

Guidance: Holding a virtual AGM

This guidance has been produced by Governance Institute of Australia and the Australasian Investor Relations Association, with the assistance of the Business Law Section of the Law Council of Australia. It reflects the situation as at 1 September 2020.

Background to this guidance

On 20 March 2020 Governance Institute of Australia and the Australasian Investor Relations Association, with the assistance of the Business Law Section of the Law Council of Australia issued guidance on the impact of [COVID-19 on AGMs](#).

The guidance was issued in response to ASIC's '[no-action](#)' position of the same date that allowed companies with a 31 December balance date to conduct an online AGM, or hold an AGM up to two months past the prescribed deadline.

Current legislative position

On 6 May 2020, the *Corporations (Coronavirus Economic Response) Determination (No 1) 2020* ([the Determination](#)) took effect to:

- ensure that companies and other entities that are required or wish to hold a meeting, such as an AGM, may do so using technology rather than face to face meetings while public health restrictions are in place
- enable:
 - a quorum
 - votes
 - notices
 - asking of questionsto be facilitated electronically.
- Allow for information required for the meeting to be circulated and accessed electronically.

The arrangements put in place under the Determination (Arrangements) will be extended (with a new determination made at the expiry of the existing Determination), so that they will be in effect up to and including 21 March 2021. All meetings under the Corporations Act such as general meetings and creditors meetings, can be held online, not just AGMs. The Arrangements overcome the issue of companies not being able to hold legally valid online or virtual meetings due to their constitutions restricting meetings being held this way as well as issues under the Corporations Act as to their legality.

The key points covered by the Arrangements include:

- Use of technology

- Quorum
- Participation
- Poll voting
- Notices of meeting – distribution and information to be included

ASIC guidelines for investor meetings using virtual technology

On 6 May 2020 ASIC issued guidelines for investor meetings using virtual technology to ensure that meetings adopting virtual technology are conducted in a meaningful and effective way that provides a reasonable opportunity for members to participate. If you are planning to hold an AGM or other shareholder meeting you are encouraged to read ASIC's guidelines [here](#).

The ASIC guidelines are based in part on the terms of the Determination and are expected to remain in place until the expiry of the extended Arrangements on 21 March 2021, unless they are withdrawn or revised beforehand.

Given the current restrictions on shareholders' ability to physically attend meetings, ASIC has stated that it would be concerned if a company were to seek to hold a physical meeting or a hybrid meeting that did not adequately allow questions to be asked, or votes to be cast, at the meeting in a way that provides a reasonable opportunity for shareholders to effectively participate.

Companies that hold meetings in such circumstances may risk breaching sections 249R or 252P of the Corporations Act (the requirement to hold a meeting at a reasonable time and place), or the terms of the Determination (and any replacement determination).

While restrictions on movement and large gatherings remain in place, ASIC strongly encourages companies to hold either:

- 'virtual' meetings (a meeting where all shareholders participate via online facilities)
- where circumstances permit, 'hybrid' meetings (a small physical meeting linked with online facilities that allow remote participation).

The guidelines set out ASIC's views on the most appropriate approach to conducting hybrid and virtual meetings as well as the legal requirements under the Arrangements. As an overall guiding principle, ASIC states that shareholders at a hybrid or virtual meeting should be given an opportunity to participate in the meeting that is equivalent to the one they would have had if attending in person.

The guidelines cover the following matters that are relevant to AGMs:

- Shareholder participation during hybrid and virtual meetings
- Voting in a hybrid or virtual meeting
- Content of the notice of meeting
- Technical problems during a hybrid or virtual meeting

Tips for holding a virtual AGM

Companies holding a virtual AGM in accordance with the Arrangements, and taking into consideration the ASIC guidance, will need to consider the following matters.

Planning

- There are some key practical changes to the processes and procedures of an online AGM which need to be addressed before the meeting date. One of the most important is technology. You will need to contact your registry and technology provider to discuss arrangements. Key to the successful execution of your AGM is a secure, robust platform that

can provide a seamless experience for shareholders. Your chair will want to be involved in the decisions on what technology to use and how the meeting will be conducted.

- Decide what experience your shareholders will have. A webcast will allow attendees to see and hear almost as if they are in the room. Another option is to hold the meeting via audio link with the use of slides. This will allow shareholders to hear but not see the speakers. You should aim to hold a meeting that facilitates effective interaction between shareholders and the board and ‘feels’ as much as possible like a physical meeting. Useful material concerning the expectations retail shareholders have of virtual meetings can be found in the Australian Shareholders’ Association [Guide to online meetings](#).
- Decide the technology option that will enable voting and questions. There are various technology offerings that provide online platforms that can be combined with telephone lines, providing shareholders with the ability to vote, submit questions online or call in with questions. You should ask potential providers if they can offer a secure log-in, real-time and pre-submitted questions, and real-time voting. You should also review processes for how you will verify whether someone is a shareholder. This is especially relevant for when you are allowing shareholders to participate by telephone.
- If you are filming from a specific location, you will need to engage with an audio-visual service provider. (Usually your registry provider will arrange this on your behalf).
- Who will host your meeting and act as moderator? A host (typically the registry provider) will usually introduce and facilitate the meeting, while the moderator is required to field questions from the online audience. It is strongly recommended that you appoint a moderator to field questions from the online audience rather than leave it for the chair to review the questions.
- Establish a dedicated AGM section on your company website that is easy for shareholders to access. This area would include the details of arrangements for the meeting, instructions on how to use the technology platform, links for web-streaming and can be updated to reflect any changes to arrangements.
- Ahead of the AGM, hold rehearsals to test the technology that will be used to facilitate the meeting and confirm that the chair and key stakeholders are comfortable with it. One way is to conduct a number of test scenarios with the chair, the CEO and other board members and staff participating as shareholders. There will most likely be a time lag between the shareholder and chair experience and you will need to take this into account in your planning.
- Consideration needs to be given to what will happen if the technology supporting the AGM fails, for example as a result of widespread network outages. Your service provider should have full redundancy built into their platform to ensure audio and visual back up if required. An alternative chair’s script/AGM procedures can be prepared and moderators can be located with the technology team to communicate easily with the support team if required. Include in the communications with your shareholders your plan B in the event something happens with the technology during the meeting.
- Check your constitution regarding any provisions affecting the AGM, including direct voting.

