**Listed company AGMs**

This element explains the nature, role, conduct and regulation of listed company AGMs.

**Listed company AGMs: Context**

Annual General Meetings (‘**AGMs’**) are extremely important to listed companies.

The AGM is also an important forum for shareholders to voice concern over certain issues and, as a result, contentious issues sometimes arise. The question of directors’ remuneration often attracts particular attention and environmental issues, especially around the impact of climate change, are also very topical.

Calling and holding general meetings during the course of the year is very expensive for a listed company due to the number of shareholders involved. As a result, listed companies usually obtain shareholder approval on an annual basis for standard matters which are going to, or may, take place throughout the following year.

**AGMs: Regulatory requirements**

**S.336 CA 2006** requires a public company to hold a general meeting as its AGM in each period of six months beginning with the day following its accounting reference date.

The UK Corporate Governance Code recognises the importance of all general meetings in maintaining communications between companies and their shareholders. According to Principle D of the UK Corporate Governance Code:

“…in order for the company to meet its responsibilities to shareholders and stakeholders, the board should ensure effective engagement with, and encourage participation from, these parties.”

In practice, it is relatively unusual for listed companies to hold general meetings other than AGMs, so AGMs are particularly significant.

**AGMs: Communications with shareholders**

The importance of communication between company boards and shareholders is reinforced by Provision 4 of the UK Corporate Governance Code); where 20% or more of votes are cast against a board-recommended resolution at a general meeting, the company should explain the actions it intends to take to consult shareholders to understand the reasons behind the vote result.

An update on the views received from shareholders - and actions taken by the company - must be published no later than six months after the shareholder meeting. This must be accompanied by a final summary explaining what impact the feedback has had on (1) the board’s decisions and (2) any actions or resolutions now proposed to be included in the next annual report.

The Investment Association maintains a register which identifies those listed companies where 20% or more of the shareholders have voted against a resolution or where the company has chosen instead to withdraw a resolution. The register also contains details of the relevant company’s response. You can view the register at:

<https://www.theinvestmentassociation.org/publicregister.html>

**AGMs: In-person, hybrid and virtual meetings**

In December 2017, the Investment Association published a statement confirming that its members would not support any amendments to articles of association in relation to electronic meetings if they were to allow for “virtual-only” AGMs. The Investment Association believes that “…such technology should only be used in parallel with the in-person meeting, and not lead to companies adopting a ‘virtual-only’ approach.”

The AGM is the one occasion in the year where a listed company’s board is “publicly accountable to all its shareholders” and, if the AGM were “virtual-only”, this accountability would be removed due to the remoteness of the participants and the fact that it would also be harder for participants to identify the views of other shareholders.

As a consequence, where listed companies have proposed amendments to their articles to provide for a virtual aspect to their general meetings, this has been to permit “hybrid” meetings (in other words, in accordance with the Investment Association statement). The most common hybrid model involves the meeting taking place both at a physical location and on an electronic platform that enables shareholders to participate and vote in real time.

The pandemic accelerated the adoption of provisions in articles permitting “hybrid” meetings. Other methods of allowing shareholders to participate electronically – but without them being able to vote in real time – are also becoming more common.

Given ongoing concerns about the legal validity and acceptability of virtual-only AGMs for institutional shareholders, it is unlikely that virtual-only AGMs - where the meeting takes place entirely on an electronic platform – will become common.

**Business transacted at AGMs of listed companies**

It is usual practice for listed companies to send an **explanatory circular** to shareholders with their notice of AGM.

Shareholder resolutions referred to UKLRs 10.5 (Buybacks) and 10.6 (such as authority to allot and disapplication of pre-emptions rights) specifically prescribe information to be included in the circular.

Companies generally send the following with their notice of the AGM:

* a copy of their **annual report**;and
* **accounts** for the preceding financial year (i.e. the financial year to which the AGM relates).

The next page summarises the matters usually considered by shareholders at an AGM of a listed company.

