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COVID-19 Corporate Update: Corporate Insolvency and Governance Bill – Governance Implications for UK Public Companies

May 27, 2020

Corporate

The UK Government has tabled legislation to assist companies in financial difficulty and to make temporary changes to the law relating to the governance and regulation of companies. The Corporate Insolvency and Governance Bill[1] (the "**Bill**"), which commenced its passage through the UK Parliament on 20 May 2020, is relevant to public companies as it provides for the temporary relaxation of certain requirements regarding annual general meetings ("**AGMs**") and other shareholder meetings and the temporary easing of certain statutory filing requirements.

I. AGMs and other meetings

- Public companies are required under the Companies Act 2006 to hold an AGM within six months of the end of their financial year, and any failure to do so is a criminal offence. The Bill makes provision to extend the period within which companies must hold an AGM, in order to offer further flexibility if required. Companies with a deadline for holding an AGM falling between 26 March 2020 and 30 September 2020 will be given until 30 September 2020 to hold their AGM. These provisions apply equally to general meetings at which a company's annual accounts and reports are to be laid (an "**Accounts Meeting**").

- The Bill further empowers the Secretary of State to pass regulations to amend any provision which imposes on a company a duty to hold a general meeting as its AGM (or an Accounts Meeting) to be extended, but not by more than 8 months.

- The Government's social distancing ban public gatherings of more than two people, which has proven to be challenge for a number of public companies in holding general meetings in a manner that is consistent with legislation and their articles of association. The Bill introduces a range of temporary measures aimed to provide companies with greater flexibility in the way in which general meetings are held. In particular, the Bill now provides that, irrespective of any provisions to the contrary or

[1] https://publications.parliament.uk/pa/bills/cbill/58-01/0128/20128.pdf

other requirements in a company's articles:

a) a general meeting (including an AGM or an Accounts Meeting) ("**a meeting**") need not be held at any particular "place";
b) a meeting may be held, and any votes may be cast, by electronic means or any other means;
c) a meeting may be held without any number of those participating in the meeting being together at the same place; and
d) shareholders of the company do not have a right to attend a meeting in person, to participate in the meeting other than by voting or to vote by a particular means.

These measures will allow companies to hold virtual meetings (i.e. meetings conducted exclusively by electronic means) if there is a wish or need to do so, or otherwise adopt a mixture of approaches to facilitate the running of a meeting. Company registrars and other platform providers will be available to service such virtual meetings and will have software, hardware and applications to assist companies with effective management and good conduct of such meetings. In particular, these tools may be helpful for companies to ensure the seamless functioning of a virtual meeting; that e-polling is conducted securely; and that shareholder engagement is promoted through, by way of an example, transparent online Q&A sessions. Public companies may still wish to look to earlier guidance issued by the Chartered Governance Institute (and discussed in our earlier alert for public companies on 3 April 2020) for a range of other suggestions and approaches to holding meetings during the current period.

- The measures relating to meetings set out in the Bill are proposed to apply retrospectively from 26 March 2020 to cure any constitutional defects that may have been tolerated as a result of the social distancing measures. If adopted, the measures will apply for a temporary period until 30 September 2020; however, there is a power to extend that period by up to three months at a time, but the temporary period cannot be extended beyond 5 April 2021.

II. Companies House filing requirements

- The Bill allows the Secretary of State to pass further regulations to make temporary extensions to deadlines for certain filings which are required to be made to Companies House. These include: accounts; confirmation statements; registration of charges; and event-driven filings such as notice of changes in directors, secretaries and persons with significant control (PSCs). The detail of the extended periods for these filings will be determined by the Secretary of State, but will not exceed:

a) 42 days, in a case where the existing period is 21 days or fewer (for example, the 21-day deadline for registering a charge could be extended to 42 days); and
b) 12 months, in a case where the existing period is 3, 6 or 9 months (for example, the 9-month deadline for filing the annual accounts of a private company could be extended to 12 months).

- There remain certain filings in respect of which no filing extension has been given, such as SH01 forms and other filings relating to the alteration of share capital which will remain subject to the standard notification requirements.

- Annual accounts. Public companies are required to file their accounts with Companies House within 6 months of the end of their financial year. Missing the deadline for filing of accounts automatically results in a financial penalty for the company and may result in the company being struck off the register of companies or an application being made to do so. In addition, each of the company's directors commits a criminal offence for failure to file accounts.

  From 25 March 2020, companies have been able to apply for a 3-month extension for filing their accounts[2]. The Bill provides for two further measures with respect to the filing of accounts:

  a) for any public company that would otherwise have been required to file its accounts between 26 March 2020 and 30 September 2020, the deadline for the filing of those accounts is extended to the earlier of (i) 30 September 2020 and (ii) the date falling 12 months following the end of the company's accounting reference period;
  b) the Secretary of State is granted powers to make regulations to extend the 6-month deadline for the filing of accounts by public companies to 12 months following the end of a financial year.

Next Steps

The utility of these measures for public companies with listed securities will depend on whether the financial regulators announce aligned proposals with respect to the filing of their accounts, in particular as most public companies use their AGM as their Accounts Meeting at which accounts are laid before shareholders, in accordance with statutory requirements, for approval before being filed.

On 26 March 2020, Main Market companies were effectively awarded a 2-month extension by the Financial Conduct Authority ("**FCA**")[3], meaning they have 6 months from their financial year-end to publish their accounts. At the time of writing, the FCA has not indicated that the time periods for publishing accounts set down in the Disclosure and Transparency Rules will be further extended to match the periods provided for in the Bill. The appropriate time to make such an announcement may be when the legislation is passed, although an earlier announcement would greatly assist any companies planning for an AGM to occur in short order. Nevertheless, we note that the joint announcement made by the FCA, the Financial Reporting Council and the Prudential Regulation Authority on 26 March 2020 emphasised the need to balance the need for markets and investors to receive timely and accurate information against the challenges faced

[2] https://www.gov.uk/government/news/companies-to-receive-3-month-extension-period-to-file-accounts-during-covid-19

[3] https://www.fca.org.uk/news/statements/delaying-annual-company-accounts-coronavirus

by companies in preparing and auditing accounts; as such it remains unclear whether the aspects of the Bill dealing with accounts and AGMs (at least in so far as they relate to the timing of these events) will be fully extended to public companies with listed securities.

It is worth noting that this is less of a concern for AIM companies. AIM companies with financial year-ends between 30 September 2019 to 30 June 2020 have been able to apply to the London Stock Exchange (through their nominated advisers) for a 3-month extension to publish their accounts, meaning that an AIM company with a 31 December year-end could have until 30 September 2020 to publish its accounts

The Second Reading of the Bill will take place on 3 June 2020 and the Government has asked Parliament to fast-track the Bill. Many of the measures in the Bill will also need secondary legislation before they come into force, and this will be introduced in due course. A further update will follow.

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