to shareholders via notice of the AGM or, if notice has already been issued, regulatory news announcement and company website update.

⁷ 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

The FRC Q&A suggests that the legislation referred to in the Announcement may take Option 3 one step further. The FRC envisages the legislation enabling companies to (i) hold “closed” AGMs that are restricted to the minimum number required for the quorum, and (ii) “temporarily...form [the] quorum by telephone or by electronic means obviating the need to compromise their own safety and those of others by convening physically, even in the smallest meetings of two people”. This does not seem to suggest fully virtual AGMs will be facilitated: the Q&A separately describes fully virtual AGMs as uncommon and largely untested in the UK, and mandating their use as likely to create further significant issues. Similar to the discussion of Option 3 above, the Q&A discusses accommodating shareholder engagement through proxy voting and online Q&A processes.

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Pending the enactment of UK legislation, a designated strategy for AGMs in the present climate is unavoidable. The circumstances in relation to COVID-19 remain fluid, therefore companies should prioritise timely and effective communication with shareholders. 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.⁷ The Guidance and Q&A both suggest holding shareholder days or other events later in the year. ICSA Policy & Research Director, Peter Swabey, 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.”⁸ 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

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

updates, including details of the mechanics of proxy voting, means of electronic participation and proposed safety measures for physical meetings (as applicable).

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