

Article Information

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Service: Capital Markets & Capital Raisings, Corporate & Commercial, Corporate Governance, Mergers & Acquisitions

COVID-19 FAQs: ASX-Listed Company Issues

Practical guidance for ASX-listed companies during the COVID-19 pandemic

Do we need to make ASX announcements about the impact of COVID-19 on our business?

Answer:

If you have previously provided earnings or other performance guidance to the market and you are no longer certain this guidance will be achieved, we strongly recommend you consider withdrawing that guidance. It is not recommended, however, that you make any announcement speculating as to possible outcomes arising from COVID-19.

On 31 March 2020 the ASX released a compliance update on the continuous disclosure obligations of listed entities arising from the rapidly changing and highly uncertain situation surrounding the COVID-19 pandemic. ASX says that a listed entity's continuous disclosure obligations do not extend to predicting the unpredictable. ASX does not expect listed entities to announce information under Listing Rule 3.1 that comprises matters of supposition or that is insufficiently definite to warrant disclosure. Nor does ASX expect listed entities to make forward looking statements to the market unless they have a clear and reasonable basis for doing so.

A number of companies have already announced that their previous earnings guidance no longer holds and have withdrawn that guidance. Entities that have not reviewed their published earnings guidance in light of COVID-19 are strongly encouraged by ASX to do so and, if it is no longer current, to update it or simply withdraw it.

A listed company that makes an operational decision that is likely to have a material effect on the price or value of its securities should immediately announce that decision to the market. For example, a decision to stand down a material number of employees or to close or suspend certain operations or facilities should be announced to the market.

The nature of any announcement will turn on each company's particular circumstances. Please get in touch with your usual Piper Alderman contact for specific advice in relation to your organisation's particular situation or a member of our corporate governance team.

How are we going to hold our AGM?

Answer:

Effective extensions of time for up to 2 months (due to ASIC's no action letters) will be available if required. Hybrid physical/ virtual AGMs may be possible provided this is permitted under your company's constitution and we strongly recommend companies seek advice on their constitutions.

On 20 March 2020, ASIC released guidelines for upcoming annual general meetings for public companies in light of the impact of COVID-19 and the government's restrictions which are now being imposed on indoor gatherings. The ASIC guidelines are particularly relevant for public companies with a 31 December balance date and that are required to hold their AGM by 31 May this year in accordance with the Corporations Act requirements. ASIC has announced that it is going to adopt a no-action position in relation to delays of up to two months, that is, companies with a 31 December balance date may extend the timeframe for holding their AGMs until 31 July this year.

For companies with a 31 March or 30 June balance date, ASIC has said that it will continue to monitor its position and provide further updates in due course. ASIC has stated that it considers hybrid AGMs (i.e. a combination of a physical

meeting and online participation by way of technology) to be permissible under the Corporations Act but companies need to check whether their constitution restricts AGMs being held in this way.

ASIC has also stated that it is adopting a no action stance in relation to virtual AGMs. There is however some doubt whether the Corporations Act permits virtual AGMs. A virtual AGM is where shareholders are only given the opportunity to participate at the AGM using online technology rather than attending the meeting at a venue. Companies that are concerned about the validity of virtual meetings should seek specific advice.

Piper Alderman has recently assisted a listed company conduct a hybrid general meeting and we would be happy to share our experience with clients facing similar issues.

What if our auditors miss the audit deadline?

Answer:

It is critical to consult with ASX as early as possible to avoid automatic suspension. Likewise any application to ASIC for an extension of time must be made before the due date for filing. Provided certain conditions are met an extension may be possible.

Generally a public company must lodge its audited financial reports within 4 months of the financial year end. Companies that are unable to lodge their audited reports by the due date may apply to ASIC for an extension of time. However, generally ASIC cannot grant an extension of time or other relief after the lodgement date has passed. If, in the case of listed entities, your auditors are not meeting the timetable to deliver your audit report you need to talk to ASX to avoid automatic suspension under Listing Rule 17.

In the case of listed entities, ASX may agree to grant a listed entity with a 30 September, 31 December or 31 March balance date a short extension of the deadline for filing its reviewed half yearly or audited annual financial statements where the company's other financial filings have been made on time and where the auditor has confirmed that they are unable to complete the audit on time. Care must be taken in preparing such submissions to ensure that they are accurate and not misleading and directors must consider their directors' duties and whether additional disclosures need to be made under listing rule 3.1 as a result.

Any relief granted by ASX from the financial reporting deadlines in Chapter 4 for entities with a 30 September, 31 December or 31 March balance date will be conditional on the entity:

1. Announcing to the market the date by which it reasonably anticipates being able to lodge its audited or reviewed financial statements with ASX;
2. Confirming to the market that it is in compliance with its disclosure obligations under Listing Rule 3.1;
3. Immediately notifying ASX if there is a material difference between its unaudited results and its audited or reviewed financial statements.

Piper Alderman can assist you to prepare appropriate submissions to ASX and ASIC and provide advice on the compliance obligations facing each director.

These FAQs are provided as a guide to some of the issues you may need to consider. The answers are general in nature and are not intended as legal advice. Before acting on any information provided, please contact us for advice that takes into your organisation's situation.