

COVID-19 Annual General Meetings (AGMs)

KPMG Board Leadership Centre

The Department of Business, Energy and Industrial Strategy (BEIS) has [announced](#) an intention to implement various COVID-19 related measures including measures to ensure those companies required by law to hold annual general meetings (AGMs) will be able to do so safely, consistent with the restrictions on movement and gatherings. Legislative changes will temporarily grant companies greater flexibilities, including holding AGMs online or postponing the meetings.

As soon as further details are published, including as to the timing of any changes, we will issue another update.

In the meantime, The Chartered Governance Institute has published [updated guidance](#) about AGMs and the impact of COVID-19, which reflects the Government ban on public gatherings of more than two people.

Prepared by five law firms, the guidance offers advice on how listed companies incorporated under the UK Companies Act might implement contingency plans in light of the compulsory 'Stay at Home Measures' introduced by the Government.

Earlier in March 2020, The Chartered Governance Institute produced ['AGMs and impact of COVID-19'](#) which suggested that companies planning their AGM should be considering contingency planning in light of the spread of COVID-19 and, subject to their own individual circumstances, including their articles of association, offered a number of options including:

- Delaying the AGM, if notice has not yet been issued
- Postponing the AGM, if permitted under the Articles of Association
- Adjourning the AGM
- Adapting the basis on which the AGM is held

Delaying 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.

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.

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.

Adapting the AGM

While the Chartered Governance Institute's [initial paper](#) included a number of matters to be considered when adapting an AGM in the light of the current pandemic, the [updated paper](#) provides more guidance in the light of the Government's compulsory 'Stay at Home Measures' prohibiting, among other things, public gatherings of more than two people.

While postponement of the AGM is an option, companies may need to ensure that their standing share capital authorities (as granted at their 2019 AGM) are refreshed before they expire.

For certain companies, the ability to raise working capital by utilising such authorities may be crucial in the coming months. This may determine, in part, whether a company takes advantage of any relaxation of the timeframe within which an AGM must be held, as it seems unlikely that any change to current legislation could extend the duration of shareholder-sanctioned share capital authorities.

Also, companies may need to hold a general meeting on an urgent basis to approve a capital raising or other urgent transaction.

Recognising the necessity of being able to hold a valid general meeting issues like these while the 'Stay at Home Measures' persist, the [updated guidance](#) proposes an approach for companies who do not wish or are not able to postpone their AGM.

It recommends that companies encourage shareholders to vote by proxy and that they make it clear in the notice of meeting, RIS announcement or by updating the information on the company website where the notice of meeting has already been published, that public gatherings of more than two people are not permitted and stress that anyone seeking to attend the meeting in person will be refused entry.

The guidance also offers advice on:

- How to ensure that the meeting is quorate
- Who should chair the meeting
- Which directors will be allowed or expected to attend the general meeting
- Where to hold the meeting in the event of the planned venue being unavailable or otherwise inaccessible.

Ensuring the meeting is quorate

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) 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.

Who should chair the 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).

Which directors should attend?

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.

Where to hold the meeting?

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 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. 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 individuals involved.

Companies might also want to consider the following measures:

- **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.
- **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.
- **Live stream the AGM:** Where technologically permits, a live stream of the event could be set up – though this would not necessarily constitute formal attendance at the meeting.

The KPMG Board Leadership Centre

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