Notice of meeting

- It will need to be clearly stated in the notice that the meeting will be held online and that there will be no physical meeting.
- Most of your shareholders will not have experienced a virtual AGM before and some shareholders may be resistant to the idea of a virtual meeting. Clear and simple communication with your shareholders on how they can participate in the AGM will be important. You will need to include instructions on how to use the technology platform to send in questions and vote online. This can be efficiently achieved by providing a link in the notice of meeting to instructions located in the dedicated AGM section of the company website. Providing step-by-step, visual instructions is essential to assist members feel comfortable using the technology. Using screen shots is helpful.
- Encourage proxy voting for those shareholders who will not attend the virtual AGM. Also, encourage shareholders not attending the virtual AGM to send in questions.

At the AGM

- One hour prior to the meeting conduct a test of the presenter's login, microphones, images etc. With internet usage at its peak at the moment, it is important to test connectivity.
- It is recommended that shareholders login to the online platform at least 15 minutes before the scheduled start time for the meeting.
- It is good practice for as many of the directors as possible to attend the AGM, but (other than the chair) this is not a legal requirement. Directors can be available via video or telephone link to answer shareholder questions and speak to their re-election where relevant. Ordinarily, the chair is required to be present.
- The auditor of the company is required to attend the AGM. Provisions for the auditor to attend via telephone or video link should be arranged.
- Arrangements must be made to enable the company secretary to take the minutes of the AGM.
- Open the poll for voting at the beginning of the meeting and, before closing the poll, make sure that the chair gives a clear notice that they are about to do so and provide a short window (around 3 to 5 minutes) for shareholders to have a final opportunity to cast their votes. This notice can be given at the same time that the chair closes the meeting.
- Ensure the length of the addresses are as concise as possible and, for listed companies, ensure lodgement of any chair or CEO speeches with ASX as required by the ASX Listing Rules prior to the AGM. For unlisted companies consider pre-releasing statements so that the AGM is more of an update.
- It is important that shareholders are able to communicate during the meeting and ask questions on how to use the technology. Companies can consider using technology that gives them the ability to communicate with shareholders via email or phone (a help line) during the meeting. Details of the helpline should be included on the AGM page on the company website.

Questions and comments

- It is important that the technology you chose provides your shareholders a reasonable opportunity to ask questions live during the course of the meeting.
- There are pros and cons of following the agenda for questions versus holding a single session for questions on all agenda items. The format you adopt will depend upon your company's circumstances. Some shareholders prefer the questions to follow the agenda order. However, issues can arise due to the time lag and the time it may take shareholders to type in their question. This may result in the chair closing questions on that item of business before a shareholder gets the opportunity to submit their question. Whatever format is chosen, it is recommended that the chair open questions at the beginning of the meeting to provide sufficient time for shareholders to submit their question.
- Shareholders may be reluctant to submit questions online. Before the AGM, consider asking employee shareholders to provide a question for each resolution that can be asked before each item or at the start of question time to cover any time lag and encourage other shareholders to submit live questions. You can also encourage shareholders to submit questions online in advance of the AGM. This will provide you with a 'bank' of questions that you can submit at the start of question time.
- It is strongly recommended that you appoint someone as moderator as they are a key part of facilitating a virtual AGM. The moderator essentially acts as the connection between the chair and shareholders participating online. It is the role of the moderator to receive, manage and electronically send any questions/comments submitted during the meeting to the chair – the chair is able to view the questions on a screen in front of the microphone. The moderator could also send the questions to the company secretary for them to read out. This gives the chair some time to gather their thoughts and prepare a response. Moderators will ideally be chosen from the company's investor relations, company secretariat or legal staff as they will understand the context in which the questions are asked. A process must be in place to

maintain a record of all questions submitted online, including questions that are not answered. Consider publishing the unanswered questions after the meeting.

- It is possible that multiple shareholders may submit a question relating to the same issue. It is appropriate that the moderator summarises those questions so that the chair responds to the issue in one response. However, in the interests of transparency, the chair should acknowledge that they have received multiple questions on the same issue and, rather than respond to each question individually, they are doing so on a collective basis. Similarly, if a chair chooses not to answer a specific question (by applying the same principles that they might do in an in person meeting), they should acknowledge that is what they are doing and that someone will respond to that shareholder after the meeting.