
Briefing

COVID-19:

Considering a Virtual AGM in 2020?



INSTITUTE OF DIRECTORS
IN IRELAND

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The Companies (Miscellaneous Provisions) (COVID-19) Act 2020 (the “**Act**”), in force from 21 August, allows entities to continue to operate in compliance with relevant existing legal requirements by temporarily permitting them to conduct annual general meetings (“**AGMs**”) and extraordinary general meetings (“**EGMs**”) wholly or partly by electronic means, provided all attendees have a reasonable opportunity to participate.

The Act

In light of the pandemic, the ongoing social distancing requirements and restrictions on gatherings and travel, these and other temporary amendments to the Companies Act 2014 (the “**2014 Act**”) and the Industrial and Provident Societies Act 1893 (the “**1893 Act**”) provide businesses with some flexibility on operational and governance matters. The Act addresses the main issues concerning virtual AGMs and EGMs, including content of the general meeting notice, minimum capabilities of the electronic platform used for the general meeting, quorum and voting.

The Process

Before looking at technologies to facilitate virtual AGMs and EGMs, a company should first consider and document the best process for itself and its members, by detailing how the general meeting would be conducted as a physical meeting, including consideration of matters such as:

- member participation;
- access by other attendees (to include members' proxies, authorised representatives and auditors);
- casting votes by members;
- use of proxies;
- speakers and their presentations;
- the content and form of information that would typically be provided.

Previous AGMs or EGMs of the company will be instructive in this and will highlight examples of what did (or, as importantly, did not) work well from an attendee's perspective. Consideration should also be given to how the AGM or EGM could be programmed to maximise member engagement. Such a review will provide the company with a list of functional requirements which will need to be catered for by the technology platform chosen.

Notice

If the company chooses to avail of the provisions in the Act for participation by electronic means in an AGM or EGM, early consideration must be given to the notice requirements. The Act provides that the notice must set out, at a minimum, in relation to the meeting the:

- electronic platform and how to access it;
- time and manner in which an attendee must confirm his or her intention to attend;
- requirements and restrictions put in place to identify attendees who intend to attend;
- procedure for attendees to communicate comments and questions and vote on proposed resolutions.

The company should assess how it would typically communicate regarding an upcoming AGM or EGM and formulate a communications plan incorporating content which is familiar to members, together with information required by the Act. To ensure that members are fully informed and are not inadvertently excluded from attending or participating in the AGM or EGM, it may be necessary to communicate more frequently with members and other attendees.

The Technology

Determining its process and functional requirements in advance of choosing an appropriate technology platform to host a company's virtual AGMs or EGMs has several advantages. Principally, to avoid the trap of purchasing electronic communications technology that might then need to be shoe-horned into fitting the company's needs. Further, it may be the case that, rather than purchasing new technology, simply adapting existing technology in-house would meet the company's functional requirements. This would have the added benefit of already having been security approved and tested.

The process map and functional requirements gathered should help to quickly eliminate unsuitable platforms due to either their functional limitations or an abundance of functionality which, although nice to have, may be unnecessary for either virtual AGMs or EGMs. The functional requirements should help maximise attendee engagement and facilitate appropriate levels of participation in the general meeting.

Access and Security

The company needs to consider how attendees will access the electronic platform, what are the audit capabilities of the technology and, the security of that technology. It will be necessary to ensure that access to the electronic platform is as smooth and intuitive as possible for attendees while ensuring that there is an appropriate level of security to verify that each attendee who logs in has the proper credentials to do so. The company must have an appropriate level of oversight built into the electronic platform to allow it to know who has accessed the AGM or EGM as well as when that access was granted and the manner in which the attendee interacted with the platform. This will be especially important for proxy interactions.

The technology platform chosen must have the appropriate level of security, not least to ensure that only those invited to an AGM or EGM can gain access. The Act provides that the technology used must minimise the risk of data corruption and unauthorised access and provide certainty as to the source of the electronic communications. Media outlets have recently reported incidents of hackers gaining access to corporate conference calls conducted on free to use platforms, so security of the platform must be checked with the platform provider or supplier.

Finally, in vetting the platform, a company should ensure that it is mobile friendly and that the mobile version meets all of their functional requirements. As many people are still working from home, access to a traditional desktop may not be possible for some attendees who will rely on cellular phones or tablet computers. This must be considered when deciding upon a platform and thoroughly tested.

Practice, Practice, Practice

As with any new technology, problems should be expected to arise so a company, in its planning, should try to mitigate these by conducting a practice of the AGM or EGM from start to finish, and perform this practice run more than once. Companies could send communication materials to test users to ensure that instructions relating to accessing the platform are clear and concise and that materials to be provided ahead of time can be accessed by test users. User access to the platform could be tested and a plan put in place to deal with troubleshooting issues in real time. To ensure that only invitees can access the platform, the security could be probed with dummy accounts, if necessary. Attendees organised to speak could go through their presentations and ensure that they can be heard and that content can be seen by test users. It is important that functionality facilitate member participation and that the platform be tested thoroughly so that the company can comply with requirements in the Act to provide technology to enable attendees to hear what is said by the chairperson and to speak and submit questions and comments during the meeting, where entitled to do so. This testing should also include users who will be relying on mobile devices.

Careful planning and testing will ensure that unforeseen issues with use of electronic communications technology in AGMs or EGMs should be minor and merely serve as helpful lessons for future virtual general meetings and events.

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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