



## **Measures in respect of Company filings, AGMs and other general meetings during Covid-19**

On 28 March 2020, the Secretary of State for Business Energy and Industrial Strategy, Alok Sharma MP, announced that the Government would, as soon as possible, bring forward legislation to assist those companies for which COVID-19 restrictions make it difficult to meet statutory obligations to hold meetings and to file documentation on the Companies Register. Those measures are contained within the Corporate Insolvency and Governance Bill published on 20 May 2020. The following Q&A is designed to provide companies with additional information upon which to plan activities over the coming months.

### **Q&A**

**Q. The legislation has not yet come in. What guarantee does my company or other body have over the retrospective measures you have announced.**

The legislation was introduced in the House of Commons on 20 May 2020. The measures relating to Annual General Meetings (AGMs), General Meetings (GMs) and other meetings will apply retrospectively from 26 March. This is the first day of the emergency period when a company would have been statutorily required to issue notice of the meeting. They will apply to companies, mutual societies and Charitable Incorporated Organisations.

We have made this announcement now to give companies and other bodies a basis on which to plan over the coming months. Any legislation is subject to the approval of Parliament, but the announcement and the further detail provided in the Q&A below reflects what Government intends to deliver. It should be read in conjunction with the our earlier Q&A briefing of 17 April [<https://www.frc.org.uk/news/april-2020/measures-in-respect-of-company-filings-agms-and-ot>].

**Q. My AGM needs to be held by x date. If the legislation has not passed by the notice period date, do I still need to notify shareholders or members of the meeting – even if I am likely to delay it once I am legally able to do so?**



Yes. Any legislation is subject to the approval of Parliament, but the announcement and the further detail provided in the Q&A below reflects what Government intends to deliver. In the meantime, we have made this announcement now to give companies and other bodies a basis on which to plan over the coming months.

It will be important to keep shareholders or members adequately informed of your plans, for example if you intend to postpone your AGM once the legislation is approved.

**Q. If I hold my AGM in accordance with the new legislation, for example virtually, prior to the legislation passing, will votes taken at the meeting be valid, once the legislation passes?**

This is a judgement that companies and other bodies will need to make with their advisers. While it is our expectation that the legislation passes into law and applies retrospectively, we cannot guarantee this outcome. Therefore, companies and other bodies will need to take their own view on how to proceed.

We are announcing this legislation now to allow companies and other bodies to plan when their AGMs will take place to ensure their outcomes are valid. Companies and other bodies should take this into account in their planning assumptions.

**Q. Our articles of association/rules require a physical AGM. How can these measures change that?**

The legislation will give you the ability temporarily to override certain requirements in your constitutional documents or rules relating to the mode of your meeting.

In the longer-term companies and other bodies should review their articles or rules to determine whether additional flexibility is necessary.

We would expect companies and other bodies to carefully consider such changes to ensure that all shareholders or members continue to have the opportunity to engage with the board.



Where a physical AGM is required, we would expect firms to be making reasonable efforts to provide opportunity for engagement and challenge by all shareholders in advance of the AGM. The timetable should provide for sufficient time for shareholders to take account of any feedback received and to exercise their voting rights.

**Q. I understand these flexibilities will be available until the end of September. Does this imply we will be in lockdown until then?**

The government is regularly reviewing the need for the existing coronavirus restrictions but has indicated that some form of social distancing is likely to be necessary for some time. Given the present uncertainties, we are making the flexibilities available for the period within which the majority of companies and other bodies plan to hold their AGMs.

**Q. For how long can I anticipate postponing my AGM?**

Companies and other bodies which have postponed their AGMs since 26 March 2020 will be given until the end of September to hold those meetings. In doing so they can take advantage of the additional flexibilities we are providing as to the manner in which meetings can be held. The Government will also have the ability make regulations to give companies and other bodies further extensions if appropriate.

**Q. It isn't the legislation that requires me to hold an AGM but my constitution/rules. Can I still postpone the meeting?**

Yes. You will have the same grace period as other companies and bodies that are required to hold an AGM by legislation.

**Q. What happens if the coronavirus restrictions are extended or reintroduced beyond 30 September?**

We will be keeping the situation under close review and intend to reserve the ability to extend the flexibilities for a further limited period beyond September should that appear necessary.



Companies and other bodies should also be reviewing their Articles or rules to consider whether these need to be amended to ensure that AGMs can be run more flexibly in the future.

**Q. The focus here seems to be on AGMs. What if I am in a position where I need to convene a general meeting?**

We recognise there may be a need to hold general meetings or other meetings of members, e.g. those referred to in [FCA Technical supplement](#) (modification of general meeting requirements under the Listing Rules). The same flexibilities around the mode in which these are convened will be available for the period to the end of September.

**Q. I am a shareholder/member. These measures deny me my rights to engage with and challenge the management of the company/other body in which I have ownership.**

These are unprecedented and uncertain times - the government's primary concern in this extraordinary period is your safety and well-being, and that of the management and staff of the company in which you have shares, or society of which you are a member. To be clear, members will still retain any existing rights to vote even if they are required to exercise those rights by voting other than in person. We expect companies and other bodies to be considering these rights and making reasonable efforts to provide the usual degree of engagement and challenge. And we intend these measures to be very short-term in their application.

**Q. I am a director. How should I be safeguarding the interests of my shareholders/members?**

First of all, by thinking about what is best for their safety and well-being.

