



AUGUST 2020

THE COMPANIES (MISCELLANEOUS PROVISIONS) (COVID-19) ACT 2020

The Companies (Miscellaneous Provisions (Covid-19) Act 2020 (Act) has recently been passed into law and was commenced on 21 August 2020. A copy of the Act is available [here](#).

The Act provides relief to companies which have faced difficulties in complying with certain statutory requirements as a result of the COVID-19 pandemic by way of temporary amendments to the Companies Act 2014. These measures will apply during the “interim period” set out in the Act, i.e. from the commencement date to 31 December 2020. This interim period may be extended by statutory instrument if the government believes that this is in the public interest due to the progress of the COVID-19 pandemic.

The headline changes made by the Act are as follows:

- **Sealing of Documents:** A document may be executed under seal during the interim period by affixing the company seal to one counterpart and by the directors and / or company secretary signing one or more other counterparts. In this event, the aggregate of the documents will be considered to be the one document executed under seal. This provision supersedes any provision to the contrary in the company’s constitution, which normally provides that two directors (or one director and the company secretary) must sign their names next to the company seal (i.e. on the same page).
- **General Meetings:** The Act made a number of changes to rules regarding annual general meetings and extraordinary general meetings for the duration of the interim period. Regardless of the provisions of a company’s constitution:
 - An annual general meeting which was due to be held in the interim period may be held on any date up to 31 December 2020, i.e. the AGM does not have to be held within 15 months of the previous AGM, as it usually does, if that deadline falls in the interim period.

For further information on any of the issues discussed in this article please contact:



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- o Related to the above, the usual requirement regarding financial statements is that they must be made up to a date no earlier than 9 months before the date of the AGM they are laid before. This requirement will not apply to an AGM held within the interim period, meaning that the AGM may be held more than 9 months later than a company's financial year end.
- o A general meeting need not be held at a physical venue and can be conducted wholly or partially as an electronic meeting, provided that all attendees have the ability to participate in the meeting. This may involve the use of technology for the purposes of casting votes during the meeting. The Act sets down specific information that must be provided to shareholders in the notice of the meeting.
- o A company can cancel or change the date or venue of a meeting, or change the meeting from a physical meeting to a meeting held electronically (or vice versa), at any time up to the end of the day prior to the day on which the meeting is scheduled to be held. In "exceptional and unexpected circumstances", the directors may cancel a meeting at any time prior to the holding of that meeting. This gives companies more flexibility to adapt their AGMs and EGMs to changing circumstances.
- Dividends: The Act allows a limited amount of flexibility in respect of a dividend which the directors of a company have previously recommended. The directors may withdraw or amend such a shareholder resolution proposing such a dividend if, after convening the meeting, they "form the opinion that, due to the actual or perceived consequences of COVID-19 on the affairs of the company, the dividend ought to be cancelled or reduced to a particular amount". This will allow companies to adapt their dividend resolutions to their changing financial circumstances without affecting the valid convening of the meeting. However, each shareholder must agree to this in writing and the directors must give them at least three days' notice that they have formed this opinion.
- Examinership: Ordinarily, an examiner is allowed 70 days to make his report of a company's affairs to the court and if this is not possible the court may grant an additional 30 days. The Act allows the court to extend the duration of the examinership process by a further 50 days during the interim period if the examiner has been unable to make his report within this 100 days and if "exceptional circumstances exist in respect of the company".
- Insolvency: For a company to be deemed to be unable to pay its debts during the interim period, it must fail after 21 days' notice to pay a debt of €50,000. In the ordinary course of events, a single debt of €10,000, or aggregate debts of €20,000 would be sufficient.
- Meetings of Creditors: much like virtual board meetings, the liquidator of an insolvent company is given discretion to conduct a meeting of creditors at a physical venue or wholly or in part as an electronic meeting, provided that all attendees have the ability to participate in the meeting. The Act sets down specific information that must be provided in the notice of the meeting.

It is to be hoped that these measures will ease the burden on compliance with statutory obligations during the COVID-19 pandemic. If you have any queries in relation to the matters raised in this publication, please contact the author or your usual Dillon Eustace contact.

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