

COVID-19 Briefing: Holding Company Meetings during the Coronavirus lockdown

Due to the current government restrictions on gatherings, companies have increasingly had to make key decisions and seek shareholder consent by means of virtual board and shareholder meetings.

This guide was created on the 16th April. As laws are currently changing very rapidly, please speak to us for the most up to date information.

KEY CONSIDERATIONS FOR BOARD MEETINGS

Articles of Association

Most companies will already have provisions in their articles of association (“articles”) catering for virtual or telephone board meetings. Where articles do provide guidance it should be followed.

Even if the company’s articles are silent on the issue, boards can still validly carry out business by virtual means, provided all the necessary formalities have been appropriately followed. These include:

- a. Obtaining advance consent of each director to the meeting being held by the proposed virtual means.
- b. Ensuring that other aspects of the articles are complied with including the number of directors required to form a quorum and that directors have received sufficient notice of the meeting (even if they are ill).
- c. Making sure that all directors taking part can be heard clearly and can communicate their approval or disapproval of matters considered and issues to be voted on.
- d. Taking minutes of the meeting, including reference to how it has been held, and circulating these to each director for approval to ensure they are a correct record of the business transacted.

The Chartered Governance Institute has provided helpful guidance on virtual board and committee meetings

[https://www.icsa.org.uk/assets/files/pdfs/guidance/good-practice-for-virtual-board-and-committee-meetings-web1-002\(1\).pdf](https://www.icsa.org.uk/assets/files/pdfs/guidance/good-practice-for-virtual-board-and-committee-meetings-web1-002(1).pdf)

PRACTICAL TIPS FOR VIRTUAL BOARD MEETINGS

Before the Meeting

Provide clear joining instructions for each meeting including dial in numbers, access codes/PIN. Send these out well in advance of the meeting and again one hour before the meeting starts.

Make sure everyone has supporting documents and a timed agenda for the meeting with clear outcomes for each agenda item.

Establish some “ground rules” for the meeting, such as:

1. *Make sure devices connected to mains or fully charged.*
2. *Join the call/meeting in good time before the allocated start time to resolve any connection issues and test the mute button.*
3. *Attend the meeting from a quiet place, to avoid distraction, and your device should be muted unless you are speaking.*
4. *Try not to interrupt or speak across others. If another person starts to speak at the same time as you, pause and allow the other person to go first.*

If you are using an app, it is a good idea to set out which numbers to use to help participants avoid costly network charges.

Prepare for possible technology issues by providing a back up dial in number and have IT support on standby.

Make sure that the Chair has a full list of attendees and contact numbers for them.

During the Meeting

Identify the Chair of the meeting, start with a welcome of everyone and allow for introductions for each participant or hold a roll call.

The Chair is to guide attendees through the agenda, making it clear which item is discussed at any one time. The Chair’s task will be more difficult compared to the usual face to face scenario.

Aim to ensure a good debate takes place and avoid drifting away from the agenda, obtain an overview of the meeting and facilitate decision making and voting where required.

Take extra care to make sure each person has had opportunity to participate. Check if anyone seeks to make any final points as each item of the agenda is “ticked off”.

Civil

Commercial

Conveyancing

Family

Probate

After the Meeting

Circulate the minutes of the meeting for approval and ask for feedback on what can be improved.

Whilst there is nothing to stop a board from making decisions by making use of formal written resolutions, written resolutions may not be practical when flexible thinking and focused discussions are required to deal with the current circumstances.

SHAREHOLDER MEETINGS

Private Limited Companies

Subject to the articles of the company in question virtual meetings should be valid, though special care should still be taken to:

- Check that the company's articles do not contain a restriction on the use of electronic or virtual general meetings. Whilst these restrictions would be "unusual", it is still important to check as decisions taken may otherwise be invalid. If in doubt seek expert advice.
- Notice of the general meeting still needs to be given even if the meeting will be in a virtual format. Make sure telephone numbers, codes to join the general meeting and other information required to participate in the virtual meeting are provided.
- Consider in advance whether and how any votes will be taken.

Some articles may require that notices state a place for a general meeting to take place. A hybrid general meeting may still be able to happen with enough attendees to form a quorum attending the "place" whilst the remainder of the shareholders join the meeting remotely by video or conferencing facilities.

Whilst it may not be very practical for private limited companies with a large number of shareholders, the written resolution procedure may still be used for most decisions. Be mindful of the exceptions where written resolutions are prohibited (in particular resolutions to remove a director before the expiration of their term under S168 and removal from office of auditors before expiration of their term under S510 of the Companies Act 2006).

Publicly Traded Companies

Provide clear joining instructions for each meeting including dial in numbers, access codes/PIN. Send these out well in advance of the meeting and again closer to the start of the meeting.

A company planning its AGM now should consider what

alternative measures it can put into place. Some companies may seek to defer convening and/or holding a general meeting but until legislation provides otherwise, a public company is still required to hold its AGM within six months after its accounting reference date.

Details are still awaited of the new legislation announced by the Business Secretary on 28 March 2020. The aim of such new legislation is to ensure, that those companies required by law to hold annual general meetings, will be able to do so safely and in a manner consistent with the government's stay at home measures.

The ICSA in conjunction with other organisations has published helpful AGM guidance for companies in the meantime:

<https://www.icsa.org.uk/assets/files/pdfs/guidance/agms-and-impact-of-covid-19-web.pdf>

PEACE OF MIND THROUGH DIFFICULT TIMES

In uncertain times, the only thing we can say for certain is that nothing will stay the same for long.

It is entirely possible, therefore, that new legislation will have been introduced which will mean that all or part of this briefing no longer reflects the current law.

Because of this, we ask you to consider that, although correct at time of printing, information in this sheet may no longer be up to date and it is always best practice to consult with a lawyer about anything contained in this briefing.

Although our office doors are closed, our lawyers are still available to help answer any of your questions about this or any other legal concern you have.

Please contact Fraser Dawbarns directly for up-to-date information on your specific circumstances.

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- [Coronavirus, Employment Law and Your Rights](#)
- [Commercial Tenancies and Rights of Forfeiture](#)
- [Making a Will Under Lockdown](#)
- [Commercial LPAs - Risk Management in Uncertain Times](#)
- [Child Contact and the Coronavirus Lockdown](#)
- [The Three Month Ban on Evicting Tenants](#)
- [Debt Recovery Under Lockdown](#)



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