



Corporate governance during the COVID-19 crisis: remote meetings

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This note is split into three sections: (1) a table setting out the legal requirements for holding remote annual general meetings (“AGMs”) and board meetings for the different legal entities (incorporated in England and Wales) that commonly operate as charitable enterprises; (2) a commentary on the options currently available, and other considerations, if required to hold such meetings; and (3) practical tips on how to hold effective remote meetings. Please note that this memorandum summarises the legal requirements under applicable corporate law only. Some legal entities may wish to seek separate tax advice to verify if they are required to hold meetings in a specific location for tax purposes.

1. Legal requirements for holding remote meetings

Legal Entity	Legal Requirements for AGMs	Legal Requirements for Board Meetings	Matters to check
Charitable Company Limited by Guarantee	For private, non-traded companies, there is no requirement to hold an AGM in the Companies Act 2006, so a private non-traded limited company will only need to hold an AGM if required to do so by its Articles.	There is no specific minimum number of board meetings prescribed by law, and therefore the board should consider if a formal board meeting is required.	Articles of Association – for requirement to hold, and other requirements for, AGM/board meeting
Non-Charitable Limited Company	If a company’s Articles require it to hold an AGM, these can be amended by passing a special resolution (which can be done by written resolution) with a 75% majority.	Provided the Articles do not preclude it, a board may: (i) take decisions if all directors agree to hold a casual or informal board meeting; or (ii) pass a resolution in writing signed by all directors.	
Community Interest Company	A traded company will be required to hold an AGM within nine months, and a public company (plc) within six months, of their respective accounting	In addition, if a company’s Articles are silent on remote board meetings, it is generally accepted that such meetings may be conducted by electronic means or by phone.	

("CIC")	reference dates.		
Cooperative and Community Benefit Societies	<p>There is no legal requirement for cooperative and community benefit societies to hold an AGM.</p> <p>If a society's Rules require it to hold an AGM, the rules may be amended by following the procedure outlined in them.</p>	<p>There is no legal requirement for cooperative and community benefit societies to hold board meetings.</p> <p>If the society's Rules require them, consider amending the Rules to allow remote meetings if not provided for, by following the procedure outlined in them.</p>	<p>Rules – for requirement to hold, and other requirements for, AGM/board meeting</p>
Charitable Trust	<p>There is no legal requirement for charitable trusts to hold an AGM.</p> <p>In the event that a charitable trust's governing document requires it to hold an AGM, the governing document will generally contain a provision enabling the trustees to vary its terms by passing a resolution at one of their meetings or in writing.</p>	<p>There is no legal requirement for a charitable trust to hold trustee meetings.</p> <p>If the charity's governing document requires them, it seems generally accepted that a meeting will be valid if the participants can see and hear each other. If the governing document prohibits electronic meetings, consider amending it.</p> <p>Trustees can also make a decision through a written resolution signed by all the trustees entitled to receive notice of and vote at a meeting of trustees, unless the governing document prohibits it.</p>	<p>Trust Deed, Declaration of Trust or Charity Commission scheme - for requirement to hold, and other requirements for, AGM/trustee meeting</p>
Charitable Incorporated Organisation ("CIO")	<p>CIOs are either Foundation CIOs or Association CIOs, and are required to have a Constitution that is in the form of one of the two Charity Commission's model Constitutions.</p> <p>The requirements for each respectively are:</p> <p>(i) Foundation CIOs are not required to hold an AGM, as its members are its trustees; and</p> <p>(ii) Association CIOs are required to hold an AGM as its membership base is broader than just its trustees.</p>	<p>There is no legal requirement to hold trustee meetings under the model Constitutions.</p> <p>Unless the model Constitution has been amended, a CIO may:</p> <p>(i) take a decision either at a meeting of the charity trustees or by a written resolution agreed by a majority of all of the charity trustees (clauses 13(b) / 17(b) in Foundation / Association CIO Constitutions); and</p> <p>(ii) hold a remote meeting as long as each trustee</p>	<p>Constitution - for requirement to hold, and other requirements for, AGM/trustee meeting</p>

