

Commercial  
Case Law Update  
Rosling King LLP



As we approach general meeting season and with the impact of Covid-19 affecting all of us, the Chartered Governance Institute has published guidance to support UK companies in managing the impact of Covid-19 on their business. In this article, we look at the implications of this new guidance:

1. **Adapt the basis on which you hold the AGM**

Following the introduction of the stay at home measures, it will be necessary to find alternative ways to hold the general meeting. In such circumstances, it is important that companies follow the appropriate process for changing venue by reference to their articles. This may mean delaying convening the AGM, postponing the general meeting or adjourning the general meeting or making alternative arrangements for the meeting to be held virtually.

Companies should be considering what supplemental arrangements need to be made.

Companies will need to ensure shareholders are kept updated by way of announcement or a dedicated information section on their company website. This will involve a greater use of technology such as live streaming the AGM, hosting an online Q&A and encouraging online proxy voting. Alternatively, hosting a shareholder event later in the year will be an opportunity for shareholders and directors to engage more freely.

Companies are advised to assess and adopt the best course of action for them, whilst at all times preserving the safety of all members involved.

Companies will also need to consider contracts with venue providers, and whether they can claim force majeure to avoid paying any additional costs.

2. **Delay convening the AGM**

This proposition will only be relevant to those companies which have not yet issued a notice of the AGM. However, where AGMs must take place within 6 months of the end of the financial year, this option may offer some companies little leeway given the uncertainty caused by Covid-19. If companies choose to delay convening the AGM, they must pay particular attention to the dates on which any standing authorities expire and whether these will need to be renewed.

Companies who delay convening their AGM must ensure appropriate announcements are made to update the market of the new time and date of the AGM.

3. **Postpone or adjourn the AGM**

The key message at this testing time is that parties should be reviewing the finance documents that are in place, participating in an open dialogue to ensure business continuity and obtaining legal advice where necessary. State intervention has shown

that the government is seeking a positive engagement from lenders and businesses alike so that everyone can best ride out what is likely be a prolonged global crisis.

#### 4. Shareholder attendance and quorum

Following the introduction of the government's stay at home measures, shareholders should not be attending general meetings in person. The Chartered Governance Institute has made it clear that shareholder attendance of general meetings is not essential for work purposes. Shareholders must therefore be encouraged to vote by proxy and companies should issue appropriate announcements which make clear that shareholders who attempt to attend a general meeting in person will be refused entry. Companies might wish to encourage shareholder participation by permitting shareholders to submit questions electronically, which can then be dealt with at the general meeting or by way of an online forum.

Typically, the quorum for a general meeting should be satisfied when two director and/or employee shareholders are present (as opposed to a general shareholder). The guidance issued suggests that physical presence of two such members at the general meeting complies with the stay at home measures, on the basis that their attendance is "essential for work purposes". In order to comply with social distancing measures, the general meeting should therefore be no longer than is required and the members present must maintain the minimum degree of physical separation. Resolutions can thereafter be passed by those members in attendance and by proxy votes.

Although their presence might not be legally required and therefore will not be permitted in the current environment, companies may choose to allow directors to dial in to general meetings.

The Chartered Governance Institute's guidance will provide some reassurance to companies who must adapt their usual course of business to comply with the stay at home measures. Whilst unsettling, given the current economic climate, this can provide an opportunity for companies to become more innovative and pragmatic in their way of doing business, particularly in so far as general meetings and AGMs are concerned. Ultimately, companies should be considering their individual contingency plans and ensuring shareholders are given the maximum opportunity to have their say.

Should you like to discuss the implications of this guidance, Covid-19 and the implications it could have on the corporate governance of your business, please contact [Alexander Edwards](#) or any other member of the Rosling King team.

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