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# Briefing

## **COVID-19:** Contingency Planning for Annual General Meetings



INSTITUTE OF DIRECTORS  
IN IRELAND

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The impact of the spread of coronavirus (COVID-19) is being felt across the world causing disruption to daily life by restricting travel and limiting social and other gatherings. Company directors and secretaries are well advised to modify their usual planning for their company's annual general meeting ("AGM") in light of the threat posed by the evolving COVID-19 situation.

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### **AGMs in the Ordinary Course**

A company must hold an AGM once in each year, and not more than 15 months may elapse between the holding of two AGMs. A newly incorporated company must hold its first AGM within 18 months. Financial statements and reports must be laid before the company at the AGM not later than 9 months after the company's relevant financial year end.

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### **Notice Periods, Location and Quorum**

An AGM may only be validly convened on the provision of a minimum of 21 clear days' notice to those entitled to receive it (although note, for companies governed by UK Corporate Governance Code, 20 working days' notice is advised). Given this long lead-time and the evolving situation around COVID-19, company directors may have to react quickly to reduce the risk to those travelling or gathering to attend the company's AGM. It should be checked that the venue to host the AGM, specified in the notice, will still be accessible and available.

These are crucial factors because business cannot be transacted at an AGM unless a quorum of members is present in person at the venue specified in the notice. Unless the company's constitution states otherwise, the quorum required is two members present in person or by proxy.

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## Steps available where notice of AGM not issued

If your company has not yet issued notice of an upcoming general meeting, there are a number of steps available to directors and secretaries. In the case of an AGM, the directors of some companies may be in a position to consider dispensing with holding a “physical” (or “in-person”) AGM. A single-member company or an LTD company may dispense with the requirement to hold an AGM in any year where, before the latest date for the holding of that meeting, all members entitled to attend and vote at the AGM sign a unanimous written resolution approving the business of the AGM.

If holding a “physical” AGM is the preferred option for an LTD, or the only option for other companies such as PLC’s which must hold its AGM by way of a physical meeting, some other approaches are available to limit the risk to those attending and these can be communicated to attendees (for example, through a dedicated section on the company’s website or, where appropriate, by announcement):

- **Notice:** It is advisable that companies enclose a notice alongside their AGM notice highlighting the potential change of time, date or venue of the general meeting because of the spread of COVID-19, and setting out how this will be communicated to attendees. This separate notice could also set out measures to reduce COVID-19 transmission at the AGM.
- **Proxies:** A member may appoint another person (who may or may not themselves be a member of the company) to attend and vote at an AGM as their proxy. This should be encouraged as much as possible in the notice of AGM to reduce physical attendance at the AGM. Where possible, the directors should also suggest that members consolidate their attendance and voting at AGMs into as few people as possible (having regard to relevant quorum provisions) through proxies. Facilitating on-line voting or the electronic return of proxies, if permitted by the company’s constitution, could pre-empt any subsequent disruption to postal services.
- **Location of AGMs and use of Technology:** Subject to certain conditions and the provisions of each company’s constitution, AGMs may be held inside or outside the State. In recent years, virtual AGMs have become more commonly used in the United States and certain other jurisdictions. There are potential issues under Irish company law regarding virtual only AGMs and it is also unlikely that they will be facilitated under existing constitutions. Accordingly, it is not likely that a virtual only AGM will be a practical solution in the current circumstances. Other measures that directors should take are to:
  - follow the advice of local health authorities (in Ireland, the Health Services Executive and the Health Protection Surveillance Centre), national governments and international organisations monitoring the spread of COVID-19, and be mindful of their advice when selecting a location for the AGM;
  - consider if holding the meeting in two or more venues (with one being the designated physical location of the meeting) linked by technology (using a proxy in each location) is an option for their company;

- introduce safety measures such as prescribed seating arrangements and limiting the duration of the meeting insofar as is possible; and
- have regard to potential tax implications for the company, if holding its AGM in a different jurisdiction.
- **Attendance:** Although it is good practice for as many of the directors as possible to attend the AGM it is not a legal requirement so, if directors do not personally attend, they could be made available for questions by means of a video link.

### *Delay*

The decision to delay the AGM can only be made if the company has not yet issued its notice (which could potentially allow the company to change the proposed AGM venue). However, there are strict limits on such a delay. As mentioned above, there must be no longer than a period of 15 months between two AGMs and, the AGM can be held no later than 9 months from the company's financial year end. Notwithstanding any delay to the AGM, the expectation would be that a company would publish its annual reports in accordance with its original timetable. The expiry of annual authorities approved at the previous AGM should be checked.

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## Steps available where notice of AGM issued

Should the spread of coronavirus between the date of the issue of the notice of general meeting and the date of a general meeting itself require changes to a validly convened general meeting, the company has some (albeit more limited) options.

### *Postponement*

Unless the constitution of a company provides otherwise, the directors have no inherent power to postpone a general meeting. If a company is permitted to postpone its AGM it can issue its AGM notice as planned and rely on the ability to postpone the AGM based on the circumstances at the relevant time. The constitution will govern the process to follow when postponing an AGM.

### *Adjournment*

It may be necessary for the general meeting to be adjourned. Any power to adjourn the meeting resides with the meeting itself; that is, it is only by validly commencing the meeting that the meeting can then be immediately adjourned. However, the constitution will sometimes allow, for example, adjournment for lack of quorum. Directors can liaise with members in advance of the meeting (notwithstanding that the notice has been issued) in order to canvass the requirement for the meeting to be adjourned based on the advice available to them in relation to COVID-19.

If the AGM cannot be held at the venue set out in the notice because of closure, then the company should communicate this to members and arrange for a representative to be present outside the proposed venue at the time of the AGM to advise members of the adjournment. Any adjournment of a general meeting must be in accordance with the company's constitution.

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## Extraordinary General Meetings/Resolutions in Writing

Similar concerns arise for companies in respect of general meetings for any purpose which is not the AGM, ie extraordinary general meetings (“EGMs”). Subject to certain limitations, it is possible for most company types to approve resolutions normally approved at EGM by written resolution instead.

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## Further Information

Publications that address some of the areas referred to in this factsheet are available on the Institute of Directors [website](#) and include the factsheet “COVID-19: Taking Decisions without Meeting”.

*Further information is available from*



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*Alternatively, your usual contact in McCann FitzGerald will be happy to help you further.*



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