	A CIO's Constitution can be amended by unanimous written resolution or a resolution passed at a general meeting by a 75% majority of votes cast (unless the Constitution provides otherwise).	can communicate with all the other participants (clauses 15.4 / 19.4 in Foundation /Association CIO Constitutions).	
Charitable Unincorporated Association	There is no legal requirement for unincorporated organisations to hold an AGM. If the unincorporated association's Constitution or Rules require it to hold an AGM, but contain no express power of amendment, the trustees can rely on section 280 of the Charities Act 2011 to pass a resolution to amend the constitution with a two-thirds majority of votes cast.	There is no legal requirement for unincorporated organisations to hold a trustee meeting. Trustees can also make a decision through a written resolution signed by all the trustees entitled to receive notice of a meeting of trustees and to vote upon the resolution, if the association has adopted the Charity Commission's model Constitution for unincorporated associations.	Constitution or Rules - for any restrictions on the ability to hold meetings remotely
Royal Charter	Any body can be incorporated by royal charter, so whether it is required to hold an AGM or board meeting will depend on what the body's legal entity was before becoming a royal charter, its charter and bye-laws.		Charter and bye-laws – for requirement to hold / other requirements for AGM/board meeting

2. Options available and considerations for holding remote meetings

Annual General Meetings

On 28 March, the government announced that it will enact legislation to enable entities required by law to hold AGMs to do so safely, consistent with the restrictions on movement and gatherings introduced to curb the spread of coronavirus. However, the timing of any such legislation and the entities to which it applies has not been confirmed and is likely to come too late to be of assistance to companies required to hold their AGMs in the coming weeks.

In the meantime, the following options are available to those entities required to hold AGMs, as further detailed below: (i) conducting a virtual-only or hybrid AGM; (ii) proposing written resolutions for general member approval; (iii) delaying the AGM; and (iv) adjourning the AGM. Companies are also advised to establish a dedicated area on the company website with information about the AGM and an online member Q&A.

Virtual-only or hybrid AGM

Whilst nothing in the Companies Acts and other applicable legislation prevents electronic shareholders' meetings (provided members are able to hear each other, speak and vote), unless there is a specific provision in the Articles permitting remote meetings, the legal position on whether remote shareholders' meetings are permissible is unclear. In addition, some investor bodies (pre-COVID 19) expressed concerns over holding virtual-only meetings (noting that both the Charity Commission and the Institutional Shareholder Services have, in guidance during the COVID-19 outbreak, recognised the need for virtual-only meetings). Therefore, the most prudent course of action, if an AGM or physical shareholders' meeting is required and there is no clear provision in the Articles permitting and regulating remote meetings, is to either:

- a) amend the Articles to include an express provision permitting and regulating remote meetings; or
- b) conduct a hybrid meeting. A hybrid meeting consists of convening a physical meeting with the minimum quorum (which is two in the case of private limited companies) with the other members participating via a proxy or through an online platform through which they can be heard and cast votes. Given that the current UK COVID-19 restrictions preclude gatherings of more than two people, a hybrid meeting may be possible if convened by the Chairman and one other shareholder at the same physical address, while other shareholders can attend by proxy or by an appropriate online platform. The current government guidelines should be consulted prior to holding such meeting.

