

Guidance for companies on holding AGMs

This guidance is targeted at public companies but is potentially of relevance to other companies and charities. The government's Stay at Home Measures, effective from 26 March 2020 in England and Wales, prohibit public gatherings of more than two people. The only exceptions are where the gathering is of people who live together or where the gathering is 'essential for work purposes'. The guidance considers how an AGM might be held in such circumstances and other options such as postponing the AGM

27 March 2020 guidance <https://www.icsa.org.uk/assets/files/pdfs/guidance/agms-and-impact-of-covid-19-supplement-web.pdf>

17 March 2020 guidance <https://www.icsa.org.uk/assets/files/pdfs/guidance/agms-and-impact-of-covid-19-web.pdf>

Supplement issued 27 March 2020. On 17 March 2020, Slaughter and May and The Chartered Governance Institute produced guidance entitled 'AGMs and impact of COVID-19'. That guidance stated that companies planning their AGM should be considering contingency planning in light of the spread of COVID-19.

Since that guidance was produced, the Government has published further, compulsory measures (the 'Stay at Home Measures') prohibiting, among other things, public gatherings of more than two people. On 26 March 2020, the Stay at Home Measures were passed into law in England and Wales, with immediate effect, in statutory instruments (2020/350 in England and 2020/353 in Wales) made pursuant to the Public Health (Control of Disease) Act 1984.

At a time of great uncertainty, companies and their directors will need to focus on making the critical decisions that will enable them to get through the period with least disruption. It is vital that the board engage with investors and other stakeholders through the most appropriate channels. Shareholders' views are important and companies should ensure that they are given as much information as possible in good time to enable them to participate in the decision-making process.

The AGM is important for any public company, but at the moment the health of companies' shareholders, workforce and officers is paramount. Our earlier guidance note made it clear that postponement of the AGM is an option, and that remains the case. However, given the uncertainty around the timeframe for resolving the current situation, companies will want to ensure that their AGM authorities are refreshed before they expire, and there may be companies that need to hold a general meeting on an urgent basis to approve a capital raising or other urgent transaction. It is therefore important that listed companies are able to

hold a valid general meeting. In the light of the Stay at Home Measures, we have now suggested an approach for companies who do not wish or are not able to postpone.

This guidance note was prepared by Linklaters LLP, Slaughter and May, Clifford Chance LLP, Freshfields Bruckhaus Deringer LLP and The Chartered Governance Institute, with the support of the Financial Reporting Council, the City of London Law Society Company Law Committee, GC100 – the Association of General Counsel and Company Secretaries working in FTSE 100 Companies, the Investment Association and the Quoted Companies Alliance and speaks as of the close of business on 26 March 2020. It sets out their views regarding how listed companies incorporated under the UK Companies Acts might implement contingency plans in light of the Stay at Home Measures in the absence of any relevant legislative changes. The Department for Business, Energy and Industrial Strategy has also reviewed this guidance note.

Checking relevant provisions of a company’s articles of association and coordinating with registrars and venue providers is key, as is ensuring shareholders are kept regularly updated and are given their right to vote. This guidance note 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.

1 Can a general meeting of a listed UK public company be validly held while the Stay at Home Measures are in force?

Yes, but general meetings will have to be held in a different way while the Stay at Home Measures are in force. While the requirements of a valid general meeting are in part determined by a company’s articles of association (and will therefore need to be checked on a case-by-case basis), the majority of listed UK public companies should be able to hold a valid general meeting in the manner described below.

2 Are shareholders generally able to attend general meetings while the Stay at Home Measures are in force?

Not in person. The Stay at Home Measures prohibit public gatherings of more than two people. The only exceptions to this are where the gathering is of people who live together or where the gathering is 'essential for work purposes' (noting that workers should try to minimise all gatherings). Attendance at a general meeting by a shareholder (other than one specifically required to form the quorum for that meeting) is not 'essential for work purposes'.

Shareholders should, of course, be encouraged to vote by proxy. Companies may want to encourage the submission of questions for the board of directors in writing with the answers to be published in whatever manner companies determine, for example on the company website.

Companies should make it clear in their notice of meeting, or by RIS announcement and by updating the information on their website where the notice of meeting has already been published, that public gatherings of more than two people are not permitted under the Stay at Home Measures and that therefore shareholders are not allowed to attend the meeting in person. This wording should be unambiguous (i.e. stronger than merely recommending that shareholders not attend) and should make it clear that anyone seeking to attend the meeting will be refused entry to the meeting and that shareholders should vote by proxy. Information should also be offered about how shareholders can remain engaged through voting and ask questions of directors. It should, however, also note that the current situation is evolving and that further announcements may be required.

3 Can a company prevent shareholders and proxies from attending a general meeting?

Yes. The chair of a general meeting of a UK public company has broad common law powers to preserve order at that meeting, ensure the safety of the attendees and allow the business of the meeting to be transacted. These are likely to be backed up by express powers to do the same in the company's articles.

