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Shareholder meetings under the Corporate Insolvency and Governance Act 2020

Guidance note

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THE INVESTMENT ASSOCIATION

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This guidance note has been drafted by a Working Party of the City of London Law Society Company Law Committee and The Chartered Governance Institute, with the support of GC100 – the Association of General Counsel and Company Secretaries working in FTSE 100 Companies, the Investment Association and the Quoted Companies Alliance. The Department for Business, Energy and Industrial Strategy and the Financial Reporting Council have both endorsed this guidance note.

The Corporate Insolvency and Governance Act 2020 (the "Act") provides temporary flexibility for companies and other legal entities (such as credit unions and cooperatives) holding members' meetings on or before 30 September 2020. The government can extend the period in which this temporary flexibility is available (until 5 April 2021, at the latest). Note that using the flexibilities provided for in the Act in relation to the holding of members' meetings is not mandatory.

Where companies do intend to use the flexibilities under the Act they are strongly encouraged to consider beforehand the Best Practice Guidance for AGMs, issued by the Department for Business, Energy and Industrial Strategy and the Financial Reporting Council on 8 June 2020, which contains further guidance on protecting shareholders' rights in the context of the coronavirus pandemic.

This guidance note has been prepared to help companies understand the meeting provisions of the Act, but companies will need to consider their own individual circumstances, including their articles of association and any other relevant matters. This guidance note is not intended to be and should not be relied upon as being formal legal advice. None of the members of the Working Party or their respective firms represents or warrants that it is accurate, suitable or complete and none shall have any liability arising from, or relating to, the use of this guidance note.

Shareholder meetings under the Corporate Insolvency and Governance Act 2020

How are companies able to hold shareholder meetings under the Act?

The Act allows (but does not require) companies to hold fully or partially virtual meetings (with attendance and voting occurring electronically), without any requirement for a physical location for the meeting. In addition, the Act allows companies to fulfil their quorum requirement by electronic means, without any members being in the same physical location.

The Act also enables companies, for a limited period, to suspend the right of the generality of members to attend meetings.

The Act does not stipulate what method of communication can be used for any virtual element of a meeting, so companies are free to choose. This could include a telephone call or a video conference.

Are companies able to limit attendance at shareholder meetings?

Yes. To safeguard the health and well-being of members, companies may choose to hold meetings with only the minimum number of attendees required to constitute a meeting and form a quorum (whether in person or by electronic means). This remains the case, even since the government has begun to ease lockdown restrictions on public gatherings, until 30 September 2020 (or, if the period in which the flexibilities provided for in the Act is extended, until the end of the extension).

What rights do members have?

While under the Act, members do not have the right to attend in person, they do of course retain voting rights on resolutions put to the meeting,

The Act gives companies the ability to choose the manner in which those voting rights are to be exercised. In practice this is likely to mean that, where attendance is restricted, companies will provide facilities for members to appoint the chair of the meeting (and not a third party) as their proxy to vote on their behalf and in accordance with their instructions. Although not obliged to do so, companies may also choose to allow shareholders to vote at the meeting by means of an online facility or a dedicated app.

As a matter of good governance, companies should nonetheless ensure they have engaged appropriately with members (for instance, where feasible, by holding an online shareholder Q&A or an additional shareholder event once appropriate to do so).

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Can companies limit the manner in which members vote?

Yes. Companies can stipulate the manner in which members must vote in order for their vote to be counted.

Do members have the right to cast their vote directly at the meeting itself (e.g. online or through a voting app)?

Some companies may provide technology to enable voting in this way, however, the Act states that a member does not have the right to "participate in the meeting other than by voting, or to vote by particular means". All members have a right to vote by proxy and therefore have the right to "participate in the meeting by voting" for the purposes of the Act if their appointed proxy (usually the meeting chair) attends the meeting. Companies are not required to offer members the ability to vote in any other way. The Act therefore does not require a company to make an electronic method of voting available for use by members at the meeting.

What if a company's articles of association say something different to the Act?