Secondly, by considering the best feasible way of fulfilling your obligations to engage with your members where previously envisaged practices could put that safety and wellbeing at risk.

Where previously envisaged processes would put members and staff at risk, you should be exploring all options available to you to ensure that you provide shareholders or members with the best level and quality of engagement they can



reasonably expect, setting arrangements so that they achieve this in a way appropriate under the current restricted circumstances. For example, where you cannot hold physical meetings, you should do what you can to hold these virtually. Processes and timelines should be designed so that as wide a range of shareholders or members as reasonably practicable can engage, exercise their voting rights, and their feedback can be taken into account by the company or other body.

We intend to publish guidance at the earliest opportunity on what we would consider best practice in this regard.\*

**Q. How can I engage my retail shareholders/members effectively if they cannot attend my AGM in person?**

Health and wellbeing are paramount. However, companies and other bodies have many channels available to them to engage with members. The use of conference calls, video calls, and email questions etc. can all help. Shareholders or members should be encouraged to send in their questions prior to the meeting. Where possible these should be dealt with at, or prior to the meeting or failing that as soon as possible once the meeting has ended.

Shareholder or member meetings should also be agreed once the current social distancing requirements have been lifted.

**Q. Are the authorisations I obtained at last year's AGM still valid if my AGM is postponed to more than a year after the last AGM?**

Companies and other bodies will need to consider the specific requirements of their Articles of Association or rules, and the Resolutions passed at their previous AGMs, in order to determine the answer to this question.

\*Now attached at [Annex A](#)



## **Annual General Meetings Guidance on Best Practice**

### **Background**

On 20 May, the Government introduced into the House of Commons the Corporate Insolvency and Governance Bill 2020. The Bill contains a range of measures to support companies and other entities in financial difficulties and, specifically through a number of temporary measures, to assist them in managing the impacts of the coronavirus pandemic.

Amongst the Bill's measures are temporary easements to make it easier for companies, mutual societies and charitable incorporated organisations to reconcile, on the one hand, obligations to hold annual general meetings (AGMs) and, on the other, the restrictions on movement and public gatherings imposed by coronavirus regulations, and the Government's social distancing guidance.

AGMs are an important event in businesses' and charities' calendars. They are an important opportunity for shareholder engagement and for shareholder voting. Decisions are ratified, resolutions passed and appointments made or renewed, all of which are fundamental to the effective operation of the organisations concerned. However, in these exceptional circumstances, it is necessary to give organisations some temporary flexibility.

The Bill measures achieve this by suspending certain statutory and constitutional requirements and allowing relevant bodies to determine:

- who is and who is not permitted to attend a meeting,
- that a meeting can be convened with a quorum formed by members situated in different locations, and
- that the quorum for the meeting can be formed by members communicating by electronic media including by telephone.

The measures will be temporary, applying retrospectively from 26th March 2020 and ending on 30th September 2020. The start date mirrors the dates that legislation restricting gatherings came into effect, and therefore meetings which have already been held by companies and other bodies from that date onwards will be considered as operating under the flexibilities in the Bill.



## Best Practice Considerations

We do not anticipate that all organisations will necessarily want, or have to exercise the temporary flexibilities to their full extent. The nature of restrictions and the content of Government guidance might change over the period to the end of September, so companies should first of all monitor and review their position and take a view on what approach best balances the safety of members and their legitimate expectation to be afforded engagement with the board.

Where the outcome of that consideration is that a “business as usual” meeting - with all members entitled to attend - is not tenable, organisations should consider whether there might nonetheless (with the consent of the community of members) still be scope to convene a physical meeting with a representative cross-section of members. If such a meeting were to be possible it is important to ensure that all shareholders can ask questions before any voting takes place.

Where the physical exclusion of members appears the only safe option, organisations should explore how they might actively participate in a meeting by virtual means. It is possible that there may be some challenges in ensuring the availability of technology to support member attendance virtually as part of the meeting quorum. Where that is not viable, organisations might look to transmit the proceedings of their AGM in real time over their website and give viewing members the opportunity to raise questions prior to the meeting. Wherever possible, answers should be provided before voting takes place, or proxy voting closes.

In addition, where member engagement in the AGM has been limited, organisations should give full consideration to the range of ways they might accommodate members through events later in the year, either online or - when Government guidance permits - physically.

## Best Practice Essentials

As a minimum, organisations should consider exemplary member communication as the key element of good practice: This should include

- issuing communications in a timely fashion to ensure members can consider the matters to be voted on,
- ensuring that clarity is given on proxy voting,
- explaining the procedure for both the meeting and any communications prior to the meeting,
- giving all members the opportunity to both ask questions and receive responses to those questions prior to voting either at a real time on-line meeting or via proxy,



- making answers to any questions raised available to all both in the meeting and in written form following the meeting. This could be in real-time in the case of virtual meetings.
- offering a physical meeting to all shareholders once government restrictions are lifted.

### **Looking ahead**

The AGM season of 2020 is producing unprecedented challenges for both organisers and members. Lessons will no doubt emerge which will be helpful in informing how approaches might be modified or adapted in the future.

Over the longer term, bodies and their members may benefit from a move to a hybrid AGM format that enables attendance both in person and on-line. With this in mind, the Financial Reporting Council (FRC) plans to work alongside representatives of both companies and shareholders to produce a fully considered assessment of best practice later this year. While this assessment will focus on companies and shareholders, it is envisaged it will be of relevance to other sectors.