

COVID-19 - Contingency Planning for AGMs

ICSA and the FRC have recently issued a guidance note on AGMs and the impact of COVID-19. The FCA have also commented on the matter in a recent market bulletin. Matheson has had discussions with several Irish issuers on contingency planning. This note summarises our advice.



Our Advice in Current Circumstances

Proxy

- Encourage shareholders to submit their votes in advance of the meeting by proxy and discourage attendance. In circumstances of a global crisis, the guidance of the WHO and national government to restrict social contact should prevail over shareholders rights to participate at meetings.
- Ensure the form of proxy provides for alternate proxy holders and allows any of the designated proxy holders to appoint a substitute. This will mitigate the risk of a proxy holder becoming unavailable at short notice.

Venue

- Consider using the issuer's local offices as the location of the meeting. This mitigates the risk of a third party venue becoming unavailable after the notice issues. Irish law requires the AGM notice to specify the location of the meeting.
- If there is a change to the details of the AGM already published on an issuer's website the market should be updated by way of RIS as soon as possible. Irish law is silent on the length of notice to be given for a change of location so the greater the notice of such a change which can be given, the better. If a director resolution was passed convening the AGM a revised resolution should be passed.

Quorum & Attendance

- While issuers should work toward convening a meeting at a physical location with minimal attendance, ensure that the relevant quorum is present in person or by proxy in accordance with the constitution.
- Consider whether it is necessary to have the issuer's advisers and registrars attend the meeting or whether they can provide the required services remotely. They are not required to attend under Irish law.

Communication

- Communicate clearly and emphatically in the Notice of Meeting that attendance is discouraged and that the Company intends to comply with any public health recommendations restricting attendance at meetings. The Company will be obliged to comply with any legal restrictions that are imposed.
- Consider issuing a separate communication to shareholders two weeks before the AGM encouraging them to submit their proxy and discouraging them from attending the AGM in light of the ongoing public health emergency. This communication can also be supplemented with a similar message by way of RIS.
- Being clear in all communications will guard against any accusations of unreasonable behaviour if an issuer decides to refuse admission to a shareholder.
- The Notice of Meeting should advise shareholders to keep up to date with the AGM subpage of the issuer's website for any announcement relating to changes to the arrangements for the AGM.

Issuing Notice

- Consider the position under the issuer's constitution on how to proceed if An Post cannot deliver the Notice of Meeting. Issuers would be wise to build in some extra days into the required notice period this year. Helpfully the FRC guidance does state that in current circumstances institutions are unlikely to object if papers related to the meeting are not issued within the 20 working day requirement under the FRC Guidance on Board Effectiveness. Therefore the statutory notice period of 21 clear days' becomes the important timeline.



Electronic Participation

- If the constitution permits, consider using technology to enable electronic participation at the AGM but do not rely on this for the purposes of counting your quorum. Irish law does not explicitly facilitate virtual shareholder meetings. However, a hybrid meeting ie, an in-person meeting that also permits shareholder participation through electronic means, is possible. Electronic meeting providers, such as Lumi, offer a service which works with the issuer's registrars to enable electronic voting and moderate shareholder Q&A.
- Electronic communication could also be used to deliver information to shareholders where they are not enabled to participate electronically. Encourage questions related to items on the agenda of the AGM to be submitted in advance and publish the answers on the issuer's website prior to the meeting. Consider making the Chair's address to the meeting or a transcript of the meeting available via RIS or on the AGM subpage of the website.



Meeting Cannot be Convened as Planned

If following the issue of the Notice of Meeting the meeting will not be able to be convened as planned or any arrangements related to the AGM change there are limited options available.

Postponement

- This option is only available to those issuers which have specifically provided for it in their constitution.

Adjournment

- The meeting must be opened with the relevant quorum in order to adjourn it. Follow the provisions in the constitution with regard to whether revised notice of the adjourned meeting is required to be given and whether proxies submitted for the first convened meeting will carry over.



Reminder - Statutory Requirement to Hold an AGM

Irish company law requires that no more than 15 months elapses between AGMs and that companies must put their accounts to shareholders within 9 months of the financial year end. Companies must also be mindful of the expiry of corporate authorities obtained at the 2019 AGM as well as any proposal to have shareholders approve the payment of a final dividend at its upcoming AGM.

For these reasons it is important to ensure that, despite the ongoing COVID-19 circumstances, an AGM can be held during this AGM season.

For more information, please contact [Susanne McMenamin](#) or [David Fitzgibbon](#) or your usual Matheson contact. The above advice is subject to any provisions contained in an issuer's constitution and is not intended to constitute legal advice. Issuers should also seek advice from their tax advisors in respect of potential implications of holding their AGM remotely or outside the State.