

# COVID-19: the implications for UK company annual general meetings

April 9, 2020

The COVID-19 pandemic has come at a time when many UK public companies are making arrangements for their annual general meetings (AGMs). Compulsory measures introduced in the UK mean that public gatherings of more than two people are prohibited except in very limited exceptions. Companies therefore have to consider their obligations to hold an AGM and the business to be conducted at the AGM against this changed and challenging landscape. This insight piece gives an overview of the requirements relating to the holding of an AGM by a public company and the potential options available to companies.

## Background

Under the Companies Act 2006 (the Act), a UK-incorporated public company must hold an AGM within six months of its financial year end.

The Act does not specify what business must be transacted at an AGM. However, UK public companies will typically have a list of matters that they put to their shareholders each year (in part dictated by where the company's shares are traded, such as the Main Market of the London Stock Exchange or on AIM). Common matters include:

- laying the company's annual accounts and reports before its shareholders;
- re-electing directors retiring by rotation and appointing new directors to the company's board;
- appointing or re-appointing the company's auditors;
- authorising the directors to allot shares and disapplying pre-emption rights;
- authorising the purchase by the company of its own shares;
- if a final dividend has been recommended by the directors, declaring that dividend; and
- for quoted companies, voting on the company's directors' remuneration report and policy, and authorising the holding of other general meetings on 14 days' notice.

Additionally, the AGM provides a significant opportunity for shareholders to ask questions of the company's directors.

While the UK government has announced its intention to introduce legislation to temporarily give companies greater flexibilities regarding their AGMs, virtually no detail has yet been made public.

What, therefore, are the key considerations for companies planning AGMs with no immediate end to the lockdown in sight?

# Delay, postpone or adjourn?

Unless and until the UK government extends the time period, the latest date to hold an AGM is six months after the financial year end. A company with a 31 December year end must therefore currently hold its AGM by 30 June 2020. If such a company is considering a delay in convening and holding its AGM, it will have relatively little leeway, bearing in mind that the company will have to allow for the notice period (21 clear days or longer).

Where a company has already given notice of an AGM, it may be possible to postpone the AGM if its articles of association permit it to do so. If the articles do not, opening and then adjourning the meeting to a later date in accordance with the articles may be a possibility. However, in either case, the postponed or adjourned AGM must still take place within six months of the year end.

Any of these courses of action is likely to give rise to a number of issues which the company will have to consider, for example:

- Impact on annual authorities relating to the allotment of shares, non-pre-emptive offers and share buybacks: these typically last from one AGM to the next but with an absolute longstop of 15 months after which they expire.
- Dividends: if the company is proposing the payment of a final dividend, the payment of the dividend may be delayed.
- 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.
- The need to update the market.

## Holding the meeting

It will generally be possible for a public company to hold a valid AGM (or other shareholders' meeting), notwithstanding the COVID-19 lockdown, but the company's normal procedures will need to be adapted.

Under the UK lockdown rules, one of the exceptions to the prohibition on public gatherings of more than two people is that it is "essential for work purposes". It is generally accepted that attendance at a general meeting by a shareholder for that meeting is not "essential for work purposes", unless that shareholder is required to form the quorum.

The requirements of a valid general meeting are in part determined by a company's articles of association, and therefore these will always need to be checked on a case-by-case basis. However, it is likely that most public companies will be able to hold an AGM (or other shareholders' meeting) and comply with the UK's lockdown requirements on the following basis:

- The quorum is satisfied by the appropriate number of director and/or employee shareholders of the company attending the meeting, one of whom acts as chair of the meeting. The typical quorum requirement is for two.
- No other shareholders are permitted to attend. The company should make clear in its notice of meeting, or by RIS announcement and by updating the information on its website where the notice of meeting has already been published that, because of the lockdown rules, shareholders are not allowed to attend. The chair of a meeting has broad powers to preserve order at a meeting, which in the context of the current lockdown would enable them to exclude excess attendees.
- Shareholders should be encouraged to vote by proxy. To make sure that the chair of the meeting can exercise all

proxy votes submitted, companies should make sure that the form of proxy appoints the chair of the meeting.

Given that an AGM that takes place in this way behind closed doors does not allow for active shareholder engagement, a company is likely to want to establish a question and answer system whereby shareholders can raise issues related to the business of the AGM in advance of the meeting.

Depending on the technology available to the company, it may be possible for a company to live stream the meeting or set up a telephone link. However, shareholders joining in this way would not be formally attending the meeting, so they would not count towards the quorum or be able to vote at the meeting (other than by proxy).

In some cases, it may be possible for a company to hold a hybrid meeting. A hybrid meeting is one in which a physical meeting is coupled with some form of electronic participation, i.e. those not actually at the physical meeting are nonetheless able to formally attend, speak and vote. Whether a company can hold such a meeting will depend both on whether its articles permit it to do so and whether it has access to the technology that would enable it to do so in a lockdown compliant way. If a hybrid meeting is possible, the notice would have to contain the procedures for shareholders to follow in order to attend electronically.

Virtual-only AGMs (or other shareholders' meetings) via an online platform are not a generally established part of the UK corporate landscape. Views differ on whether they are viable under UK company law and, from a broader governance perspective, investor bodies have not been supportive.

## COVID-19 changes to the law

It remains to be seen exactly what changes to the law the government will introduce to give companies more flexibility as regards their AGMs and from when the changes will take effect. The announcement of the changes simply referenced holding AGMs online and postponing the meetings without any further detail. We will publish a further update, once more information is available.

## Your Key Contacts



**Neil Nicholson**

Partner, London

D +44 20 7246 7624

M +44 7702 370769

[neil.nicholson@dentons.com](mailto:neil.nicholson@dentons.com)



**Nik Colbridge**

Partner, London

D +44 20 7246 7102

[nikolas.colbridge@dentons.com](mailto:nikolas.colbridge@dentons.com)



**Guy Norfolk**

Partner, London

D +44 20 7002 8568

[guy.norfolk@dentons.com](mailto:guy.norfolk@dentons.com)



**Brian Moore**

Partner, Edinburgh

D +44 33 0222 1897

[brian.moore@dentons.com](mailto:brian.moore@dentons.com)



**Darren Acres**

Partner, London

D +44 20 7246 7745

[darren.acres@dentons.com](mailto:darren.acres@dentons.com)



**Joseph Altendorff**

Partner, London

D +44 20 7246 7012

[joseph.altendorff@dentons.com](mailto:joseph.altendorff@dentons.com)



**Anna Janik**

Managing Practice

Development Lawyer,

London

D +44 20 7246 7384

[anna.janik@dentons.com](mailto:anna.janik@dentons.com)