

# AGMs IN LOCKDOWN

KEYSTONE LAW

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## AGMs IN LOCKDOWN

**FRIENDLY SOCIETIES AND CORPORATE MUTUAL INSURERS (INSURERS) HAVE PARTICULAR ISSUES THIS COMING AGM SEASON. THE GENERAL POSITION IS THAT ON AGMS THE ACCOUNTS MUST BE SUBMITTED (HAVING BEEN APPROVED BY THE BOARD/COMMITTEE) TO THE MEMBERSHIP (FOR INFORMATION AND QUESTIONS) ANNUALLY AND THAT THE AGM SHOULD BE HELD NO LATER THAN 15 MONTHS AFTER THE LAST AGM. THIS MEANS THE AGM CAN BE HELD AFTER 30 JUNE IF DESIRED BUT WITHIN 15 MONTHS OF THE PREVIOUS.**

On submission of accounts for filing, the deadline for corporates is nine months after their accounting reference date, but for friendly societies it is stipulated as 30 June. For those insurers to whom Solvency II applies, the normal regulatory annual reporting date of 7 April will apply and many insurers finalise their annual report and accounts at the same time. However there has already been an extension ([see here](#)) of eight weeks given by the PRA for Solvency II annual reporting requirements. Auditors are currently raising a variety of questions which are causing delays in board/committee approval.

### NOTICE FOR MEETINGS

For corporates, the Companies Act 2006 is the appropriate legislation and for registered and incorporated friendly societies it is the Friendly Societies Act 1974 as amended by the Friendly Societies Act 1992. Both of those pieces of legislation provide similar provisions for minimum notice of the AGM. Legislation and/or rules most commonly provide for 14, 21 or 28 days. Notices will include the right to appoint proxies to vote on the member's behalf. Some insurers may also be able to do all of that electronically (provided that the appropriate provisions/notifications/agreement to/of members have been obtained and a website is in place). Some societies have, and the 1992 Act specifically provides for, notice of meeting by advertisement in local newspapers or other media.

Delegate societies have a more convoluted process whereby their branches or courts have local meetings to approve the branch accounts but most importantly to appoint the delegate(s) who will represent the branch at the national AGM. Sometimes those meetings are as much as a couple of months before the AGM. Rules vary in such societies but it is normally found there are no provisions for proxy or electronic voting. There is not yet a clear answer on how these societies can move forward. Correspondence is with the FCA courtesy of the AFM.

### QUORUM

However, there always needs to be a quorum of members. Usually that means members present in person. That number can vary from a very small number of members to a percentage of the membership. However, where insurers have up-to-date articles of association/rules there could be wording allowing members to be "present in person OR by proxy". In that case provided there are sufficient proxy votes to meet the minimum quorum requirement, then the meeting will be quorate. Directors/officers/employees who are also members of the insurer (by holding a policy) can be counted in the quorum and counted in a vote but given current circumstances care should be taken that they (and any employees) do not attempt to out-vote members.

### SO WHAT PROBLEMS ARE THERE?

It is pretty clear that even if lockdown is not in place in June, the Government have advised that social distancing may be required for up to 12 months and there may well continue to be restrictions on the numbers of people being allowed in one place/room.

- Although the corporates are likely to be further ahead, it is very unlikely that all insurers are sufficiently teed up as of now to have all members on electronic communication. Yes, notice can be given both electronically and written but considerable care needs to be taken to avoid failing to give all members notice, and the subsequent meeting being invalid. There are a very few saving provisions if this does happen. The insurer's obligation is to give the notice of meeting, so if there is postal disruption, that is not on its head, but it would be prudent to consider alternative postal districts/non-strike-bound areas or consider alternative methods of delivery of the notice.

