

Preparing for AGM season 2022

By Neo Allwood

Overview

The COVID-19 pandemic has prompted Boards to adapt their approach toward one of the traditional means of engaging with their shareholders: the Annual General Meeting (**AGM**). The need over the last two years to observe social distancing requirements, and the opportunities created by technology, have changed the perception of how AGMs can be held. Similarly, the investor view on how companies engage with their shareholders more broadly continues to evolve. Boards need to ensure that their approach toward shareholder engagement continues to meet these changing expectations.

As we move into "AGM season" in 2022, we consider in this article some of the key areas for Boards to be thinking about as they plan for their next round of shareholder meetings.

AGM format and shareholder engagement

The options for holding AGMs remain threefold:

- (i) in-person only meetings where a minimum of two shareholders must be present in person for the AGM to be valid. While almost all legal restrictions on public gatherings have now been removed across the UK, companies will still need to be mindful of general guidance on public gatherings;
- (ii) hybrid meetings, which combine in-person and virtual participation; and
- iii) virtual meetings (if the Company's articles of association allow).

The last two years have been instructive for companies **in the benefits of using technology to improve shareholder participation and engagement at AGMs. Boards have not only seen that this technology works but that it is also a potential enabler for engagement.** Shareholders that may have been unable or unwilling to travel to in-person meetings are offered the opportunity to join at the press of a button. We are seeing in our own engagement with companies that hybrid shareholder meetings will remain an attractive option for many companies even in a potential post-COVID-19 environment.

We have also seen divergence in practice on hybrid meetings in the last two years. Some companies will have allowed shareholders to listen into proceedings, or to ask questions of the Board via videoconference, but votes can only be cast by those attending in person or by appointing the Chairman as proxy. In general, for such meetings, votes will have been cast in advance by proxy. The AGM itself is largely procedural.

Some companies have gone a step further and provided an online voting facility to shareholders to enable votes to be cast in person and online. This allows for shareholders to incorporate the traditional question and answer session of Directors into their voting decisions. Such a system does however increase costs.

A virtual AGM is held through an online platform only. While the Government introduced significant flexibility in how AGMs were held during the last two years, it should be noted that there remains some legal uncertainty around the validity of virtual AGMs in the absence of any significant case law in the area. Whilst the platforms needed to host virtual meetings may be relatively expensive, they do reduce logistical costs – for example, the costs of hiring a venue, the costs of travel for some or all Directors.

In deciding on the most appropriate format for the AGM, Boards should consider the following questions:

- **What is the Board's view of the AGM?** Is it the primary forum in the year for shareholder engagement – in which case, which is the best format to facilitate such engagement? While evidence is mixed on whether offering conference call opportunities during the pandemic has significantly increased attendance at shareholder meetings, the answer to the question on “best format” is likely to be specific to the Company and the investor base.
- **Are there other opportunities in the year to facilitate additional shareholder engagement?** For example, are there options for further engaging with shareholders on the Company's release of the Full-Year or Half-Year results? More broadly, the GC100, the association of general counsel and company secretaries working in UK FTSE 100 companies, has suggested that the UK Corporate Governance Code could be amended to encourage questions to be asked of the board (and the chairs of the audit, remuneration and nomination committees should be available to answer questions) at a virtual pre-AGM shareholder engagement event dedicated for the purpose (in addition to the shareholders' ability to ask questions at the AGM itself).
- **Is the Board hearing the full range of shareholder views?** Are there opportunities to engage further with retail investors, for example? Again, is the AGM the format for this?
- **What is the perception of investor bodies?** Despite the transition to hybrid and virtual meetings that took place during the COVID-19 pandemic, for now, the majority view articulated by investor bodies remains that a virtual meeting may inhibit shareholders' ability to present proposals and escalate concerns. The Investment Association (**IA**), for example, is supportive of changes to articles of association to allow virtual meetings only where the company has provided an assurance that these meetings should only be used when physical meetings are restricted by government regulations or guidance.

2022 Voting Guidelines

In respect of the formal business of the AGM – decision-making by shareholders – Boards need to be mindful of both the voting positions of their institutional shareholders as well as of the major proxy voting agencies. The overwhelming majority of resolutions put to AGMs pass; however, investor expectations on corporate governance issues, including for those outside of the FTSE 350, continue to evolve.

At the end of the last year, voting agencies updated their guidelines (as set out below) that will apply to shareholder meetings taking place on or after 1 February 2022, save where otherwise noted. In general, focal areas of voting agencies in the UK remain:

- a) **executive remuneration** and the importance of giving shareholders a 'say on pay';

- b) **diversity on the Board**, which encompasses both gender diversity and increasingly ethnic diversity; and
- c) **ESG** factors, including disclosure on companies' action on climate change.

We see that these areas of focus are increasingly on the mind of voting agencies in their voting recommendations for smaller listed companies and on the mind of institutional investors.

In respect of AIM-listed companies specifically, **Glass Lewis'** focus remains on remuneration for AIM-listed companies. In their [2022 policy guidelines](#), Glass Lewis state that they will "take a broadly similar approach as for main market issuers, particularly with regard to the alignment between executive and shareholder interests, pay for performance and protections against unmerited pay.. where an AIM listed company does not provide shareholders with a say on pay, and we identify egregious remuneration practices, we may recommend shareholders vote against the remuneration committee chair."

The Institutional Shareholder Services (ISS) has published its [UK proxy voting guidelines updates](#) for 2022. ISS will generally recommend a vote against the chair of the nomination committee of a FTSE Small Cap or large AIM-listed company (market capitalisation of over £500 million) if **the Board does not have at least one female director**. New for 2022 is that ISS expects such companies to have at least one individual from an ethnic minority background on the Board by 2024. Boards that do not currently comply with this expectation should start to be thinking about a roadmap to meet this goal now.

The **IA** published its annual letter to remuneration committee chairs as well as its updated [Principles of Remuneration](#) in November 2021, covering the importance of linking executive pay and ESG targets, grant size consideration where share prices have fallen and the need for a clear justification in case of material remuneration increases year-on-year. The Principles of Remuneration are designed as a set of over-arching principles and general guidance, therefore are also relevant to AIM listed companies to consider.

We assist many of our clients in ensuring that the AGM meets all legal and regulatory requirements and facilitates effective shareholder engagement. If you would like assistance with your AGM or advice on how to hold an effective AGM, please get in touch with us using the details below. ONE Advisory's Company Secretarial, Governance & Compliance team's expertise and knowledge of best practise in small and mid-cap growth companies can ensure that your Board receives the advice and support needed to facilitate good corporate governance.

March 2022

[Useful links](#)

GC100 discussion paper - [Shareholder Meetings – Time for Change](#). Overall aims of the paper include broadening engagement from geographically diverse shareholders and stakeholders and encouraging the updating of legislation to better meet the needs and expectations of companies and the communities within which they operate.