



Technical Accounting Alert

TA 2020-07

ASIC releases 20-068MR Guidelines for meeting upcoming AGM and financial reporting requirements

Executive summary

On 20 March 2020, the Australian Securities and Investment Commission published Guidelines for meeting upcoming AGM and financial reporting requirements. This is the first step in ASICs response to the current economic considerations following the COVID-19 outbreak.

In summary ASIC:

- Has undertaken to take no action against entities with 31 December 2019 balance dates that do not hold their AGM by 31 May 2020;
- Has undertaken to take no action against entities holding virtual or hybrid virtual/physical AGMs to proceed;
- Not extended deadlines for financial reporting obligations; and
- Not extended AGM deadlines for entities with non-31 December 2019 balance dates.

These positions are subject to change. Entities should monitor ASIC media releases to ensure they are abreast of regulation changes and no-action decisions on a proactive basis.

The text of the media release is included below (source: <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2020-releases/20-068mr-guidelines-for-meeting-upcoming-agm-and-financial-reporting-requirements/>).

20-068MR Guidelines for meeting upcoming AGM and financial reporting requirements

Annual General Meetings

Coronavirus (COVID-19) may temporarily impact on companies' ability to hold an annual general meeting (AGM). This issue is most immediately relevant for listed and unlisted public companies with 31 December balance dates that are required to hold an AGM by 31 May 2020. For these entities, ASIC:

- Confirms it will take no action if the AGMs are postponed for two months; that is, until the end of July
- Supports the holding of AGMs using appropriate technology.
- The full text of our 'no action' position is attached.



ASIC cautions entities against holding an AGM while there are restrictions on large gatherings, unless the entity can provide members as a whole with a reasonable opportunity to participate in the meeting.

Commissioner John Price said a degree of flexible pragmatism was needed to deal with the issue. 'Consistent with the Council of Financial Regulators' statement that they would move to adjust the timing of regulatory initiatives so financial institutions could concentrate on their businesses and assist their customers, we will focus on helping entities with the difficulties created by this situation.

'Our position is under continuous review. We are liaising closely with advisors and industry bodies so that we can understand our stakeholders' needs and respond pro-actively,' he said.

Financial Reporting Obligations

ASIC is closely monitoring developments that may affect financial reporting, talking to market participants and auditors, and considering possible impacts and responses. At present, there appear to be no widespread indications of any significant issues for entities in meeting their full-year and half-year financial reporting obligations at 31 December 2019.

Entities with 31 March or 30 June balance dates

ASIC will carefully monitor how market conditions and COVID-19 are affecting financial reporting and AGM obligations for these entities and may update this guidance if needed.

ASIC's formal 'no-action' position on AGMs due by 31 May

Entities with a financial year-end of 31 December may find it difficult to hold their AGM by the deadline of 31 May 2020 due to the restrictions on large gatherings, travel restrictions and concerns from members about attending large-group meetings in the COVID-19 situation.

ASIC does not have the power to grant extensions of time to hold an AGM on a 'class basis', i.e. to all entities with a financial year ended 31 December 2019. We have therefore provided a 'no-action' position on upcoming AGMs that need to be deferred or that are held online.

Two-month extension by 'no-action' position

ASIC has adopted a two-month 'no-action' position for entities with a financial year end of 31 December 2019 that do not hold their AGM by 31 May 2020. At present, these entities ideally will be able to hold their AGM by the end of July 2020, but the situation will remain under review.

This 'no-action' position means that ASIC will not take action against an entity with a financial year end of 31 December 2019 who fails to comply with s250N(2) of the Corporations Act 2001 provided the entity holds the AGM by 31 July 2020 or such later date as ASIC advises ('extension period').

Hybrid and Virtual AGMs

Some entities may wish to proceed with holding their AGM by 31 May 2020 or during the extension period, using technology to comply with COVID-19 restrictions. This may include a 'hybrid' AGM (where there is a physical location and online facilities) or a 'virtual' AGM that is conducted solely online.

ASIC understands the benefit of hybrid and virtual AGMs in the current circumstances, including encouraging members to vote by proxy and participate electronically. In circumstances where a notice of meeting has already been dispatched to members, we support entities sending supplementary instructions to their members electronically, on their website and via market announcement.



Legal status of hybrid and virtual AGMs

ASIC considers that hybrid AGMs are permitted under the Corporations Act but entities need to check whether their constitution restricts meetings being held in this way. ASIC does not have the power to modify the Corporations Act to facilitate hybrid AGMs where they are not permitted under an entity's constitution.

There is some doubt as to whether the Corporations Act permits virtual AGMs and there may also be doubt as to the validity of resolutions passed at a virtual AGM. ASIC does not have the power to modify the Corporations Act to facilitate virtual AGMs. However, we have provided a no-action position on virtual AGMs – see below. Entities should also consider whether they can hold a virtual meeting under their constitution.

Entities that are concerned about the validity of virtual meetings may wish to seek legal advice on section 1322 of the Corporations Act. Various irregularities associated with meetings held for the purposes of the Act are not invalidated unless the Court makes a contrary declaration. A person may be also able to apply to the Court for an order addressing other irregularities.

No-action position on virtual AGMs

ASIC intends to take a no action position 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 in order to comply with the statutory 31 May 2020 deadline or during the extension period.

This 'no-action' position on virtual AGMs is conditional on the technology providing members as a whole a reasonable opportunity to participate (sections 249S). In ASIC's view, this would include:

- members being able to ask questions of the auditor and about management; and
- voting occurring by a poll rather than a show of hands.

Entities should make an assessment of their AGM-facilitating technologies in advance of holding of the meeting and consider whether it adequately addresses these conditions. If there are concerns, entities can instead postpone the AGM and hold it later in reliance on ASIC's no-action position on deferred AGMs.

No-action on sending supplementary notices electronically

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:

- electronic message (if the member has provided the relevant details);
- a notice on the entity's website; and
- 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.

What if the entity cannot facilitate online participation in their meeting?

Entities that have a constitution that restricts on-line participation in an AGM or that cannot otherwise provide effective on-line participation for logistical or technical reasons can also rely on ASIC's 'no-action' position for deferral of AGMs. Postponing an AGM where an entity has made advanced preparation may cause significant cost and inconvenience, but holding an AGM where few members can participate either in person or online might not comply with the Corporations Act and produce an unsatisfactory outcome.



Note on status of ASIC's 'no-action' positions for AGMs

ASIC's general policy on 'no-action' positions and their status is set out in Regulatory Guide 108 No-action letters. In particular, it should be noted:

A 'no-action' letter is an expression of regulatory intention about how to exercise ASIC's powers. The purpose of a 'no-action' letter is to provide an indication as to the future regulatory action that we might take.

An ASIC 'no-action' letter does not necessarily preclude third parties (including the Office of Director of Public Prosecutions) from taking legal action in relation to the same conduct or conduct of that kind. Nor does it prevent a court from holding that particular conduct infringes the relevant legislation. ASIC does not represent that the conduct covered by the 'no-action' letter will not be held to contravene the relevant legislation. Nor does ASIC undertake to intervene in an action brought by third parties in respect of such conduct.

Further information



If you wish to discuss any of the information included in this Technical Accounting Alert, please get in touch with your Grant Thornton Relationship Partner or a member of the National Assurance Quality Team at national.assurance.quality@au.gt.com.