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COVID-19: Board and Shareholder Meetings

Corporate

The pandemic and the associated government protective measures pose significant threats to businesses. This article examines the options available to companies in navigating some of the administrative and operational challenges of the new virtual world and how business can be transacted remotely.

Board Meetings

Whether a company can hold meetings of its directors remotely will depend substantially on its articles of association. Those (many) private companies which have adopted the statutory default (“model”) articles will already have the flexibility to allow directors to participate in a board meeting otherwise than by physical presence. The Model Articles permit board meetings to be held by conference or video calls or indeed any other means by which the directors can communicate with each other.

Companies whose articles of association do not include such provisions should check their articles and the options available before holding a board meeting remotely. These might include the circulation of a written resolution signed by all directors, agreeing to decisions by email (not ideal) or delegating the issue to a committee of directors formed

for a particular project or purpose. Historically there have been differing views on whether directors can conduct their meetings electronically where not specifically authorised by the company's articles of association. That said, if the directors unanimously agree then decisions may be reached using such means. It is becoming generally accepted that directors' meetings may be conducted by telephone or other electronic link, provided the articles do not preclude it.

If a board meeting is held electronically, it is good practice to ensure that:

- all directors entitled to receive notice give their express consent to the meeting being held by such means
- the arrangements are such that everyone can hear everyone else
- minutes are subsequently circulated to each director for approval to ensure they are agreed as a correct record of the business transacted

The Chartered Governance Institute has published guidance on holding board and committee meetings by virtual means (the guidance does not cover virtual shareholder meetings) emphasising the importance of choice of technology, preparation, access instructions and “ground rules” for the meeting and where possible obtaining the views beforehand of any director who cannot attend.

Shareholder Meetings

As with board meetings, there is nothing in the Companies Act to preclude electronic shareholder meetings. The articles should be checked to ensure that they do not restrict the holding of meetings in this way. Subject to that there is no requirement that a company's articles must expressly permit the holding of shareholder meetings electronically. The Model Articles permit "virtual" attendance at general meetings provided that a person is able to vote (by whatever means that person communicates with the meeting).

Views differ as to whether a “virtual-only” meeting (i.e. one that is held exclusively through the use of online technology without a corresponding physical, in-person meeting) is permissible under UK company law. It may be possible - depending on the availability of suitable technology - to change the meeting to a “hybrid” meeting i.e. one where an in-person or physical meeting is convened with the minimum quorum and other

shareholders are permitted to participate online.

If this is not possible, it may be possible to hold a telephone conference: a shareholder meeting held in several rooms connected by audio-visual links has been held to be valid.

Written Resolutions

As an alternative to holding a general meeting, the Companies Act permits directors to propose and members to circulate, written resolutions of members which are passed on reaching the relevant percentage (depending on the type of resolution).

Proxies

The Companies Act gives members the right to appoint a person (a proxy) to attend and vote on their behalf at a shareholders' meeting and to exercise all or any of the member's rights to attend, speak and vote at the meeting. That statutory right overrides any contrary provision in the company's articles. The articles will usually specify how a proxy should be appointed.



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