

Article Information

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Countdown to AGM

At this time of year, ASX-listed companies with a June year end will start preparing for AGMs. Here is a countdown of key actions to ensure a successful launch.

10 - Have you announced the date?

A listed entity must announce the date of its AGM via ASX at least five business days before the closing date for receipt of nominations for the election of directors. An entity must normally accept those nominations up to 35 business days before the AGM.

This brief announcement, which precedes the formal Notice of Meeting, is sometimes forgotten.

9 - Are you communicating with key stakeholders ahead of time?

Allow time to 'check in' with key shareholders and proxy advisers, particularly to sound them out on sensitive issues such as remuneration, any proposed changes to the capital structure, issues of shares or options to directors and Board composition.

8 - What do you need to include in the agenda?

Consider all the possible items of business, to allow time to draft explanatory notes and consult with ASX if necessary. For example:

- If there was a 'strike' against your remuneration report last year, you will need to comment on how you responded to any questions on remuneration from the last AGM, as well as allow for a spill resolution if there is a second strike this year.
- You may wish to obtain ratification of allotments of shares not previously approved by shareholders (in order to 'refresh' your placement capacity).
- You may require shareholder approval in order to implement proposed share or option issues to directors, or implement changes to the capital structure (such as a consolidation of shares)
- You may wish to update the company's Constitution to expressly allow for hybrid and virtual meetings going forward^[1].

7 - How many Board vacancies are there?

The Board cannot set the number of directors below the maximum board size in the Constitution without member approval. For example, if the incumbent board is five directors but the Constitution allows for a maximum of ten directors, the Board will need an ordinary resolution to support any Board recommendation that the size of the Board be limited to five directors.

In addition, the Board will need to give early consideration to:

- which of their number are required to retire by rotation under the constitution,
- if such directors will put themselves forward for re-election; and
- changes or additions to the Board to deliver better diversity in gender, background and skills.

6 - Do you need to revisit the NED remuneration pool?

An increase to the maximum aggregate remuneration of non-executive directors requires shareholder approval by ordinary resolution. The cap on the remuneration of the NED pool should be considered before the AGM, particularly if the Board is growing. The Remuneration Committee may wish to seek external validation of the new cap, and it may be a topic of conversation with key stakeholders.

5 - Does a three year approval cycle apply?

Some matters have a three year approval cycle; they must be approved every third AGM in order to remain effective. The matters that operate on this three year cycle are:

- Confirming that issues under an employee share, option or performance rights plan are an exception to the 15% limit set out in Listing Rule 7.1.
- Renewal of a proportional takeovers provision if there is one in the Constitution.

Check whether the time has come around for either of these to be approved, and if so, ensure they are included in this year's Notice of Meeting.

4 - Do you need to consult with ASX on your notice of meeting?

Where the AGM agenda includes particular Listing Rule approvals or changes to the Constitution, a draft Notice of Meeting must be submitted to ASX for review before it is despatched to members. ASX has up to five business days (commencing on the day after lodgement) to review the documents and confirm whether it has any objections, unless it requires more time to examine the documents.

3. Is your AGM technology ready?

With the ongoing impact of Covid, you may decide to hold a hybrid or virtual meeting^[2].

You will need to ensure that your chosen technology platform is the right "fit" for you and that it will facilitate members' fair participation through voting and asking questions, as well as helping your team present the meeting's content smoothly and professionally. Take time to reflect on learnings from last year and whether the technology used was up to the task.

Give yourself plenty of time to test the technology you'll use, for example by having team members try out the platforms for voting and asking questions, in order to check "the user experience".

2 - Are you prepared for a poll?

If you are running a virtual or hybrid meeting you must have voting by poll.

Make sure you give your members clear guidance before and during the meeting about the different ways in which they can vote.

1 - Are you ready to update ASX on the day?

A copy of the contents of any prepared announcement that will be delivered at an AGM, such as the Chair's and CEO's address must be given to ASX no later than the start of the AGM.

Blast off!

Careful planning and time management are critical to a successful AGM. By considering these steps and taking appropriate action at the right time, you will lay the groundwork for a successful and well-run AGM with minimal surprises.

Finally, remember to report the votes on all items of business to ASX immediately after the AGM has concluded.

^[1] Current draft legislation to allow for virtual meetings would, if passed in this form, only allow virtual meetings if the Constitution so provides. [See our earlier update](#)

^[2] As last year's legislation allowing virtual meetings has expired, ASIC has announced a "No Action" position for holding virtual meetings, up to 31 October, which will finish earlier if the Government passes new legislation on the matter. Give yourself plenty of time to clarify what is permitted by your constitution and the evolving regulatory framework.