

COVID-19 AND ITS IMPACT ON SHAREHOLDER MEETINGS



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Every public company incorporated in Jersey and any other Jersey company which passed a special resolution on or after 25 July 2014 confirming that annual general meetings are to apply to it (a relevant private company), must hold an annual general meeting, no more than 18 months (for a public company) or no more than 22 months (for a relevant private company) after the date of the last annual general meeting.

Typically such meetings represent opportunities for shareholders to come together in one location and hear directly from the company's directors. COVID-19 will pose a number of challenges to these particular companies. If you are a director or potentially a shareholder of one of these companies what should you be considering at this time?

When does the notice convening the meeting need to be sent out to be valid?

Unless your articles prescribe a longer period a notice convening an annual general meeting must be sent in writing to all eligible shareholders no later than 14 days prior to that meeting. A company is not responsible for making sure that the notice of the meeting is actually received by the shareholders, as it can rely on the notice provisions in its articles of association. Companies can of course give more than the minimum notice period.

Can the meeting be convened using other forms of communication?

Subject to any restrictions in its articles a company could advertise the notice of its annual general meeting in or on commonly used places and systems of communication such as newspapers and social media. However whilst a company might choose to take additional notification steps, it is important that the method of calling a shareholder meeting prescribed in the Company's articles of association is also followed to minimise the risk of the validity of the convening notice being challenged.

Should the meeting be adjourned or postponed?

At the time of writing the UK government guidance has clamped down on public gatherings of more than two people and unnecessary travel. Jersey companies who have already issued notices, could consider adjourning their shareholder meeting to another place and or time. This is typically a power reserved in the articles of association.

However, given it is uncertain how long any lock down / social distancing measures will remain in place, it is imperative that shareholders meet to approve a business decision consideration should be given to whether:

- the articles enable a technological solution to be implemented;
- sufficient shareholders are able and willing to attend the meeting to ensure it meets its quorum threshold;
- the use of proxies; and or
- if the total number of plc shareholders is reasonably small, whether the company's business might be approved by way of written resolution.

A court may order that the director be held personally responsible and liable for any and all debts incurred after the director became aware or ought to have been aware that there was no reasonable prospect of avoiding insolvency and or that the company was furthering a fraudulent purpose.

As mentioned previously a disqualification order could also be sought, along with criminal prosecutions.

Should you wish to discuss any of the content of this briefing, please do not hesitate to get in touch with the team on the below information.

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