The temporary measures in the Act allowing companies to hold meetings flexibly override any provisions to the contrary in a company's articles of association.

Can a company which has already issued its notice of meeting change the format of its meeting to one allowed under the Act?

Ordinarily, companies cannot, in advance of a meeting, change the meeting location or date once notice has been issued, unless their articles specifically allow them to do so. There is no explicit provision in the Act that reverses this position.

Companies in this position will need to seek specific advice based on the Act including a review of the company's articles and the relevant notice.

If changes are made to the format of the meeting to one allowed under the Act, then the company should provide shareholders with sufficient notice of any such changes. Where a specific location has been specified in a notice, the company should consider practical steps to address the risk of shareholders not having understood the changed arrangements.

Shareholder meetings under the Corporate Insolvency and Governance Act 2020

Companies have already been holding meetings on an adapted basis during the coronavirus lockdown. What difference does the Act make?

As set out in our Supplementary Guidance Note of 27 March 2020, the meeting chair has broad common law powers to preserve order, ensure the safety of attendees and allow the business of the meeting to be transacted. These powers are often backed up by express powers to do the same in companies' articles of association. In the context of the strict lockdown measures in place until very recently, companies have been relying upon these powers to prevent members from attending meetings and to require members to vote by proxy. The Act replaces the effect of these common law powers and ensures that companies can continue to limit attendance and require proxy voting now that lockdown restrictions on public gatherings are beginning to be eased.

The Act specifically provides that a general meeting may be held without any number of those participating in the meeting being together at the same place. This means companies can hold fully virtual meetings (including by way of telephone) where no two attendees are in the same physical location, whether or not their articles allow for this situation.

Do companies that have already held their meetings on an adapted basis during the coronavirus lockdown need to do anything?

No. The Act applies retrospectively to all meetings held on or after 26 March 2020. Therefore, as of 26 June 2020 (when the meeting provisions of the Act came into force), any meeting that was held on or after 26 March 2020 is valid if it complied with the looser procedural requirements in the Act. In practice, this retrospective validation will not be relevant for companies who held meetings on an adapted basis before 26 June 2020 in accordance with our Supplementary Guidance Note of 27 March 2020. This is because such meetings were compliant with the law as it stood before the Act came into force and are therefore valid in any event.

Can companies hold a physical meeting to be attended by shareholders generally?

Recent easings of the lockdown restrictions in the Health Protection (Coronavirus, Restrictions) (No.2) (England) Regulations 2020, effective from 4 July 2020, mean that a physical meeting that is attended by shareholders generally may now be possible. Companies will need to assess what works best for them and ensure both that government guidance is followed and that the appropriate risk mitigation is implemented at the meeting venue. Given the uncertain nature of the situation and, in particular, the

possibility of local lockdowns or the fact that national restrictions may be tightened at some point in the future, the planning and holding of such a meeting may not, however, be practical. Depending on the planned date of the meeting, the flexibilities under the Act are likely to provide companies with more certainty that their general meeting can go ahead as planned.

Does the Act change a company's AGM deadline?

Companies with a deadline for holding their AGM on a date falling between 26 March 2020 and 30 September 2020 will now be able to hold their AGM at any time up to 30 September 2020. The Act also grants the government the power to extend AGM deadlines further, in total by up to eight months from the original deadline. These extensions apply equally to the deadline for a public company to lay its annual reports and accounts before a general meeting.

Before taking advantage of any extension, companies should consider carefully the consequences of doing so. For instance, the Act does not extend the expiry date of corporate authorities. Therefore, companies should ensure that they do not delay their AGM beyond the expiry of their existing corporate authorities.

Do the meeting provisions of the Act apply to charities?

The provisions of the Act that provide the flexibilities outlined above in respect of meetings apply to charitable incorporated organisations (including Scottish charitable incorporated organisations). However, they do not apply to other types of charitable organisation.

This issue was raised on multiple occasions during parliamentary debates on the Act. In response, government ministers noted the Charity Commission's statement that it will take a pragmatic and proportionate approach to charities that have been unable to hold meetings in the normal way.