- The quorum required for a meeting will be set in the articles/rules. It will not be a future get-out in changing your rules to simply reduce your quorum to a very small number because the FCA will expect to see the quorum number being of a reasonable size to reflect the size of your insurer. In any event you will need a quorate meeting to change the articles/rules.
- Under the Companies Acts and the Friendly Societies Acts there cannot be more than 15 months between AGMs. This is likely to be the date which catches most insurers as many hold their meetings before the summer. The Treasury are looking at this issue for friendly societies (at the request of the Association of Financial Mutuals) but the Companies Act legislation is owned by the Department for Business Energy and Industrial Strategy and it is not known at present what they are doing for corporates. An obvious answer may be to extend the 15-month limit for 2020 alone but that would require a change of legislation and Parliament is not sitting.
- Delegate societies will already have commenced the process of branch meetings but that process will now be on hold because of lockdown and after lockdown may be restricted by the number of persons who can meet in one room. There may then be a breach of rules/time limits for some societies in putting forward delegates for a future AGM. Guidance from ICSA for public companies suggests that meetings of more persons could be held, provided it is the minimum number and social distancing is observed. AFM are seeking further guidance.
- For those insurers who have not updated their articles/rules for some time and are reliant upon paper notices and physical meetings, then the picture is far from clear from present government announcements. Those insurers may be in a more difficult situation when any lockdown has been lifted by any extension to the quarantine period for elderly or vulnerable members.
- It is important not to get confused between the regulatory reporting requirements for Solvency II insurers (which may include the annual accounts), the approval by the board of the accounts and the statutory requirement to submit the accounts to the members at an AGM. That AGM can be held after any regulatory return dates. However, should boards so wish, there is no reason why the submission of the accounts to the members at an AGM cannot take place before the appropriate regulatory return date.

## ACTION

- Check your rules and articles of association for current provisions.
- Complete your accounts, management and strategic reports and prepare appropriate notices of meeting to members. BUT see the comments below about difficulties with auditors signing off accounts.
- Check the position your printers are in for printing volume hard copies of your accounts (where required).
- Check the extent to which you have current email addresses for members and their consent to deal with them electronically.
- Consider reviewing your articles of association or society rules to incorporate more flexible provisions to cover the problems which COVID-19 has raised and consider whether those changes should come back in 2021. The newspaper or advertisement notice of meeting is not as widely used as it could be.
- Use the concessions from the regulators/change in the laws this year to make a step change in how you deal with your members. They are likely to need some TLC to understand how they will be affected if things are to be different next year, and you will have already read the many comments that "life will never be the same after COVID-19".
- Try to get all of your members onto an electronic basis for the future.
- Urge all members to vote by proxy and appoint the chairman of the meeting (not necessarily the Chairman) as their proxy.
- Ensure that you can round up the minimum number of members for a physical quorum if that is how the meeting has got to go, subject to then government guidance on numbers of people who can meet.

## ALTERNATIVES

### SO, WHAT ABOUT AN ELECTRONIC MEETING?

These are called hybrid meetings and are a relatively new development whereby members join a physical meeting but through electronic/video means. The Friendly Societies Acts do not refer to these as clearly their development post-dates the most recent legislation. We see no reason why they cannot happen provided the basic legislation has been complied with.

For corporates, the option of an electronic meeting will depend on the current articles of association. Section 360A of the Companies Act 2006 is helpful in this regard. However, the holding of a fully virtual meeting with no quorum present (except for the person hosting the meeting) is a concept which insurers have not yet undertaken. Therefore, it would be sensible to look at your articles/rules to consider providing for these possibilities for the future. Jimmy Choo Ltd held the first fully virtual AGM in 2016. A virtual meeting could dispense with the need for having a physical meeting (and potentially the printing and postal costs of distribution of meeting documents and information). Fully virtual meetings have their own issues to consider. See a separate note from Edward Dawes of Keystone Law on this subject or request one from the writer of this article.

### ADJOURNMENT

If you have already posted your notice of meeting, then given the current lockdown it is quite probable that you will have to adjourn the meeting. Provision to do this is usually already provided for in most articles/rules but should be checked as there are technical difficulties. In law an adjournment needs an actual meeting before it can be agreed to be adjourned. Postponement is a different concept which needs authority in the articles/rules. If you are forced to adjourn, then you may come up against the timetable problems above. Even after the lockdown provisions have been lifted it is likely that the social distancing rules will still apply, which is another reason for encouraging the maximum number of proxy votes and ensuring that those present are only the minimum quorum sitting at least 2 m apart from each other. If you have a larger number of members, then you may consider putting them into different rooms with video links.