**Matters usually considered at a listed company AGM include:**

* Consideration of the annual report and accounts.
* Approval of the directors’ remuneration policy (binding vote).
* Approval of the directors’ remuneration report (advisory vote).
* Declaration of a final dividend.
* Appointment and re-appointment of directors.
* Re-appointment of auditors and authority to determine remuneration.
* Directors’ authority to allot shares (s. 551 CA 2006).
* Disapplying pre-emption rights (s. 570 CA 2006).
* Market purchase of a company’s own shares (s. 701 CA 2006).
* Contributions to political parties (Part 14, CA 2006).
* Reducing the general meeting notice period to 14 clear days.

**AGMs: Consideration of the annual report and accounts**

Every company must, pursuant to s.423(1) CA 2006, send a copy of its annual accounts and reports for each financial year to:

* every member;
* every debenture holder; and
* every person who is entitled to receive notice of general meetings.

The directors of a public company must ‘lay’ before the company in general meeting copies of its annual accounts and reports within **6 months** after the end of the accounting period to which they relate (s.437(1) and s.442(2)(b) CA 2006).

There is no statutory requirement for shareholders to approve the accounts. Therefore, the relevant resolution will often be drafted so as to ‘consider and adopt’, ‘receive’ or ‘receive and adopt’ the annual report and accounts.

You should **always** check the articles of association of the company you are advising to confirm that specific wording is not required.

**AGMs: Approval of the directors’ remuneration policy (binding vote)**

A company’s remuneration policy sets out the scope of payments which may be made to directors. This includes their remuneration (including the scope for pay rises or bonuses) and any sums paid for “loss of office”. The remuneration policy must be put to a shareholder vote by **ordinary resolution.** This must be done:

* at its **first** AGM as a quoted company; and then
* at least once **every 3 years** (see s. 439A(1) CA 2006).

The vote to approve the remuneration policy is **binding**. Once the policy has been approved, the company may only make payments to directors in accordance with the approved policy (unless it seeks specific shareholder approval to amend the policy to permit the payment; see s.226B(1) and s.226C(1) CA 2006).

An obligation, however arising, to make a payment which would contravene ss. 226B or 226C CA 2006 has **no effect** (s.226E(1) CA 2006). Any payment made in contravention of these sections will be held on trust by the recipient and any director who authorised such a payment would be jointly and severally liable to indemnify the company for any loss resulting from it (s. 226E(2) CA 2006).

If the remuneration policy is not approved, then a company may only pay remuneration in accordance with the most recent remuneration policy which has been approved (s.226B(2)).

**AGMs: Approval of directors’ remuneration report (advisory vote)**

The remuneration report sets out details of (1) the actual amounts paid during the last financial year to the directors (including a ‘single total figure’ table for each director); together with (2) any link between their performance and pay. The report should also cover the way in which the company intends to implement its remuneration policy in the next financial year.

s.439 CA 2006 requires quoted companies to put the remuneration report to a shareholder vote at the company’s AGM. This vote is not, however, binding; the directors’ entitlement to remuneration is not dependent on the resolution being passed (s. 439(5) CA 2006). Sometimes this type of resolution is called an advisory vote. Shareholders are, in effect, voting retrospectively on a statement which relates to payments which have generally already been made.

Note -ss. 439 and 439A CA 2006: if the resolution to approve the remuneration report is not passed at an AGM (a remuneration policy was not separately approved at that same AGM), it will be necessary for the company to put a remuneration policy to a shareholder vote at its next following AGM (s.439A(2) CA) - even if the usual three-year period has not expired.

The question of whether a listed company’s notice of AGM will contain a s. 439A resolution will depend on whether a) the company is newly listed, b) three years have passed since the last s.439A resolution, c) the company is seeking to change its remuneration policy within three years and/or d) the section 439(1) resolution was approved at the last AGM.

**AGMs: Declaration of a final dividend**

The articles of association of listed companies tend to include a provision which requires final dividends to be recommended by the directors and approved by shareholders in general meeting.

