

The Corporate Insolvency and Governance Act

26 June: CIGA came into effect

Relieve burden on those affected by Covid-19

Can Limit attendance at GM/AGMs

Meetings can be held virtually

Shareholders no longer have right to attend in person

Changes apply until 30 September

Extensions to GMs/AGMs

Meetings may be delayed until 30 September

Need to consider impact on s172 disclosures

Filing deadlines extended

1. Introduction

- The Corporate Insolvency and Governance Act (**Act**) (**CIGA**) came into effect on 26 June 2020.
- The Act introduces new measures to help relieve the burden on companies affected by the ongoing impacts of Covid-19. The four measures introduced are summarised below.

2. General Meetings and Annual General Meetings

- What measures have been introduced? The CIGA gives companies statutory powers to continue to limit attendance at general meetings. The Act overrides companies' constitutional documents and will allow for the following changes to general meetings (**GM**)/annual general meetings (**AGM**):
 - No longer a requirement to hold a 'physical meeting' as fully virtual meetings are now permitted regardless of the companies' articles of association;
 - The CIGA changes voting procedures allowing votes to be cast electronically;
 - Companies can now restrict how shareholders exercise their votes by requiring shareholders to vote by appointing only the Chair of the meeting and not a third party, as their proxy;
 - The meeting will be quorate by electronic means, even if there are no members physically in the same venue;
 - There is no need for there to be a physical venue where the AGM is held; and
 - Shareholders will no longer have the right to attend meetings in person.
- For how long do these changes apply? The CIGA will apply to all GMs and AGMs held between 26 March and 30 September 2020 (**Relevant Period**), however there is scope for this to be extended for a further 8 months, if deemed necessary.
- Does the Act apply to a company's AGM deadline? The Act allows for an extension to the timeframe in which a company must hold their AGM. Companies with an AGM deadline date falling within the Relevant Period will now have until 30 September 2020 to hold their AGM, regardless of other legislation.
- What if the AGM notice has already been released? There is no provision in the Act that allows for changes to be made if the notice has already been given. If a company's articles allow for changes, they need to provide sufficient notice and consider the risk of shareholders not understanding the changed arrangements.
- Impact on shareholder relations. Companies who choose to use the provisions under the Act will need to consider the impact on shareholder engagement, and how this may need to be incorporated into the Company's reporting requirements in the next financial year (e.g. s172 Statement). Companies may want to consider how they can continue to engage with shareholders, an example of which would be allowing shareholders to submit questions prior to the AGM, with answers being provided on the Company's website following the formal proceedings.

3. Filing requirements

- The filing deadline for accounts has been extended for listed companies. Public companies with a deadline falling between 25 March and 30 September 2020 will receive an automatic extension, so there is no longer a need to apply for one via Companies House. This will be extended to the earlier of:
 - 30 September 2020; or
 - 12 months from the end of the accounting period.

• 20-day moratorium to seek new financing

• Appointment of nominee to oversee process

• Intention to provide time for viable businesses to react to survive

• Moratorium may be extended further

• Restructuring plan to prevent/reduce financial difficulties

• 75% shareholder approval required.

- Under secondary legislation, companies will receive an automatic extension for:
 - Confirmation statements;
 - Registration of charges (mortgage); and
 - Event-driven filings, e.g. changes to directors/people with significant control.

4. Company moratoriums

- Insolvent companies or those likely to become insolvent will now be given a 20-business day moratorium period allowing them time to restructure or seek a new investment free from creditor action. The moratorium will be managed by a nominee who must deliver notice of the moratorium to Companies House. The directors retain full control of the company throughout the moratorium and the nominee will oversee the company's affairs to ensure that the rescue of the company is likely.

- Who is eligible for a moratorium? All companies are eligible except those listed in Schedule ZA1 of the Act (Exempt companies include those in the financial sectors or those who have been subject to a moratorium in the previous 12 months.)

- Relief granted under the Act during a moratorium The moratorium provides a break from certain payments, but it must continue to pay certain debts including:
 - Newly incurred liabilities;
 - Payments for new suppliers;
 - Rent in respect of the moratorium period;
 - Certain payments due to employees; and
 - Debts under financial contract.

The moratorium will ensure that formal insolvency proceedings cannot be brought against the Company (unless initiated by the directors). There are also restrictions on which legal proceedings can be brought against the Company.

- The moratorium can be extended for a further 20-business days without consent from creditors and can be extended further with the consent of the court and creditors.

5. Restructuring Plan

- The Article includes a new restructuring process as Part 26A of the CA06, which enables Directors to propose a restructuring plan to compromise the claims of creditors and/or members. This is a new, permanent process contained in the CIGA and introduces a new restructuring procedure similar to a Scheme of Arrangement allowing a company to prevent or reduce any financial difficulties it has/is likely to encounter or that affects its ability to carry on as a going concern.

- The plan will involve an arrangement being proposed by the company to its creditors or its members.

- Creditors will vote on the plan in separate classes, which will reflect those that feature in schemes of arrangement, with approval needed from 75% of votes in each class. However, the court will have final approval, and can do so even where classed do not vote in favour of the plan, if they feel that the those who have not agreed would be no worse off under the proposal than if there were no proposal.

For further guidance on the Corporate Insolvency Governance Act, please contact your client manager at ONE Advisory or at co-sec@oneadvisory.london.

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