

AGM Considerations for UK Foreign Private Issuers Arising from Coronavirus (COVID-19)

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This memorandum highlights some annual general meeting (**AGM**) considerations for UK foreign private issuers (**FPIs**) with listings in the United States arising from coronavirus (COVID-19), including changing the format of their AGMs to include a virtual component, or delaying, postponing or adjourning their AGMs.

As UK FPIs are not subject to the proxy requirements applicable to domestic US public companies, AGM considerations are driven primarily by the company's articles of association, UK company law and associated regulation, and relevant stock exchange and listing requirements in the UK, the US or elsewhere (which for the NYSE and NASDAQ simply require that an AGM is held once per year). As UK government advice continues to change on a real-time basis, companies should be prepared to alter their plans as required.

Changing AGM Format to Include a Virtual Component

If a company's articles of association permit, it may be possible for a company to conduct an AGM with a virtual component. In such circumstances, appropriate procedures for properly notifying shareholders should be followed. Where the articles of association do allow for a hybrid physical and virtual AGM, those attending online will typically be considered in attendance at the meeting and be entitled to the same rights, including the right to vote at the meeting, as those physically present.

If a company has already published its AGM notice for a physical meeting but now wants to move to a hybrid meeting format (and its articles of association allow for it), it should publish an announcement of the intended change and post the announcement on its website. UK companies with American Depositary Receipt (**ADR**) holders in the United States will need to work with their Depositories on procedures for sending amended notifications and proxy materials to ADR holders.

Where articles of association do not permit a virtual component to an AGM, an alternative would be to webcast the meeting live on the company's website. This would allow shareholders to observe proceedings remotely, although they would not have the right strictly to vote or to ask questions directly of management during the meeting itself. These shortcomings could be mitigated if the company was to give shareholders the ability to submit questions in advance of the meeting or to host a live webcast Q&A session with shareholders prior to the meeting to allow them to voice their opinions, and also make a determined effort to ensure shareholders were encouraged to make their votes by proxy beforehand.

Delaying, Postponing or Adjourning the AGM

Given that the coronavirus (COVID-19) pandemic and relevant government-imposed measures are likely to evolve but continue for some time, companies should consider whether delaying, postponing or adjourning their AGM is the best course of action.

UK companies are required to hold their AGM within six months of the company's financial year end. This leaves companies with a December 31 year end only a small window for delaying their meeting if the notice of meeting has not already been published and a meeting called.

Where an AGM notice has already been published and a meeting called, a company may be able to postpone the meeting to a later date, but only if its articles of association allow it to do so. The procedure for postponement will also be governed by the provisions of the articles.

If the articles do not provide for the ability to postpone the meeting, the AGM will need to be held, but may be adjourned to a later time and/or date or the meeting moved to a different location. In general, the meeting will have to be quorate (likely requiring the attendance of 2 to 5 shareholders) before it can be adjourned, but the articles of association may provide that a meeting can be adjourned for lack of quorum.

When an AGM is postponed or adjourned, a company is nevertheless still required to hold the rescheduled meeting within the six month period from the company's year end. This means that a postponement or adjournment may not accomplish the aim of increasing accessibility to the AGM if the coronavirus (COVID-19) pandemic persists until the end of June 2020.

If the record date for the AGM changes, UK FPIs should ensure that they satisfy relevant stock exchange notification requirements in relation to the setting of new record dates, which for NYSE listed companies involves notifying the NYSE 10 calendar days prior to the new record date. In addition, UK FPIs will need to coordinate with their Depositaries in relation to procedures for ADR holder mailings and communications. There is no requirement for a minimum period of time between record dates and AGM meeting dates but the NYSE recommends 30 days. As companies will need to maintain flexibility to alter plans as required, this 30 day period may not be possible. Procedures should be discussed with Depositaries to ensure that ADR holders are given required materials with as much lead time ahead of the AGM as possible, while ensuring that companies preserve flexibility.

Please see our separate client memorandum '[UK Corporate Finance Update: Coronavirus-related Measures and Guidance](#)'.

If you have any questions regarding the matters covered in this publication, please contact any of the lawyers listed below or your usual Davis Polk contact.

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