**AGMs: Appointment and re-appointment of directors**

Provision 18 of the UK Corporate Governance Code states that “…all directors should be subject to annual re-election”.

Compliance with the UK Corporate Governance Code is not mandatory - companies are free to explain rather than comply with Provision 18 under UKLR 6.6.6(5) and (6) if they believe their existing arrangements ensure proper accountability (although this is unusual).

The notice of AGM must contain a separate resolution for each appointment/re-appointment of a director (s.160 CA 2006). This allows shareholders to express their discontent directly by voting against the re-election of a director whose performance they consider to have been unsatisfactory.

**AGMs: Re-appointment of auditors and authority to determine remuneration**

An auditor of a public company must be appointed for each financial year of the company (s.489(1) CA 2006).

The members must appoint an auditor by ordinary resolution before the end of the accounts meeting of the company at which the company’s annual accounts and reports for the previous financial year are laid (usually the AGM); see s.489(4)(a) CA 2006.

**AGMs: Directors’ authority to allot shares (s.551 CA 2006)**

It is usual for a company to obtain authority to allot share capital from its shareholders at its AGM. This provides the company with flexibility over allotments in the following year and avoids the need for (and expense of) calling a subsequent general meeting.

An ordinary resolution is required under s. 551 CA 2006.

The ability to obtain approval for such a resolution will depend on whether the resolution complies with the Investment Association Share Capital Management Guidelines ('IA Guidelines') - see box. ​

Most listed companies choose to comply with the IA Guidelines on authority to allot. IA Guidelines - Authority to allot

**Investment Association ​**

**Share Capital Management Guidelines 2023 ​**

**Authority to allot​**

The IA Guidelines state that Investment Association members will regard as routine an authority to allot up to two-thirds of the existing issued share capital. Any amount in excess of one-third of existing issued shares should be applied to fully pre-emptive offers only.​

**AGMs: Disapplying pre-emption rights (ss.570 CA 2006)**

Disapplication resolutions are used to disapply the statutory pre-emption rights which would otherwise apply in the context of the allotment of equity securities for cash under s. 561 CA 2006. Any such resolution must be passed as a **special resolution** and must be expressed to be dependent on the related s.551 resolution being passed.

The resolution will also be limited in duration and cannot, in any event, endure for longer than the resolution relating to authority to allot.​

The Pre-Emption Group ('**PEG'**) publishes guidance on the disapplication of pre-emption rights (issuing equity securities for cash on a non-pre-emptive basis, i.e. without offering them first pro rata to existing shareholders) and it also monitors and reports on how this guidance is applied. The PEG Statement of Principles 2022 ('PEG Guidelines') have an important impact on any such proposed resolution. Although compliance with the PEG Guidelines is voluntary, listed companies are unlikely to deviate from it without good reason (and prior shareholder consultation). ​

The IA Guidelines state that the terms of a special resolution to disapply pre-emption rights should comply with the current PEG Guidelines.

**PEG Statement of Principles – disapplication of pre-emption rights**

The PEG Statement of Principles splits the disapplication authority which a listed company may acceptably seek into two parts (Part 2A, paragraph 3 of the PEG Statement of Principles):

* First: the company may seek a general disapplication of pre-emption rights at its AGM over up to 10% of its issued share capital. This disapplication may be applied to any purpose.
* Second (and in a separate resolution): the company may seek disapplication over up to a further 10% of its issued share capital but this second tranche of authority may only be used to fund an acquisition or specified capital investment (as defined).

In the case of each tranche of authority, the company may seek a further authority of no more than 2% to be used only to make a follow-on offer. This follow-on offer would be made to retail investors and/or existing shareholders and would take place after a placing.

PEG has issued a standard “template” resolutions for companies to adopt if they intend to seek the additional disapplication of pre-emption rights.

The template resolutions are available on the FRC website. This is a link:

<https://www.frc.org.uk/getattachment/e3b27fda-18c5-4a02-903f-f9267a209684/PEG_Template-resolutions.pdf>

Companies generally choose to adopt the wording of the template resolutions in order to maximise the chance that their disapplication resolutions will be passed.

