

Covid-19: The impact on Annual General Meetings.

Annual general meetings (“AGMs”) are an important part of the governance process of certain Isle of Man companies, in particular Isle of Man companies whose shares are publicly listed.

Amongst other things, AGMs are convened to ensure transparency between the board and the members of a company, enable members to vote on a range of matters relevant to the running of the company and, importantly, to provide a means by which the members can hold the board to account.

Impact of Covid-19

AGMs are traditionally constituted by the holding of a physical meeting of members and directors of a company at a specific venue, on a particular day, and at a particular time.

In light of the current COVID-19 pandemic it is unlikely that, in the short term at least, the “traditional” approach to holding AGMs is going to be feasible for some companies

Governments across the world are putting measures in place in order to actively discourage (and in some instances criminalise) people coming together, in an attempt to reduce the rate at which the virus has, and is expected to, spread.

As the “AGM season” approaches, it is necessary for companies to consider their options regarding the convening of their AGMs.

Meeting options: Physical, Hybrid and Virtual

As noted above, most AGMs are traditionally convened as physical meetings which may not be feasible under the current COVID-19 situation. If a traditional meeting is not possible or advisable, depending on the articles of association of the company in question it may be possible to hold either a hybrid meeting or a virtual meeting in lieu of a traditional fully physical meeting.

A hybrid meeting would allow participants to attend the AGM electronically if they wish to. Whilst at first sight this may seem a reasonable solution to the “traditional” model, it still also requires the holding of a physical meeting, albeit perhaps a smaller one.

In light of the above issues for fully physical and hybrid meetings, and if the company’s articles provide for it, it might be tempting to convene a fully virtual AGM. Whilst virtual meetings are common in certain jurisdictions such as the United States, they are less common in others, such as the United Kingdom and the Isle of Man, due to legal uncertainty as to their validity.

Furthermore, many institutional investors and proxy advisers have not traditionally been in favour of such meetings.

Delaying the sending of notices; postponing or adjourning AGMs

In light of the current uncertainty, the board of a company may wish to consider the follow contingencies:

1. If the notice of the AGM is yet to be sent out, the directors might wish to consider delaying the sending of the same until the last possible moment in order to wait and see how the COVID-19 situation develops.
2. If the notice of the AGM has already gone out, consideration should be given as to whether the company is able to postpone or adjourn the meeting, or at least request that shareholders refrain from physical attendance and instead vote by way of proxy. For shareholders with questions that they wish to ask directors, shareholders could be offered the ability to do so by way of advanced written questions or by giving shareholders the opportunity of attending the meeting by telephone.

In the case of both the postponement and adjournment of an AGM, the board will need to review the constitutional documents of the company in question in order to ascertain whether the actions proposed to be taken are possible. Moreover any specific requirements of the exchange the company is listed on, if any, must be complied with.

A complication concerning the adjournment of a meeting is that, ordinarily, a quorate physical meeting must first be convened. This may or may not be possible in the circumstances then existing.

Key take aways/ practical considerations

The current COVID-19 situation is developing on a daily basis and it is unclear what restrictions will be in force at the date when a company's AGM is due to be held. With that in mind, set out below are some practical pointers to consider.

The constitutional documents of the company should always be checked carefully and the company's legal counsel consulted before any decisions are made.

1. Physical Meetings

- Check to see whether the preferred venue is still available and consider booking an alternative venue (perhaps in a different location/jurisdiction where restrictions may differ).
- Consider holding 'satellite' meetings in different locations to restrict the need for attendees to travel to a single location.
- Create a dedicated area on the company's website concerning information regarding the AGM.
- Consider live streaming the AGM and enabling an online Q&A facility.
- Encourage members to submit proxy votes.
- Restrict the attendance of non-shareholders.
- Ensure suitable safety measures are put in place in accordance with government guidelines then in force.

2. Delaying/postponing the AGM

- If notice of the AGM has not been issued to shareholders and time allows, consider delaying the issuance of the notice until the COVID-19 situation has stabilised and/or restrictions have relaxed.
- Consider updating the shareholders and market as appropriate.
- Consider the effect of the delay/postponement on the contract with the venue provider.

3. Adjourning the AGM

- Check whether statute and the company's constitutional documents contain the power to postpone the AGM (adjournment should be considered if no power of postponement exists).
- Keep the shareholders and market apprised of any proposed adjournments through direct contact with the shareholders and, if listed, RNS announcements. Also update on the company's website.
- Check to see whether the AGM needs to be quorate in order validly to adjourn to a later date.
- Consider similar issues to those required to be considered in the context of a delay/postponement.

4. Convening a hybrid AGM

- Review the constitution of the company to check whether it is possible to convene a hybrid AGM.
- Check whether the primary meeting venue is still available and book an alternative venue (as above).
- Ensure that shareholders are able to attend and participate in the meeting electronically in real time.
- Notify the market and the shareholders of the proposals via RNS announcements and updating the company's website.

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