Post COVID-19: The benefits and challenges of virtual shareholder general meetings (annual general meetings)

As the COVID-19 pandemic has continued to impact every aspect of our lives, companies have had to change the way shareholder meetings ("**AGMs**") have been held. Will this be the new "normal" or will companies go back to the old way of doing things prior to COVID-19? At this point, only time will tell, as companies continue to grow and evolve during these uncertain times.

In terms of the King IV Code on Corporate Governance, the Board is required to oversee that the organisation encourages proactive engagement with shareholders, including engagement at the AGM. What this previously meant is that a day would be blocked out in the calendar for the organisation to meet with shareholders at a venue big enough to accommodate the vast number of shareholders (or proxies) that may attend.

Travel restrictions, social distancing protocols, and general disruptions to daily life have made it nearly impossible to hold in-person shareholder meetings.[1] Gathering shareholders from around the world and from different parts of the country in convention centers has simply been out of the question—leaving regulators and companies to consider alternative approaches.[2] Regulatory approaches around the world have varied, such as extending deadlines for holding such meetings, or allowing them to take place virtually. As such, there has been an unprecedented rise in the number of virtual shareholder meetings around the world. Through engagement with key governance role players in varying industries, we have understood how companies within South Africa have tackled this challenge.

We have summarised the insights we have gathered, providing our clients with guidance as to some of the key considerations, and the key benefits and challenges of the virtual AGM.

The feedback from most clients indicates that companies opted for AGMs that were fully virtual in nature – allowing shareholders/ investors/ stakeholders to dial into calls, video conferencing platforms from anywhere in the country or even the globe.

Certain companies (typically those less affected by the lockdown regulations) opted for a hybrid AGM – allowing identified stakeholders to attend the AGM in person and other to attend virtually. Through our engagements, a client revealed that *"Even though [the] company was operational during the lockdown period, [the company] had to ensure adherence to social distancing regulations even and as a result, a hybrid AGM was a better option for [the company]. The AGM went exceptionally well and one can argue that this AGM was better than previous AGMs held, as the level of attendance and engagement was elevated"*.

Most remarkably, this shift to virtual meetings has been seen even in global markets that had previously only allowed for in-person shareholder meetings. Given the length of prolonged lockdowns across many countries, all of this may mean that practices may be permanently altered as a result of these changes. If so, it is important for Boards of Directors, Management and Company Secretaries alike to weigh a number of considerations as they transition to virtual shareholder meetings.

Technology challenges

Most technology providers have reported exponential growth in their client bases, including in countries that had previously allowed for virtual shareholder meetings. Organisations have largely understood that in this new environment, technology is the only way to convert traditionally closed-door meetings into virtual forums open to all investors. Similarly, regulators from various regions have acted to temporarily enable virtual shareholders meetings, either expressly (France, Germany) or implicitly (Japan).[1] Large institutional investors and leading proxy advisers have also signaled an openness to virtual meetings. For example, proxy adviser Glass Lewis recently updated its voting policy by noting that they will *"…generally refrain from recommending to vote against members of the governance committee on this basis, provided that the company discloses, at a minimum, its rationale for doing so, including citing COVID-19."*

This drastic change, in such a short time, has itself brought about new governance challenges. Traditionally, the transition to tech-driven meetings had taken place gradually, through hybrid meetings – taking place both in person and over the internet - over a multi-year transition period. Today, virtual meeting providers have been overwhelmed by the number of organizations looking to make the transition, and to do so fast.

However, the COVID-19-induced transition to virtual shareholder meetings has not been uniform. For instance, the format of e-meetings differs across companies: some are voice-only meetings, some are pre-recorded sessions; others are live and offer multi-site video broadcasting. There are also a number of difficulties that come with virtual meetings: there is always the chance of a poor connection and broadcasting interruptions that make the meeting difficult or impossible to follow; there can be cyber-security and data protection concerns, and there can be questions about the reliability of the technology platform servers. In addition, there are other non-technical challenges experienced during virtual meetings and these include disruptions during meeting caused by people wanting to raise their view at the same time, silence during discussions and finding ways to deal with the silence. Feedback from one of our clients interviewed was to the effect that "*it is difficult to read the virtual room and due to this, you are unable to effectively oversee the meeting [as a Company Secretary]*". Some of the techniques used to overcome these non-technical challenges experienced during virtual meetings include the Chairperson communicating rules of engagement at the beginning of each meeting, use of the chat box functionality to raise questions or comments, utilisation of the "hand raise" functionality and going around the virtual room requesting comments in a sequential manner.

Technical issues can themselves lead to complex governance questions such as; how are votes counted? should an e-voting platform run into technical difficulties mid-meeting? And what

about the impact on quorum and majority requirements? It is as if companies and shareholders have stepped together into a laboratory, where numerous experiments in governance are being conducted within a very short period of time. It remains to be seen what new leading practices and technological innovations will result from these experiments. We do know, however, that renewed standards are likely to emerge around:

- The functionalities offered by electronic voting platforms (e.g. attendee authentication, fielding live shareholder questions, audio and video meeting formats, etc.);
- The secure processing of personal data (compliance with GDPR and multiple data protection regulations during shareholder identification); or
- The use of Blockchain technologies for voting integrity and reliable vote counting (e.g. NASDAQ's eVoting solution based on distributed ledger technology).

