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AGMs and impact of Covid-19

Guidance note



March 2020

AGMs and impact of Covid-19

This guidance has been produced jointly by Slaughter and May and The Chartered Governance Institute, with the support of a number of other organisations (see page 7) and speaks as of the close of business on 16 March 2020.

Companies planning their AGM should be considering contingency plans in light of the spread of Covid-19. Checking relevant provisions of the articles of association and coordinating with registrars and venue providers is key, as is ensuring shareholders are kept regularly updated and are given the maximum opportunity to have their say.

This guidance offers suggestions reflecting UK company law and associated regulation. Companies will need to consider their own individual circumstances, including their articles of association and any other relevant matters.

What are the options?

- **Adapt the basis on which you hold the AGM.**
- **Delay convening the AGM**, if notice has not yet been issued.
- **Postpone the AGM**, if permitted under the articles of association (Articles).
- **Adjourn the AGM.**
- **Conduct a hybrid AGM**, if permitted under the Articles.

Given that the situation continues to evolve, companies may ultimately have to use more than one of these options.

Adapt the basis on which you hold the AGM

If holding the AGM, companies should consider the following measures.

- **Confirm position with venue provider.** Ensure that the venue is still prepared to host the AGM and consider booking a fall-back venue. If moving to another venue or if the situation otherwise changes, it may become necessary to postpone or adjourn the meeting (see below for these eventualities).

AGMs and impact of Covid-19

- **Arrange supplemental venues in addition to the main venue.** The Articles may permit the use of supplemental nearby venues linked by satellite or some other means. There is also authority enabling this where the Articles are silent. Consider this as a way of restricting numbers in any one particular location, to take account of emerging limits on the size of meetings. If notice has already been issued without referring to supplemental venues, use appropriate announcements and website updates to inform shareholders.
- **Establish a dedicated area on company website.** This area would include the details of arrangements for the meeting and can be updated to reflect changes in the situation, including as regards attending the AGM. Where appropriate, updates can also be given by announcement.
- **Encourage proxy voting.** Include specific provisions in the notice of meeting encouraging shareholders to vote by proxy. Facilitate on-line voting to pre-empt any disruption to postal services. Supplement this with appropriate announcements and website updates.
- **Establish an online shareholder Q&A for the AGM.** Shareholders can post questions related to the business of the AGM. To the extent practicable, this should be kept up to date with answers up to the deadline for proxy voting. Questions can also be answered at the AGM, in particular if the AGM is being live streamed.
- **Consider announcing a shareholder event to be held later in the year.** Although this will not be the AGM, companies may wish to offer shareholders, particularly retail investors, the opportunity to engage with directors later in the year.
- **Ensure the AGM will be quorate.** Generally, this is likely to require a small number of attendees (2-5) and relevant provisions will be in the Articles.
- **Restrict the number of non-shareholder attendees.**
- **Pre-register attendees.** If not already part of the AGM process, establish pre-registration to attend the AGM, so as to assess the number of attendees.
- **Live stream the AGM.** Where technologically possible, a live stream of the event and/or a phone link could be set up. These options will not constitute formal attendance at the meeting.

AGMs and impact of Covid-19

- **Introduce appropriate safety measures.** The Articles will likely contain provisions permitting directors to introduce arrangements before and during an AGM to ensure the safety of attendees. Companies could rely on these provisions to take appropriate safety measures, including restricting the number of attendees and requiring temperature checks and self-certifications. Details of the proposed arrangements can be included on the website and an appropriate announcement can also be made.
- **Dispense with the provision of refreshments and any other complimentary offerings** before and after the meeting. Announcing this in advance is likely to reduce the number of attendees.
- **Attendance of directors.** It is good practice for as many of the directors as possible to attend the AGM, but this is not a legal requirement and it therefore does not invalidate the meeting if some (or all) are unable to do so. If directors do not attend in person, they could be available for questioning via video link.

Delay convening the AGM

A company which has not issued its notice can delay its despatch and potentially change the location of the AGM. The latest date to hold an AGM is six months after the financial year end and so companies with a 31 December year end will have relatively little leeway. Institutions are unlikely in the circumstances to object to the AGM being convened on less than 20 working days' notice and so generally, companies can convene the AGM on 21 clear days' notice absent any longer period in the Articles.

