COVID-19 Toolkit: A company's annual general meeting (AGM) obligations

I am a company director and/or shareholder. The company must hold its annual general meeting (AGM) by 31 May 2020, but I'm not sure how we can hold the AGM given the government's current restrictions on gatherings and movement relating to COVID-19. How does the company comply with its meeting obligations?

Companies that must hold their AGMs by 31 May 2020 are wondering how they can comply with their statutory meeting obligations under the *Corporations Act* (**the Act**), while also complying with COVID-19 related movement and gathering restrictions.

Fortunately, ASIC has adopted a 'no-action' position against such companies that have not held their AGMs by 31 May 2020 by giving them a two-month extension to do so by 31 July 2020.

During this 'no-action' period, companies may conduct their AGMs by alternate means, for example, by holding an AGM online or by conducting a 'hybrid' AGM (**i.e.** online and in person).

While ASIC has indicated that during the 'no-action' period, they will not take action against any company that holds virtual AGMs in contravention of the Act, the caveat is that members as a whole must be given a reasonable opportunity to participate in the meeting.

This means that if the technology used prevents members from reasonably participating and / or voting at the AGM, then, under section 1322 of the Act, a member may apply to the Courts to declare that the meeting is invalid for substantial injustice caused by the irregularity.

While ASIC's two-month grace period may be extended, we recommend that you take action now by:

- **Reviewing the company constitution** to ascertain the meeting and voting requirements, as these may differ from the requirements under the Act.
- **Prepare and serve supplementary notices** (per the constitution) providing further instructions for members to attend the meeting online (and in-person if conducting a hybrid meeting), including how voting will occur, if the constitution is silent as to whether meetings must be in-person or provides that virtual or hybrid meetings may be conducted.

- **Postpone or cancel meetings** that have been convened by serving further notices (per the constitution) of the postponement or cancellation in reliance on ASIC's "no-action" position, if the constitution directs that only in-person meetings are allowed and permits the cancellation or postponement of meetings.

Our Corporate team helps manage a variety of corporate governance issues on behalf of clients. For more information about issues related to trading during a pandemic, our COVID-19 Toolkit might be of assistance, as well.

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