As the attendance of more than two people at a general meeting (other than where this is essential for work purposes) is not permitted under the Stay at Home Measures, not to mention unsafe for the attendees, the chair of a general meeting should exercise those powers to exclude excess attendees. This means that any of those whose presence is not 'essential for work purposes' should be excluded, once two people (including the chair of the meeting) are present. This allows a public company to hold a general meeting 'behind closed doors', and to carry out the business of that meeting, provided a quorum can be established and maintained, and provided the other requirements of a general meeting are observed.

For some companies, it may be necessary to have additional personnel at the location of the meeting (if not in the room where it is held) to ensure its proper conduct and safe operation (such as technicians, if there is to be a webcast, and/or security staff) but this should be kept to the minimum and only where this is essential for work purposes.

4 How will a quorate general meeting be held, if shareholders are not able to attend?

The quorum for a general meeting is typically set out in a public company's articles (or is determined to be two members present in person or by proxy by section 318(2) of the Companies Act 2006). This quorum may be satisfied by two director and/or employee shareholders of the company attending the meeting, with resolutions being passed by the proxy votes of those who have not been able to attend in person (or by appointing one of those employees as a corporate representative under section 323 Companies Act 2006) and the votes of those in attendance.

This might be achieved by, for example, an executive director and the company secretary being present at the general meeting, provided that each is a member, a corporate representative or appointed as a proxy. The fact that their presence is necessary in order for a quorum to be formed means that their presence is 'essential for work purposes' (and therefore permitted), especially given they are both employees and the company needs to deal with the business of the meeting.

All, or almost all, companies should be able to form a quorate meeting in this way. In some situations (for example where the meeting venue is unavailable), it may be necessary for a quorate meeting to be formed at another location which is under the control of the company. In extreme situations, this might be at the home of a director or employee, with that director or employee and a fellow householder (if not shareholders themselves) being appointed as proxies or corporate representatives. This is clearly permitted under the Stay at Home Measures, but the appropriate process for changing the venue of a general meeting would need to be followed as described below.

Of course, all appropriate social distancing measures should be observed by the small number of attendees at a physical meeting. For example, the meeting should be no longer than is required and if those attending are not from the same household they should maintain at least the recommended minimum degree of physical separation.

5 What if the quorum requirement is more than two?

The articles of association of some public companies require more than two shareholders to be present for a meeting to be quorate. However, these members may typically be present either in person or represented by proxy. In this case, two natural persons will need to be present in person as described above in order to constitute a 'meeting', but one of them (for example, the person who chairs the general meeting) might be appointed as proxy for other members in order to fulfil the quorum requirement.

If, unusually, a quorum requires the physical presence of more than two persons, then additional members or proxies may be required to attend in person. This is likely to be limited to a very small number of companies and the number of people required to be present in any one place is likely to be very small (in single figures) and should be kept to the minimum necessary to enable the meeting to proceed. Again, all appropriate social distancing measures should be observed.

6 Who will chair a general meeting?

The articles will determine who chairs a general meeting. They typically provide that the chair of the board or, in the absence of the chair of the board, another director shall preside as chair of the meeting. It may be helpful for a director to attend as part of the quorum so that it is clear who shall act as chair of the meeting. Alternatively, articles may allow for any member to be elected to act as the chair of the meeting by a resolution of the company passed at that meeting.

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 (and not the chair of the board or a specific director who may on the day be unable to attend).

Where shareholders have already appointed someone other than the chair of the meeting as their proxy, they should be encouraged to submit a new proxy form appointing the chair of the meeting instead (as it is unlikely that the original proxy will be permitted to attend unless she/he is someone required to form part of the quorum for the meeting). Where proxy forms allow someone other than the chair of the meeting to be appointed (as they normally do), shareholders should be encouraged to appoint the chair of the meeting, given that any other proxy may well not be permitted to attend the meeting.

7 Will the other directors be allowed to or expected to attend the general meeting?

As described in 'AGMs and impact of Covid-19', there is no legal requirement for directors (other than those whose presence may be required to form a quorate meeting as described above) to attend a general meeting and their attendance would not be permitted under the Stay at Home Measures. It would, however, be possible as an option for them to dial in to the meeting if the company considers that this is helpful for running the meeting, although it is not required.

8 Where should general meetings be held, if the planned venue is unavailable or otherwise inaccessible?

Companies that have already convened a general meeting for a venue that has since become unavailable will need to find an alternative venue. If the company's articles allow the board to postpone the meeting or move its location to an alternative venue, they should consider exercising this power to move the meeting to a more controlled venue, such as the company's head office. While some companies may ordinarily have security concerns (especially if their general meetings are normally very well-attended or if they operate in contentious sectors), the fact that the meeting may be held behind closed doors should mitigate these concerns.

Companies that do not have articles provisions that enable them to postpone their meeting or switch to an alternative venue should, in law, adjourn the meeting from the planned venue to an alternative venue. If practicable, it is accepted that this could be achieved by the small number of employees/others who plan to form a quorum attending the planned venue (or close to it – e.g. outside the door) and adjourning to another suitable venue, where the meeting would be held as described above. Where this is not practicable, companies should take advice on the best course of action in the circumstances, while always preserving the safety of the directors and employees involved and complying with prevailing government rules.

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