If adopting this approach, companies should consider the following measures.

- **Update the market.** If the time and date of the AGM have been publicised, an update announcement should be made.
- **Annual authorities.** Check the dates on which standing authorities approved at the previous AGM expire. Generally, authorities will be expressed to expire at the earlier of the date of the following AGM and 15 months after the AGM at which they are granted.
- **Remuneration policy.** Companies required to approve a new remuneration policy at their 2020 AGM have until the end of their current financial year to approve the new policy.

AGMs and impact of Covid-19

- **Dividend payments.** Delaying the AGM may mean that the company's final dividend is not paid on the expected date. If the timing is considered important, the payment of an interim dividend in lieu could be considered.
- **Implications for Listing Rule and DTR disclosures.** If listing rule and DTR statements have been included in the report and accounts, these will need updating if the notice of meeting is issued more than one month after the report and accounts.
- **Consider contract with venue provider.** It may be possible to avoid paying the costs for a booked venue if force majeure can be claimed.

Postponing the AGM

If a company has issued an AGM notice, it can postpone its AGM if its Articles permit it to do so. Companies with the ability to postpone their AGM can opt for the flexibility of issuing their AGM notice as originally planned and relying on the ability to postpone the AGM based on the situation at the relevant time.

The Articles will govern the process to follow when postponing the AGM. Assuming the Articles do not provide otherwise, there is no statutory minimum notice period for rearranged meetings. As a matter of good practice, the company should try to provide 21 clear days' notice but it may be reasonable in the circumstances to have a shorter notice period. The postponed meeting must be held within six months of the company's financial year end and so companies with a 31 December year end will have relatively little leeway.

Similar considerations to those under '**Delay convening the AGM**' apply to companies which decide to postpone their AGM.

Adjourning the AGM

A company should only consider adjournment if it has issued its AGM notice and does not have postponement provisions in its Articles. Generally, a quorate meeting is required to be held in order to enable an adjournment. However, the Articles will often permit greater flexibility, allowing, for example, for adjournment for lack of quorum. The adjourned meeting must be held within six months of the company's financial year end and so companies with a 31 December year end will have relatively little leeway.

AGMs and impact of Covid-19

If it is known in advance of the meeting that it will be opened with the intention of adjourning it, an announcement to this effect should be released and the company's website should also be updated.

If it is not possible to hold the meeting at the relevant venue because of closure, companies should make an announcement of the adjournment and also arrange for representatives to be present outside the venue at the time of the meeting to inform shareholders of the adjournment. Although there is no authority for this course of action, it was followed for meetings convened at the site of the 1992 bomb attack in the City.

Similar considerations to those under '**Delay convening the AGM**' apply to companies which decide to adjourn their AGM.

Conducting a hybrid AGM

Virtual-only meetings are not viable given they may not constitute valid meetings. However, if the Articles allow this, companies can conduct a hybrid AGM (a combination of a physical and electronic meeting).

If a company has already issued its AGM notice for a physical-only meeting but its articles allow 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.

Companies conducting a hybrid AGM should make shareholders aware that they can participate fully in the AGM electronically. Holding a hybrid meeting in itself will not preclude the ability of shareholders to attend in person and therefore the measures under '**Adapt the basis on which you hold the AGM**' should also be considered.

Current legislative position

It is understood that the Government will consider legislative options to help systems and services work more effectively in tackling the outbreak. The Government is encouraging individuals to reduce non-essential contact and advising against the holding of mass gatherings. However, the precise details of these measures (for instance, the size limit on AGMs) are not yet clear. Companies should alter their plans as necessary as new Government advice and/or emergency legislation are announced.

AGMs and impact of Covid-19

This guidance has been produced jointly by Slaughter and May and The Chartered Governance Institute, with the support of the Financial Reporting Council, GC100, the Investment Association and the Quoted Companies Alliance. The Department for Business, Energy and Industrial Strategy has also reviewed the guidance.