The concept of “acquisition or specified capital investment” is defined in the Appendix to the PEG Statement of Principles. It was introduced in order to allow companies the opportunity to finance expansion opportunities using equity finance without having to seek additional shareholder approval.

The 10% general authority to disapply pre-emption rights may be used for any purpose so a company may, in practice, choose to use its full 20% disapplication of pre-emption rights to carry out one or more placing(s) to finance one or more acquisition(s) or specified capital investment(s) during the year.

A company which needs to raise larger amounts of money more frequently known as ‘capital hungry companies’ (Part 2A paragraph 4, PEG Guidelines) may seek additional disapplication authority if it specifically highlights its reason for exceeding the amounts set out above at the time it requests its general disapplication.

Under Part 2B paragraph 1 of the PEG Statement of Principles, a company which issues equity securities non-pre-emptively for cash pursuant to a general disapplication of pre-emption rights should undertake steps including:

* consulting with its major shareholders prior to the announcement of the issue (where permitted);
* give due consideration to the involvement, in the placing and / or in a follow-on issue of retail investors and existing investors not allocated shares as part of the soft pre-emptive process;
* providing an explanation for the background to and reasons for the offer and the proposed use of proceeds, including details of any acquisition or specified capital investment;
* as far as practicable, making the issue on a soft pre-emptive basis;
* involving company management in the allocation of the shares; and
* after completion of the issue, making a post-transaction report within one week which includes details of the transaction, the use and quantum of the proceeds, share allocations (including to retail investors) and consultations with shareholders.

**AGMs: Authority to allot and disapplication of pre-emption rights – expiry of authority**

Under the IA Guidelines, an authority to allot resolution should last for a period until the next AGM. However, the PEG Guidelines refer to a disapplication lasting no more than 15 months or until the date of the next AGM, whichever is the shorter period.

Given the close interrelationship between the two resolutions, market practice dictates that both should expire at the same time. As such, it is accepted practice for the authority to allot and the disapplication resolutions both to adopt the PEG Guidelines timeframe i.e. each resolution will expire on the earlier of the next AGM and 15 months from the date of the AGM.

**AGMs: Market purchase of own shares (s.701 CA 2006)**

Although s. 701 CA 2006 only requires a company to pass an ordinary resolution to authorise a purchase of its own shares, the IA Guidelines state that a listed company should in fact:

1. seek this authority by **special resolution**; and
2. renew the authority **annually**.

According to the IA Guidelines, shareholders expect that a general authority for a company to purchase its own shares will be exercised only if it is in the best interests of shareholders generally and, normally, only if it would result in an increase in earnings per share.

Where this outcome is not expected, the company should explain the benefits of the own share purchase clearly. Companies are required to disclose in their next annual report the justification for any own share purchases made in the previous year.

The IA Guidelines suggest a general authority to purchase up to 10% of the existing ordinary issued share capital is unlikely to cause concern:​

"A general authority to purchase up to 10% of the existing issued Ordinary share capital is unlikely to cause concern. The Institutional Voting Information Service (IVIS) will note a general authority to purchase more than 10% (but less than 15%) of the existing issued ordinary share capital. A repurchase of more than 15% is not permitted under the UK Listing Rules, unless carried out by a tender offer". (Paragraph 3.2, IA Guidelines)​

In practice, some companies seek buyback authorities for up to 14.99% of issued share capital but there is less certainty over whether the resolution will be passed if the company seeks a buyback authority which exceeds 10%.

**Institutional investor guidelines: a note about treasury shares**

The PEG Statement of Principles and the IA Guidelines both make reference to shares which are held in treasury. This concept is also referred to extensively in the PEG template disapplication resolutions.

Treasury shares are shares in the capital of the company which are held by the company itself. Treasury shares arise where a company buys back its own shares out of distributable profits and chooses to hold them in treasury rather than cancelling them (s. 724 CA 2006).

