COVID-19: THE CORPORATE INSOLVENCY AND GOVERNANCE ACT 2020

Date: 1 July 2020

UK Corporate Alert

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INTRODUCTION

On 6 April 2020, we released an alert on the impact of COVID-19 on UK annual general meetings (AGMs) which detailed the options available to UK companies that were required to hold their AGMs during the pandemic. In that alert, we referred to the announcement that was made by the Department for Business, Energy and Industrial Strategy (BEIS) in March which stated that the government was looking at solutions to the pandemic's impact on the 2020 UK AGM season and would introduce further guidance and measures in due course. Such measures are now contained within the Corporate Insolvency and Governance Act 2020 (the Act). After being fast-tracked through Parliament, the Act came into force on 26 June 2020.

MEETING REQUIREMENTS UNDER THE ACT

The Act introduces a number of temporary measures to enable UK companies to hold their AGMs, and other general meetings, flexibly while complying with the social distancing measures that are in place, as follows:

- Timing: UK companies who are required to hold their AGMs between 26 March 2020 and 30 September 2020 (the Relevant Period) will be able to postpone their meetings until 30 September 2020. The Act enables the Secretary of State to shorten or extend the Relevant Period provided that any extension is for a period of no more than three months at a time, and does not go beyond 5 April 2021.
- Virtual Meetings: general meetings held during the Relevant Period do not have to be held at a physical location in order to be valid - the meeting can be held, and votes validly cast, via electronic means and quorum requirements will be satisfied even if the members are not present in the same location. In addition, the Act specifically provides that members do not have the right physically to attend the AGM in person, to participate in the meeting other than by voting or to vote by particular means.
- Conflict with Articles: the provisions of the Act relating to general meetings override any requirements set out in a company's articles of association and/or statutory provisions. Therefore, during the Relevant Period, companies will be able to hold a valid virtual AGM, even if their articles of association specifically require a physical meeting.

These provisions apply retrospectively from 26 March 2020. This means that if any UK company held its AGM (or any other general meeting) between 26 March 2020 and 26 June 2020 in contravention of the provisions of its articles of association but in a way which accords with the measures introduced by the Act, that meeting will be deemed to have been validly held.

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The Financial Reporting Council (the FRC) and the BEIS have published joint guidance on best practice at AGMs in light of the temporary measures introduced by the Act (the Guidance). In particular, given the restrictions on shareholders' attendance and participation in the meetings, the Guidance stresses the importance of maintaining shareholder engagement before, during and after the AGM. Companies can maintain such engagement in a number of ways, including by live-streaming the AGM online and/or allowing shareholders to submit questions in advance of the AGM and then posting the responses to such questions on the company's website or through the usual investor relation channels promptly after the meeting. Shareholders should also be encouraged to appoint a proxy (ideally the chairman of the AGM) to ensure that their votes are cast at the meeting.

Due to concerns around the effective safeguarding of shareholders' interests at, and the legal validity of, virtual AGMs, the government has stressed that the Act's measures in relation to general meetings are temporary and should only apply for so long as they are required to enable companies to hold their AGMs in a way which is consistent with "the need to limit the spread of COVID-19". Furthermore, the Guidance recognises that it may not be appropriate for all companies to exercise the temporary measures in relation to their 2020 AGMs, and recommends that each company takes a view on how to hold their AGM in the most suitable and safe way while complying with current government advice and restrictions on social distancing.

In the longer term, the COVID-19 pandemic has highlighted the need for a degree of flexibility in relation to how companies hold their AGMs in the future, with the FRC recognising that companies and their members "may benefit from a move to a hybrid AGM format that enables attendance both in person and on-line". As a result, the FRC has announced that it intends to work with company and shareholder representatives in the coming months to produce an assessment of best practice at hybrid AGMs. For further information and commentary on hybrid and virtual AGMs, please see our April alert.

OTHER CHANGES INTRODUCED BY THE ACT

The Act also introduces changes to the UK insolvency regime, some of which apply on a more permanent basis. Further background on these changes can be found here.

In addition, the Act confers on the Secretary of State the ability to temporarily extend statutory deadlines for various filings that UK companies are required to make at Companies House. Such extensions were introduced by the Companies etc. (Filing Requirements) (Temporary Modifications) Regulations 2020, which came into force on 27 June 2020. Pursuant to these Regulations, companies now have (i) nine months if they are public companies with an original filing deadline of 30 June 2020 or later, or 12 months if they are private companies, after the end of their relevant accounting reference period to file their annual accounts and reports, (ii) 31 days to register a charge, (iii) 42 days from the end of their confirmation period to file their annual confirmation statement and (iv) 42 days to submit certain notices relating to changes to the company (such as changes to directors) at Companies House. These temporary extensions will last until 5 April 2021.

This alert reflects the position as at 1 July 2020. If you have any questions in relation to your company's 2020 AGM or the measures introduced by the Act, please do not hesitate to contact us.

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