New corporate governance practices

In a virtual setting, shareholders and companies often find that they are not able to interact as easily as they can in person. Regulators, issuers, and investors alike have sought to replicate the in-person shareholders meeting experience in virtual form. New corporate governance leading practices have emerged, mostly following guidelines issued by regulators and local authorities. Some of these leading practices include:

Disclosure Improvements:

Many companies' efforts have focused on improving the quality of information provided to shareholders. Organisations have informed investors of the structural changes to their shareholder meetings and voting methods through emails, press releases, or through their websites. Organisations have also added additional disclosures on COVID-19 and its impact on operations and profitability. Furthermore, due to the impact of COVID-19 many companies in South Africa have disclosed that they have taken the offer from the Johannesburg Stock Exchange (JSE) to report on their financials during the extension period provided by the JSE.

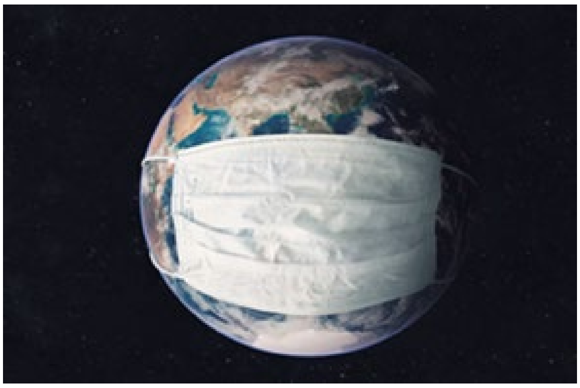
Enhancing Shareholders' Right to ask questions:

Virtual meetings can impact shareholder rights, inasmuch as they can affect a shareholder's ability to ask questions before and during meetings. The Council of Institutional Investors (CII) in the US reports that some shareholders have already experienced issues in this respect. The ability to ask questions at AGMs is considered a fundamental shareholder right; however, shareholders may fear that their ability to ask questions may be weakened if management is able to pre-screen and filter them. A leading practice to address these concerns is the use of robust Q&A tools and continuously updated and refreshed lists of questions.

Final thought:

There is a large consensus among issuers, shareholders, and regulators that the shift to virtual shareholder meetings is a temporary reaction to the COVID-19 crisis. Going forward, it is easy to envision the following developments:

- Improvement in e-voting technologies;
- Inclusion of e-voting capabilities in a growing number of shareholder meetings;
- Continuation of the 'temporary' regulations allowing virtual meetings; and
- Decreased appetite for travel costs to attend and host in-person meetings



While most regulators across the globe stress the importance of shareholder voting rights, it is possible that corporate governance codes (such as the King IV Code on Corporate Governance) will be updated to take into account virtual shareholder general meetings. We believe now more than ever it is important for organisations to work together with shareholders to build trust and find common ground as these developments continue to play out.

Five questions every board should ask about virtual Shareholder meetings:

- How comfortable are we with our virtual meeting technology platform? Are we confident in its reliability and security?
- How robust are its shareholder identification capabilities? The voting process?
- Have we ensured that all proxy materials and notices to shareholders are updated?
- What is our process for dealing with a larger volume of shareholder questions? How do we do so transparently?
- Have shareholders voiced any concerns with respect to how our dialogue with them has changed given the absence of an in-person meeting?
- How can we continue to build a sense of trust with our shareholders? Is there a need to increase shareholder engagement outside AGMs?

Contacts

Mark Victor
Partner
Deloitte & Touch Risk Advisory
Strategic Governance & Risk Management
South Africa
mvictor@deloitte.co.za

Tendai Shitto
Senior Manager
Deloitte & Touche Risk Advisory
South Africa
tshitto@deloitte.co.za

Leisl van Zyl
Senior Manager
NED Programme
Deloitte & Touch Risk Advisory
lvanzyl@deloitte.co.za

1 Laff, Michael (2020). Annual General Meetings & COVID-19 [online] Harvard Law School Forum on Corporate Governance. Available at: https://corpgov.law.harvard.edu/2020/04/09/annual-general-meetings-covid-19/
2 SEC Press Release 2020-62, SEC Staff Provides Guidance to Promote Continued Shareholder Engagement, Including at Virtual Annual Meetings, for Companies and Funds Affected by the Coronavirus Disease 2019 (COVID-19) (March 13, 2020), press release available at https://www.sec.gov/news/press-release/2020-62
3 For an international overview: ISS Governance Research Team, Annual General Meeting & COVID-19: A Review of the Regulatory Landscape, April 2020
4 Taraporevala, Cyrus (2020). Stewardship Engagement Guidance to Companies in Response to COVID-19 [online] Harvard Law School Forum on Corporate Governance. Available at: https://corpgov.law.harvard.edu/2020/04/06/stewardship-engagement-guidance-to-companies-in-response-to-covid-19/
5 https://www.glasslewis.com/immediate-glass-lewis-guidelines-update-on-virtual-only-meetings-due-to-covid-19-coronavirus/
6 Cunningham, Lawrence (2019). Quality Shareholder Voting. Available at: https://clsbluesky.law.columbia.edu/2019/11/21/quality-shareholder-voting/
7 CII's Weekly Governance Alert Vol 25, Issue 17, April 30, 2020