

New ASIC guidelines for upcoming AGMs and financial reporting requirements in light of COVID-19

March 25, 2020

All public companies¹ are required to hold an AGM once per calendar year within five months of their financial year end, in accordance with s250N(2) of the Corporations Act 2001 (Cth).

However, public companies with financial year ends of 31 December may find it particularly challenging to hold their AGMs by the 31 May 2020 deadline in the face of the COVID-19 pandemic.

In response, for public companies with 31 December balance dates, ASIC has confirmed that it:

1. Will take no action if the AGMs are postponed for two months until 31 July 2020 ('**extension period**'); and
2. Supports the holding of AGMs using appropriate technology. This announcement comes in the form of the 20-068MR guidelines released by ASIC on Friday 20 March 2020.

The full text can be found [here](#).

Two-month extension by 'no-action' position

Provided that public companies with a financial year end of 31 December 2019 hold their AGM by 31 July 2020, ASIC will not take action against those entities if they do not comply with s250N(2) of the Corporations Act 2001 (Cth).

Hybrid and virtual AGMs

Notwithstanding the two month extension, public companies may still wish to proceed with their AGMs by 31 May 2020 by using appropriate technology to comply with COVID-19 restrictions.

This may take the form of 'hybrid' AGMs, hosted in a physical location with online participation available for members. However, the viability of anchoring a hybrid AGM in a physical location is subject to increasingly restrictive social distancing measures.

Alternatively, entities may be able to hold their AGMs entirely online. There is considerable uncertainty as to whether the Corporations Act permits the holding of virtual AGM's. However, ASIC intends to take a 'no-action' position on non-compliance with provisions of the Corporations Act that may restrict the holding of virtual AGMs where a company holds one to comply with the 31 May 2020 deadline or throughout the extension period.

ASIC's 'no-action' position is conditional upon adequate technology being used to provide members as a whole with a reasonable opportunity to participate. ASIC considers this to include members being able to ask questions of the auditor and about management; and voting occurring by poll rather than a show of hands.

ASIC also state that their 'no-action' powers do not cover scenarios where companies wish to hold a hybrid or virtual meeting and their constitution does not permit such a course of action.

Supplementary notices

If companies have already dispatched notices of meeting to members, ASIC supports sending supplementary instructions to their members electronically, on their website and via market announcement. Supplementary notices must be sent at least two business days before the meeting is due to be held.

ASIC's 'no-action' position extends to any failure of the supplementary instructions to comply with the notice of meeting provisions contained in s249J of the Corporations Act.

Inability to facilitate hybrid or virtual AGMs

Some companies' constitutions prohibit the holding of hybrid or virtual AGMs. Other companies may be unable to facilitate adequate online participation due to technological or logistical reasons. Those companies are able to rely on ASIC's 'no-action' position and postpone their AGMs.

Financial reporting obligations

Currently, ASIC does not foresee any extensive or substantial issues with entities meeting their full-year and half-year financial reporting requirements at 31 December 2019. However, ASIC has stated that it is "... closely monitoring developments that may affect financial reporting, talking to market participants and auditors, and considering possible impacts and responses."

What's next?

Whilst the ASIC 'no-action' position does not yet apply to entities with 31 March or 30 June financial year ends, ASIC has indicated it will monitor market conditions and COVID-19 developments and update its guidance accordingly.

If you would normally be holding an AGM in line with having a 31 December year end, please reach out to your Dentons contact, or one of the contacts on this update, to discuss your options.

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1. Companies limited by guarantee are classed as 'public companies'. However where the company is also a registered charity, the Corporations Act does not apply in a number of areas, including the holding of an AGM. Please talk to your Dentons contact if you have particular questions on AGM's of registered charities. ↩

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