

Covid-19: Planning for Company General Meetings and Board Meetings

As the situation with Covid-19 continues to evolve, practitioners advising Irish companies will be asked to advise them on how to implement and test their business continuity plans in relation to their upcoming AGMs and their regular board meetings with full regard to public health guidelines and restrictions.

This note considers some of the precautionary measures that companies can take in the lead up to their AGM and when convening director's meetings with a view to safeguarding the health and safety of their shareholders and directors.

Responding to Covid-19

Companies should make every effort to ensure that shareholders and directors are informed of the Company's response to Covid-19 and make them aware of any decisions made regarding the AGM and board meetings.

It is important that companies keep themselves informed in relation to the latest public health guidelines and communicate with stakeholders, as appropriate. The health and safety of shareholders, directors and employees should be a priority.

1 AGMs

1.1 AGM Notice

Irish companies must provide at least 21 clear days' notice for their AGM. Companies should consider the method of issuing notices and avoid sending notices from any affected areas by post or other means that require "at-risk" physical handling at any stage of the delivery.

The AGM notice should be accompanied by an additional information leaflet such as the latest HSE leaflet outlining the steps to protect attendees and others from transmission of Covid-19 at the AGM. This should include the company's response to Covid-19 with regard to the AGM in terms of issues such as the availability of hand sanitiser, seating arrangements and other prescribed precautionary measures being implemented by the Company.

1.2 Minimise Attendance

In order to minimise the number of persons in physical attendance, the AGM notice should encourage shareholders to appoint a proxy or to attend remotely. In addition, the rules and procedures for electronic voting should be communicated clearly to shareholders within the notice.

Where an AGM notice has already been issued, an electronic follow-up communication should be sent to shareholders with the latest public health information and any related decisions by the Board of the Directors. Given the rapidly evolving nature of the situation, the notice should also set out how the company will communicate further updates.

1.3 Proxies

Subject to the constitution of a company, shareholders are entitled to appoint a proxy to attend and vote at the AGM. The shareholders may grant proxies to a small number of persons such as independent directors who may attend in person and vote on their behalf at the meeting. Shareholders may also be able to vote by proxy in advance of the meeting.

A form of proxy should be included in the AGM notice which includes contingency provisions should the appointed proxy not be able to attend at short notice due to travel restrictions, illness or as a precautionary measure.

The appointment of proxies should minimise the number of persons physically in attendance at the meeting. In this scenario, shareholders may be invited to submit their questions in advance of the meeting.

Companies should be aware that the meeting must still satisfy the quorum requirement and be held at a physical location.

1.4 Electronic Participation

Where provided for in a company's constitution, shareholders may participate in the AGM by electronic means such as videoconferencing. This enables shareholders to participate in the meeting without attending in person and to cast their own vote without using a proxy.

As part of their business continuity planning, companies should be testing their telecommunications systems to ensure that they are reliable and can facilitate an AGM as well as remote working.

Where the constitution does not provide for electronic participation, companies can still ensure that shareholders are involved in the process. This could be done by live streaming online so that although not formally present (and therefore not having a vote unless they have appointed an attending proxy), shareholders can still monitor the progress of the meeting.

1.5 Dispense with AGM

Irish companies must hold an Annual General Meeting (AGM) once in each year, and not more than 15 months may elapse between AGMs. However, single-member companies and private limited companies may decide to dispense with holding a "physical" AGM while the Covid-19 pandemic continues. All shareholders entitled to attend and vote at the AGM may sign a written resolution dispensing with the requirement to hold the AGM.

1.6 Adjourning an AGM

A company's constitution will usually allow the company to change the date and location of its AGM, if required. Many companies have already decided to adjourn their AGM until later in the year and have communicated this to shareholders.

However, Irish companies which cannot dispense with their AGM must be mindful that no more than 15 months should elapse between AGMs. As there is still great uncertainty as to how long the Covid-19 crisis will last, companies should continue to monitor the situation closely with a view to adapting policies and procedures to allow the AGM to take place rather than to adjourn it. Ideally the AGM will take place with the minimum number attending in person.

Companies should also be ready to adapt their conference policies according to the latest public health guidance and restrictions. For example, a small window of opportunity to hold meetings may arise and companies should be familiar with the provisions of the Companies Act 2014 that may allow for a shorter notice period of 7 days, subject to shareholder approval. In any event, all decisions that affect the AGM should be communicated to shareholders.

1.7 What if your AGM venue is unavailable or travel is restricted?

If an AGM has been convened and is to take place in a venue which is now closed or unavailable then the requirement that the meeting must commence and be quorate in order to be adjourned must be navigated. Most company constitutions give flexibility to the chairman to adjourn to another venue and time but this must be checked. An arrangement must somehow be made to gain brief access in order for a quorum to meet and an adjournment to take place or to hold the meeting, If this is not possible then the meeting must be reconvened.

2 Board Meetings

Companies will also have to reconsider how directors convene their meetings. As a matter of good corporate governance, companies are advised to hold quarterly board meetings for the directors to discuss the business of the company. In addition, boards are required to meet as necessary to authorise the company's entry into various transactions. In light of the circumstances, it would be prudent for boards to hold their meetings using distance communications or by way of unanimous written resolutions.

2.1 Electronic Participation

The Companies Act 2014 facilitates the participation of directors in meetings by telephone, video or other electronic means. It is also expressly provided for in some constitutions. All participants must be able to hear other directors and to speak at such meetings. A director taking part in the meeting shall be entitled to vote and will be counted in the quorum.

When determining the location of such a meeting, the Act states that the meeting occurs at the place where the largest group of those participating is assembled or, if there is no such group as will likely be the case, where the chairperson is situated. If neither such situation applies, the meeting may determine the location for itself.

2.2 Tax Considerations

Companies should also be cognisant of their tax residency when convening their board meetings. Should the company wish to be Irish tax resident for corporation tax purposes, amongst other requirements, board meetings should be held in Ireland as this is where the central management and control of the company is required to sit.

3 Conclusion

Understanding and communication are of fundamental importance. Although company boards are afforded some degree of flexibility in regard to the manner in which they can convene their director meetings, many companies are faced with the predicament of a statutory obligation to hold an AGM within a specified time period, which may conflict with public health guidance to avoid or restrict large gatherings.

The profession should advise directors and company secretaries to ensure that they are aware of all statutory AGM and board meeting requirements and the options contained within the legislation that may be utilised to hold the AGM and board meetings in the current circumstances.