

Guide for Sports: COVID-19 and its impact on holding AGMs

In light of the spread of Coronavirus (**COVID-19**) and the restrictions imposed on large gatherings, Sports should consider how they will hold their AGMs to ensure they comply with Government requirements and protect the health of their members.

To assist Sports, we provide the following key considerations when planning AGMs.



Preparing for an AGM

When preparing for an AGM:

- understand what is permitted under the Sport's constitution including:
 - whether it can be postponed, adjourned or cancelled;
 - whether it can be held via technology; and
 - voting and proxy requirements.
- ensure sufficient notice of the AGM is provided;
- consider which format and technology is most appropriate to provide an opportunity to participate and vote; and
- engage early with the regulator if an extension of time is required or to address other compliance queries.

Notice

Provide notice in accordance with the Sport's constitution and clearly stipulate if the AGM will be held by technology:

Include clear instructions on how to join, comment and vote at the AGM;

Explain how votes will be taken and any other relevant procedural requirements; and

Provide helpline details if a member has technological difficulties.

Timing of holding AGM

- A company must hold its AGM within 5 months of the end of its financial year.
- ASIC has extended the period for companies with financial year end 31 December 2019, permitting AGMs to be held up to 31 July 2020.
- Associations should comply with the requirements of the State/Territory regulator (at the time of publication no formal statement about extension of AGM deadlines had been made by State/Territory regulators).
- In Victoria, Associations must hold their AGM within 5 months of the end of the financial year and in New South Wales, within 6 months of the end of the financial year. Consumer Affairs Victoria and Fair Trading NSW may grant extensions for holding AGMs in exceptional circumstances, including due to COVID-19.



Using Technology



Consider what is permitted under the constitution. Most constitutions (and some States/Territories such as in Victoria and NSW) allow a Sport to hold in-person meetings or hybrid meetings (allowing members to either attend in-person at a physical venue or online).



In the current circumstances, Sports should consider holding virtual AGMs (only online attendance). There is some doubt as to whether the law permits virtual AGMs. For companies (association regulators are likely to adopt a similar approach), ASIC will take no action against a company that holds a virtual AGM during this period provided the technology allows members a reasonable opportunity to participate including:

- members being able to ask questions; and
- voting by a poll rather than a show of hands.



Tools such as Zoom or Microsoft Teams can facilitate virtual meetings. Vote Now, Truevote and CorpVote can facilitate electronic (real time) proxies and voting. Ensure you can record attendance at the meeting using these tools. Consider giving members the opportunity to submit questions before the meeting.



ASIC will take no action against companies sending members supplementary instructions for online participation after notice of the AGM has previously been sent.



Be aware, ASIC's 'no-action' decision does not preclude members from taking legal action in relation to the validity of a meeting. If you believe a member may challenge an AGM or the resolutions, seek legal advice before sending notice of the meeting.



If you have any concerns about holding a virtual AGM, consider postponing it.



Follow the same meeting procedures as you would for an in-person meeting (including quorum), except that attendees participate by technology.



If you have any questions, please contact our Sport & Leisure Team



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