The company may not exercise any rights in respect of the treasury shares it holds and it is not entitled to receive dividends in respect of them (s. 726 CA 2006). The company is not entitled to receive an allocation of shares in a pre-emptive share issue (s. 561(4) CA 2006).

However, the company may at any time sell the treasury shares for cash or transfer them for the purposes of an employee share scheme (s. 727 CA 2006). The sale of treasury shares is subject to statutory pre-emption rights in the same way as the allotment of new shares (s. 560(3) CA 2006).

**AGMs: Contributions to political parties (Part 14, CA 2006)**

Part 14 CA 2006 regulates political expenditure by companies and political donations by companies to:

* political parties;
* other political organisations; and
* independent election candidates.

A company must not:

* make any donation to any registered political party or independent election candidates; or
* make any donation to any other UK political organisation; or
* incur any UK political expenditure

**unless** the donation or expenditure is approved **in advance** by the shareholders by **ordinary resolution**.

**AGMs: Reducing general meeting notice period to 14 clear days**

“Traded companies” generally seek shareholder approval for a special resolution at each AGM which permits them to hold general meetings (other than AGMs) on 14 clear days’ notice rather than the 21 clear days’ noticed which would otherwise be required (s. 307A CA 2006).

The rules relating to notice of general meetings are considered in the following pages.

**Notice periods of general meetings**

There are specific rules regulating when and how notice of general meetings must be provided.

The rules that apply depend upon whether the meeting is an annual general meeting (AGM) or a general meeting other than an AGM.

**AGMs:**

* s.307A(1)(b) CA 2006;
* s.360 CA 2006; and
* Paragraph 36 of the FRC’s Guidance on Board Effectiveness

**Meetings other than AGMs:**

* s.307A(1)(a) CA 2006; and
* s.360 CA 2006

**Notice periods of general meetings: AGMs**

The notice period for an annual general meeting of a traded company is at least **21 clear days**; see s.307A(1)(b) and s.360 CA 2006.

When calculating **clear days**:

* You do **not** include the day on which the notice is deemed given; and
* You do **not** include the day of the annual general meeting itself.

In addition to the above, Paragraph 36 of the FRC’s Guidance on Board Effectiveness (which supplements the UK Corporate Governance Code, but is not part of it), recommends that the notice of the AGM and related papers should be sent to shareholders at least 20 working days before the AGM.

In addition to the notice periods in CA 2006, time must be added to allow for postage of the meeting notice. S.1147(2) CA 2006 provides a 48 hour period for deemed service of notices, which includes only “working days” (see s.1147(5) CA 2006), subject to any contrary provision in the company’s articles (see s.1147(6)(a) CA 2006). However, many listed companies have provisions in their articles providing that service is deemed to have occurred the day after sending.

**Notice periods of general meetings: Meetings other than AGMs**

The notice period for a general meeting (other than an AGM) of a traded company is at least **21 clear days**. This may, however, be reduced to **14 clear days** (s.307A(1)(a) and s.360 CA 2006) provided the following conditions are met:

* the general meeting is not an AGM;
* the company provides a facility enabling all shareholders to vote electronically at any meeting held on such reduced notice, for example the ability to appoint a proxy via a website; and
* shareholders have passed a special resolution at or since the most recent AGM approving the shorter notice period.

Consequently, many companies include a resolution at each AGM enabling them to call a general meeting on as little as 14 clear days’ notice.

**Summary**

* Listed company AGMs play an important role for both the company and its shareholders. Given their importance, there are legal and regulatory requirements governing how they are conducted.
* Key regulatory requirements relate to communications with shareholders, ensuring that they have the requisite notice of and information about the matters to be covered.
* Matters considered at AGMs include: consideration of the annual report and accounts; approval of the directors’ remuneration policy (binding vote); approval of the directors’ remuneration report (advisory vote); declaration of a final dividend; appointment and re-appointment of directors; re-appointment of auditors and authority to determine remuneration; the directors’ authority to allot shares; disapplying pre-emption rights; market purchase of a company’s own shares; contributions to political parties; and reducing the general meeting notice period to 14 clear days.