



# BEST PRACTICES FOR SOUTH AFRICAN VIRTUAL ANNUAL GENERAL MEETINGS

## PREPARED FOR LISTED COMPANIES AND SHAREHOLDERS

Annual general meetings (AGMs) provide essential opportunities for shareholders to interrogate company decision-making and hold boards to account. The COVID-19 pandemic and resulting social distancing requirements mean that a growing number of **electronic or virtual-only AGMs** are now being announced.



While virtual-only AGMs are a responsible alternative at a time when far-reaching restrictions aim to slow the spread of the coronavirus, **the virtual-only AGM format increases the risk of infringement of shareholder rights**. This is a particular concern in relation to the ability of shareholders to ask questions of the board and to engage with the responses to those questions.

**If a company holds a virtual-only AGM and does not allow shareholders to ask questions in real time, without moderation, or requires all questions to be submitted in advance, that meeting will not constitute an AGM for the purposes of the Companies Act, 71 of 2008.**



## BEST PRACTICES

*The best practices set out below are aimed at ensuring that electronic or virtual-only AGMs comply with the law and enhance, rather than inhibit, shareholder participation. Companies should commit to conducting in-person or hybrid AGMs as soon as it is considered safe to do so.*

Companies holding virtual-only AGMs should ensure that the company Memorandum of Incorporation does not prohibit a shareholders' meeting from being conducted entirely by electronic communication, in accordance with section 63 of the Companies Act. If not, virtual-only AGMs are permitted and the following best practices should be followed:

1. **Notify shareholders at the earliest opportunity**, and by no later than the release of the Notice of AGM, regarding decisions and arrangements for virtual participation and provide periodic updates as technical and logistical details are refined.
2. **Include clear instructions in the Notice of AGM** on how to access the meeting, raise questions during the meeting, and vote on shareholder resolutions.



3. Commit to ensuring a **meaningful Q&A session**:

- Make clear at the start of the AGM when the Q&A session will be held (a frequent omission even at in-person AGMs).
- **Allow participants to submit questions in real time, without moderation, and to choose whether to do so in writing or verbally.** This is not a recommendation, but is required by the Companies Act which provides in section 63(2) that virtual AGMs are permissible –

*“as long as the electronic communication employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate reasonably effectively in the meeting”.*

- In addition, **Section 61(8) of the Companies Act lists the items of business that must be transacted, at a minimum, at an AGM, and this business includes “any matters raised by shareholders, with or without advance notice to the company”.**
- Ensure that all participants can see and/or hear the questions being asked, as well as see and/or hear the answers to those questions by the board.
- Allow sufficient time for questions: virtual AGMs may make attending meetings accessible to more shareholders and technological disruptions could slow meetings down.



4. Select and test in advance a **reliable, secure online platform** that caters specifically for virtual AGMs, real time interaction and electronic voting, and allows participants to connect from any location across common smart devices.
5. Prior to the date of the virtual AGM, adopt and make easily available on the company website **a plan for dealing with technology disruptions** and curtailed or interrupted interaction between the board and shareholders joining remotely.



6. Ensure **secure, effective and quality technical support** including:
  - the opening of phone and virtual connection lines 30 minutes prior to the meeting;
  - allowing time before the start of the meeting to provide participants with the technical assistance and information needed to afford smooth participation; and
  - a helpline or virtual assistance that is available to participants for the duration of the meeting.



7. **Make a video recording** of the full AGM available on the company's website as soon as possible after the conclusion of the AGM.



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## EASY REFERENCE

### COMPANIES ACT, 71 OF 2008



#### Section 63(2)

Unless prohibited by its Memorandum of Incorporation, a company may provide for –

- (a) a shareholders meeting to be conducted entirely by electronic communication; or
- (b) one or more shareholders, or proxies for shareholders, to participate by electronic communication in all or part of a shareholders meeting that is being held in person,

as long as the electronic communication employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate reasonably effectively in the meeting.



- (3) If a company provides for participation in a meeting by electronic communication, as contemplated in subsection (2) –

- (a) the notice of that meeting must inform shareholders of the availability of that form of participation, and provide any necessary information to enable shareholders or their proxies to access the available medium or means of electronic communication; and
- (b) access to the medium or means of electronic communication is at the expense of the shareholder or proxy, except to the extent that the company determines otherwise.

#### Section 61(8)

A meeting convened in terms of subsection (7) must, at a minimum, provide for the following business to be transacted:

...

- (d) any matters raised by shareholders, with or without advance notice to the company.

### KING IV CODE ON CORPORATE GOVERNANCE

The Recommended Practices for shareholder relationships under Principle 16 of King IV include:

**Recommended practice 6:** The Board should oversee that the Company encourages proactive engagement with shareholders, including engagement at the annual general meeting (AGM) of the Company.

**Recommended practice 7:** All directors should be available at the AGM to respond to shareholders' queries on how the Board executed its governance duties.

**Recommended practice 9:** The Board should ensure that shareholders are equitably treated, and that the interests of minority shareholders are adequately protected.