

Companies (Miscellaneous Provisions) (COVID-19) Act 2020: *Top five features*

The Companies (Miscellaneous Provisions) (COVID-19) Act 2020 has been signed into law.

The Act is a welcome clarification of certain company law issues faced by companies during the pandemic. It will counteract some of the practical difficulties that companies are facing, particularly around general meetings.

The Act also provides measures designed to ameliorate in some respects the immediate impact the crisis may have on a company's solvency, with a view to protecting viable businesses and supporting economic recovery post-crisis.

The provisions of the Act will apply for an 'interim period', expiring on 31 December 2020 and must be commenced by statutory instrument. The Government reserves the power to extend the interim period, where this is in the public interest, taking into account the threat to public health and any travel restrictions in place at the relevant time.

In this document, we set out five of the key practical difficulties companies are facing and the solutions provided by the Act.



You will find a full range of timely materials for businesses in our dedicated **[COVID-19 HUB](#)** on our website.

01 GENERAL MEETINGS

Practical Difficulty:

Irish law does not currently provide for fully virtual general meetings (AGMs & EGMs). This has led to confusion, delays and even cancellation of general meetings in order to comply with public health restrictions.

Solution:

Notwithstanding any other provision of the Companies Act 2014 or of the company's constitution, the Act provides companies with a range of options around conducting general meetings during the interim period.

- A company may postpone its AGM up to 31 December 2020.¹
- General meetings (and certain creditors' meetings, including for a winding up or examinership) may be conducted as fully electronic/virtual meetings², 'provided all those entitled to attend have a reasonable opportunity to participate'. These meetings may also be conducted as hybrid meetings³. Both virtual and hybrid meetings can be availed of notwithstanding any contrary provision in the constitution of a company.
- The date, location and/or means of holding an AGM may be changed by giving notice at any time up to the end of the day prior to the day scheduled for the meeting.

¹ Companies authorised and/or regulated by the Central Bank of Ireland are not relieved by this section from any obligations they may have under laws for which the Central Bank of Ireland is the competent authority (e.g. timely reporting of information laid before general meeting).

² Electronic/virtual meetings: a meeting with no physical location, held solely electronically including voting prior to and at the meeting.

³ Hybrid meetings: combining a main, physical meeting with electronic/virtual participation. A true hybrid meeting will allow for equivalent levels of participation at both a physical and virtual level i.e. participating and voting in real time.

02 DIVIDENDS

Practical Difficulty:

Directors may have recommended the declaration of a dividend before the impact or potential impact of the pandemic on the company was known.

Solution:

Where directors form the opinion that, due to the 'actual or perceived consequences of COVID-19 on the affairs of the company', the dividend should be cancelled or reduced, they may:

- Withdraw the resolution to approve the dividend, or
- Propose an amendment to the resolution to provide for a reduced dividend.

This power is however very limited in application as it may only be exercised subject to agreement in writing by all the members of the company and where notice of the directors' opinion is given no later than three days prior to the general meeting.

03 SEALING BY COMPANIES

Practical Difficulty:

Typically, any document to which the common seal is affixed must be signed by a director and countersigned by the company secretary or a second director. Remote working has created practical difficulties in this respect, with company officers and the company seal often in different locations.

Solution:

During the interim period, a company seal and the necessary signatures may be executed in counterpart as separate documents and then counted as one instrument for the purposes of the Companies Act 2014.

04 WINDING UP: DEBT THRESHOLD

Practical Difficulty:

COVID-19 has had an impact on the liquidity of many companies. Companies which are capable of recovery, post-COVID, are currently at risk of being wound up where a statutory demand for payment of €10,000 (or €20,000, where two or more creditors are acting together) goes unsatisfied.

Solution:

The debt threshold for the commencement of a winding up by the Court is raised, for the interim period, to €50,000 for both individual debt and aggregate debts.

05 EXAMINERSHIP

Practical Difficulty:

Examiners may face challenges and delays in formulating a restructuring plan, not least because current market turbulence means that it is more difficult for the examiner and the independent expert to get comfortable on future viability, than would be the case in a more 'normal' market. Recent experience has shown that, at least for a period, there may be a more limited pool of investors available and slower creditor buy-in in the process. Given the uncertainty, further time to formulate a rescue plan would be helpful.

Solution:

Where there are "exceptional circumstances", an examiner may apply to the Court to extend the period of protection from creditors to up to 150 days, from the current 100 day period.

The potential for extra time to formulate a rescue plan will be welcomed by examiners and companies seeking court protection alike.

This 50 day extension may only be sought where the examiner has already obtained an order extending the standard 70 day period by a further 30 days.

Exceptional circumstances include (but are not limited to) the nature and potential or actual impact of COVID-19 on the company.

Please do not hesitate to contact A&L Goodbody if you should wish to discuss any of the matters raised in this publication.

If you have any questions in relation to the matters raised, or if there are any other issues relating to the impact of COVID-19 which you would like to see dealt with in future editions, please contact any member of [Corporate and M&A](#) team



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Julian Yarr
Managing Partner
+353 1 649 2455
jyarr@algoodbody.com

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