### MEMBER INFORMATION

In order to maintain maximum contact with your members and treat all fairly it would be sensible to consider either streaming the AGM live online and either answering pre-notified questions from members or allowing live electronic questions. If that cannot be done, consider posting on your website a recording of the meeting. These suggestions may be difficult to implement where the membership is very elderly or not IT-orientated.

## POTENTIAL REGULATOR/AUDITOR DELAYS.

The FCA has recently written to public companies to ask them to delay issuing interim results on the basis that "recent unprecedented events mean that the basis on which companies are reporting and planning is changing rapidly". While this voluntary moratorium was aimed at FTSE 100 companies and the practice of announcing preliminary results for publicity purposes, we suspect that that principal may filter down the chain to companies of all sizes. The sort of issues likely to be under consideration are assessing if senior management has undertaken appropriate procedures to understand and update their view as to whether they are a going concern in the light of COVID-19. We suspect that auditors will look much more deeply behind that question in evaluating the data used for any decision about the strength of argument for being a future going concern. This is likely to lead to appropriate statements being inserted into either the auditor's report or the management report. Given that the situation is changing so fast, we hope that these questions and indeed the initiative by the Association of Financial Mutuals may result in an extension to the 15-month and 30<sup>th</sup> June dates mentioned above. The current situation is changing extremely rapidly.

## A MUSE OF THOUGHTS

Below you will see the extension of time which has already been given by the FCA for completion of regulatory accounts. We would sincerely hope that eight weeks is sufficient and if auditors continue to raise further and bigger issues, then we have little doubt that the FCA could extend that period of time. It may be helpful to the AFM if individual members can note specific/large delaying issues. If lockdown continues, then none of us will be going away in the summer anyway and new thoughts will be needed.

The 15-month/30<sup>th</sup> June date is more of a problem as that is set by legislation which cannot be changed. The FCA is the enforcement regulator and we do not see that it is outside the bounds of possibility for them to say they will not take enforcement action provided certain longer deadlines are met.

In terms of submission of accounts to members then provided it can be shown that members have had access to all the AGM information (including those without electronic communication) and that members have had enough time and opportunity via open systems (post/telephone conference/email/virtual processes) to question management on the annual accounts and other usual business of an AGM, then we would very much hope that the regulator would take the stance that "provided the insurer could show that members had not been prejudiced by the lack of physical meeting", then no disciplinary proceedings would be considered.

## PRA/FCA STATEMENT OF 26 MARCH 2020

Just as this article was going to press the PRA and FCA issued a joint statement on financial reporting ([see here](#)). The statement applies to listed companies having an extra 2 months in which to publish their audited annual financial reports.

### UPDATE 9.4.20.

The FCA confirmed in an email of 2.4.20 that they would allow an extension of 3 months for returns/filings due by 30 June, without taking regulatory action provided societies take all reasonable steps to submit returns and accounts.

On AGMs these are rights of members governed by the society's rules and are not an FCA compliance matter. But the FCA will not consider it in the public interest to discipline a society for a breach of rules where it can be demonstrated that the society is taking all reasonable steps to comply with legislative requirements as soon as reasonably practicable. This would not stop members taking such action as they consider appropriate.

Included in the article above is guidance from the FRC on corporate governance and reporting ([see here](#)). We believe this guidance will affect your governance reporting and it should be read in detail. The FRC has also issued guidance for auditors and matters to consider where engagements are affected by COVID-19 ([see here](#)). While the PRA/FCA statement applies only to listed companies and to banks, building societies and PRA designated investment firms (not insurers) the FRC has specifically confirmed to us today that its guidance to auditors applies to ALL companies (and by implication therefore to societies) and we believe this will bring delay by auditors in signing off accounts. You will see detailed guidance to auditors in the FRC bulletin.

ICSA has also issued guidance for public companies ([see here](#)) which, while not directly relevant, is particularly clearly written.

Companies House has also issued guidance ([see here](#)) giving a 3-month extension to file accounts BUT a specific application must be made inside the original filing date. That guidance applies to all companies.

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