Where any form of electronic participation is envisaged, notice of the meeting will need to include sufficient and clear information (in accordance with the Articles) informing members how they may attend, speak and vote at the meeting, making clear the options to attend remotely or by proxy. Consideration should also be given to the following matters:

- a) establishing a means for questions to be submitted, and either answered or ruled inadmissible. It is recommended to encourage pre-registration of questions and dealing with certain issues in advance through a Q&A on the company's website (or circulated with the notice of the meeting);
- b) adequate arrangements and technology must be in place to permit electronic voting, otherwise the meeting may be invalid;
- c) (if addressed in the Articles) alerting members attending by electronic means that the chairman has discretion to treat the meeting as continuing if there is a technological failure and that members may wish to make a proxy appointment to ensure that, in this event, their votes will be counted;
- d) how the chairman will control the meeting, how presentations will be communicated and how any documents required to be open to inspection at the meeting will be made available (e.g. circulated with the meeting notice or made available on the company's website);
- e) the range of different platforms that members may use (e.g. desktops, tablets, smartphones) and differing levels of technical expertise of attendees. A user guide may need to be sent out with notice of the meeting explaining how to use the technology effectively (and it is advisable to do a practice run in advance to iron out any technical issues and pre-empt any questions); and
- f) security issues (eg as to the means of verifying the identity of participants);

Following the meeting, information regarding the proceedings (e.g. attendees and voting) will need to be recorded for the company's records. The company will need to retain adequate information to deal with any issues that subsequently arise in relation to the meeting.

Written Resolution Procedure

On the assumption that there are no restrictions in the Articles, private non-trading limited companies may propose resolutions through the statutory written resolution procedure, instead of holding an AGM. The key requirements for circulation are that: (i) a copy of the resolution must be sent to every voting shareholder in (at least) electronic form or through a website; (ii) copies must be sent at the same time to all voting shareholders; and (iii) the copy of the resolution must be accompanied by a statement informing the shareholder how to signify agreement to the resolution and the date by which the resolution must be passed if it is not to lapse. Resolutions under the statutory written resolution procedure are passed on reaching the relevant percentage of the total voting rights, which is over 50% for a written ordinary resolution and at least 75% for a written special resolution.

Delaying the AGM

A company that has not yet issued its AGM notice may wish to delay its despatch and change the meeting to a virtual-only or hybrid AGM if its Articles allow it (see further details above)(and before the applicable deadline for public or traded companies), while still ensuring the notice period in the Articles is respected.

If, on the other hand, a company has already issued its notice, it can postpone its AGM if its Articles permit it to do so.

Assuming the Articles do not provide otherwise, there is no statutory minimum notice period for rearranged meetings (provided that the rearranged meeting is more than 14 clear days from the original notice for private companies); as a matter of good practice, the company should aim to provide 14 clear days' notice, but it may be reasonable in the circumstances to have a shorter notice period.

Adjourning the AGM

A company should only consider adjournment if it has issued its AGM notice and it does not have postponement provisions in its Articles. Generally, a quorate meeting is required to be held to enable an adjournment; however, the Articles may permit greater flexibility, allowing, for example, for adjournment for lack of quorum.

Board/Trustee Meetings

If a board or trustee meeting is held electronically, it is recommended that: (i) all directors/trustees entitled to receive notice give their express consent to the meeting being held by such means (albeit this is not mandatory); (ii) the arrangements are such that everyone can hear everyone else; and (iii) minutes of any such meeting are circulated to each director/trustee for approval.

Key Requirements of Meetings

While this note focusses on holding remote meetings, the usual notice, quorum, voting, meeting and filing requirements will obviously continue apply and must be complied with.

3. Practical tips on holding effective remote meetings

The BBC's [Remote Working: Seven Tips for Successful Video Meetings](#) and UK Chartered Institute of Personnel and Development's [Ten Top Tips: Effective Online Meetings](#) contain useful tips on holding effective online meetings.

There are various options available for video conferencing, including Google Hangouts, Zoom, and Skype, which also allow participants to share their screen, making discussion of documents easier. For non-subscription accounts:

- Google Hangouts Meets (currently free until 1 July 2020) allows up to 250 participants per call and an audience of up to 100,000 viewers and no time limit;
- Zoom allows up to 100 participants for a limit of 40 minutes; and
- Skype has no time limit, but is limited to 50 users.