

COVID-19 - ASIC's Temporary Measures

The Australian Securities and Investments Commission (ASIC) has recently introduced a number of temporary measures to assist companies affected by the coronavirus pandemic. These include:

1 AGMs

The requirement for a company to hold their annual general meeting (AGM) by 31 May 2020 has now been “unofficially” extended to 31 July 2020. Although ASIC does not have the power to grant an extension, it has confirmed that no action will be taken by ASIC in respect of any company that fails to meet the 31 May 2020 deadline, if they hold the AGM by the end of July.

ASIC has also provided a no-action position on virtual AGMs in that they will not take action on non-compliance with provisions of the Corporations Act that may restrict the holding of virtual AGMs where an entity elects to hold a virtual AGM by 31 May 2020 or during the extension period.

On 5 May 2020, the Treasurer issued a Determination modifying the provisions of the Corporations Act and the Corporations Regulations. The Determination allows the use of technology when conducting an AGM, rather than face-to-face meetings.

The virtual AGM, however, must provide members as a whole a reasonable opportunity to participate without being physically present, including the ability to ask questions, and voting occurring by poll rather than a show of hands.

The Determination also allows company boards to:

- (1) Provide notice of AGMs by email;
- (2) Achieve a quorum with shareholders attending online; and
- (3) Appoint a proxy online.

2 Notices

ASIC also intends to take no action on any contravention of the Corporations Act if an entity has dispatched a notice for a meeting to be held on or before 31 May 2020 and at least two business days before the meeting is held, the entity sends members supplementary instructions for on-line participation by:

- (4) electronic message (if the member has provided the relevant details);
- (5) a notice on the entity's website; and
- (6) a market announcement if the entity is listed on a market.

This ‘no-action’ position covers any failure of the supplementary instructions to comply with sections 249J of the Corporations Act.

The Determination mentioned above also allows for any notice of a meeting to be given via email, however, the notice must include information about how those entitled to attend can participate in the meeting (including how they can participate in a vote taken at the meeting, and speak at the meeting).

It is essential that you are aware that no-action by ASIC does not preclude third parties (including the Office of Director of Public Prosecutions, or other third party stakeholders) from taking legal action in relation to the same conduct.

3 Financial Reporting

Unlisted Entities

ASIC is also extending the deadline for unlisted entities to lodge financial reports under Chapters 2M and 7 of the Corporations Act 2001 by one month for balance dated from 31 December 2019 to 31 March 2020.

The extended deadlines for lodgement by unlisted entities will assist those entities whose reporting processes take additional time due to current remote work arrangements, travel restrictions and other impacts of COVID-19

ASIC has advised that where possible, entities should continue to lodge within the statutory deadlines having regard to the information needs of shareholders, creditors and other users of their financial reports, or to meet borrowing covenants or other obligations.

The extended deadlines will not apply for 31 December 2019 balance dates if the reporting deadline has already passed.

Listed Entities

ASIC has not extended deadlines for listed entities as it considers they are important to confident and informed capital markets and a broad range of investors.

Timely reporting by these entities is important, however ASIC will consider applications to extend the reporting deadline for individual entities in appropriate circumstances on a case by case basis. Where possible, any applications should be made at least 14 days before the normal reporting deadline. Applications should include sufficient information for ASIC to assess the impact of market conditions and COVID-19 developments.

Disclaimer

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