

AGMs during COVID-19 – the Channel Islands perspective

Service area / [Corporate](#)

Location / [Guernsey, Jersey](#)

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The international and local travel restrictions and “stay at home” measures imposed as a result of the COVID-19 pandemic create a number of challenges for publicly listed companies seeking to hold their 2020 AGMs in the coming months.

The specific rules relating to shareholder meetings will differ for each company depending upon the provisions of their articles of incorporation or association (“Articles”), so advice needs to be sought on a case-by-case basis.

We have been advising Channel Islands clients listed on the London and US markets on the impact of COVID-19 on upcoming general meetings since February 2020. We act for more listed companies than any other Channel Islands law firm and so are ideally placed to provide timely, practical and cutting-edge advice to guide clients through the current uncertainties.

Lockdown

It is often impractical for shareholders or directors to travel to attend an AGM:

- For shareholders such travel would generally not be regarded as “essential”, so even travel within a jurisdiction may be restricted.
- For international travel, individuals may be required to self-isolate for a period upon arrival, meaning flying to in meetings held outside of an individual’s home jurisdiction is practically impossible.

This can also impact on choice of chair: the chairperson of the board may not be in a position to chair the 2020 AGM.

The provisions of a company’s Articles need to be carefully checked to ensure that it is possible for another company representative to chair the meeting, with appropriate contingency planning put in place.

Delaying an AGM

A potential solution to the current issues might be to wait until the restrictions are relaxed or lifted. There are a number of factors relevant to that decision:

- Uncertainty around whether the situation will improve or get worse as the year progresses.
- Legal constraints on when AGMs have to be held (both generally and due to time limits on laying accounts before a general meeting).
- Expiry of share repurchase and share issuance or allotment authorities (which due to a combination of law, market rules and practice generally expire 15 months from the last AGM).

We are working with government and industry bodies in Guernsey and Jersey to try to mitigate some of these issues, but to do so will require legislative change and therefore the speed of achieving relaxations to the rules may mean that change comes too late in the year for many companies.

Shareholder attendance

Practice on the expectation for physical shareholder attendance at meetings is moving fast:

- Given the current situation it may be necessary or appropriate for companies to prohibit or actively discourage shareholders from physically attending meetings using the security provisions set out in their Articles.

- For many companies, the focus is shifting to ensuring adequate shareholder representation, for example through joining meetings via a webinar or call, with legal participation in the meeting itself being wholly through proxy appointments.
- The appointment of proxies, including the terms on which they are appointed, is therefore a key focus.

Companies also need to ensure, and put in place contingency planning to ensure, that meetings will be quorate. Advice should be sought on contingency planning early on in the process.

Virtual, hybrid and satellite meetings

Many clients are looking at holding virtual, hybrid or satellite meetings to deal with COVID-19 issues. However, in the vast majority of cases they are not the answer:

- Market practice tends to be that a company’s Articles do not provide the same level of flexibility as allowed by law – for example Jersey permits fully virtual meetings provided all participants can hear and be heard by one another.
- Hybrid meetings (i.e. a physical meeting place plus virtual attendance) are permitted in both Guernsey and Jersey, but Articles sometimes require such meetings to involve a two-way audio-visual link, which can be difficult to achieve in practice.
- Satellite meetings (i.e. where the company arranges one or more additional physical meeting places from which shareholders can participate) are not helpful in the present context as they fall foul of the same issues as the main physical meeting.
- There may not be enough time to source the technological solutions to allow virtual attendance even when a company’s Articles permit it, or the cost may be disproportionate.

The focus for 2020 therefore tends to be on ensuring shareholders’ views are properly taken into account by allowing participation in some other way, and ensuring a high level attendance via proxy.

We are however seeing clients looking to propose resolutions at their 2020 AGM to amend their Articles to add flexibility for future years.

Choice and change of venue

The venue for any physical meeting will need to be carefully chosen so that there is certainty that the venue will be available and accessible on the day, even if restrictions are increased before the meeting occurs.

There is no easy way to change the venue of a meeting after the notice of meeting has been circulated, although in many cases it is possible to achieve a change of venue provided the provisions of both the general law and the company’s Articles are complied with. Advice should be sought on contingency planning early on in the process.

Postponement of meeting

As with change of venue, there is no easy way to postpone a meeting after the notice of meeting has been circulated, and so companies should assume that they will have to hold the meeting in some form, even if they then immediately adjourn it to a later date. Again, advice should be sought on contingency planning early on in the process.

Should you have any queries in respect of the above, please do not hesitate to contact your usual Carey Olsen contacts.



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