


CHARITIES' GUIDE FOR VIRTUAL GENERAL MEETINGS

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Boardmatch are delighted to partner with Charities Institute Ireland (Cii) on this much needed information for the Charity Sector. Before implementing any of the following suggestions a charity should first consult its governing documentation to ensure that the proposed approach does not go against its constitution.

With the expertise of Arthur Cox, we now have a very clear answer to the question that many charities were struggling with – Can we hold a virtual AGM? All charities want is a very clear 'Yes' or 'No' to the question. So, let's hear it from the experts:

1. Can a charitable company meet in a "Virtual" General Meeting (or VGM)?

 **The simple answer is yes and here is the legal evidence.**

There is no requirement that members have to be physically present at an AGM. This is the case even where the constitution requires, for example, a minimum of three persons "present in person". **(This is old wording based on 1963 Companies Act provisions which no longer applies.)**

Section 176(4) of the Companies Act states that any members' meeting – AGM or EGM – may be held in two or more venues at the same time **using any technology that provides members, as a whole, with a reasonable opportunity to participate.** **Important to note** *This is an overriding provision of company law which cannot be disapplied by a company's constitution. (As such this provision does not apply to charities which are not companies.)*

The use of section 176(4) of the Act is strongly recommended given that the 'COVID-19 Workplace Protection and Improvement Guide' published by the Government and the National Standards Authority of Ireland on 27 March advises that physical distancing measures should be implemented across all business types and can be achieved by, amongst other things, "the use of technology for video/ virtual meetings" and "limiting the number of meetings including length and proximity of gathering of employees/others".

2. If you are not a Company - What about charities which are not companies?

In these cases, then consultation of the governing document is required. If the document allows trustees (for example) to organise meetings as they think fit and contains no provisions which indirectly require attendance in person at a physical location, then it may be possible to proceed with a VGM. **Reference to and compliance with the governing documents provisions is essential.**

3. Electronic Participation

Where a charity's constitution permits members to participate and vote electronically, a physical location for the VGM is still required to be nominated. Members should be advised that admittance will be strictly limited to the minimum and that participation will be virtual for all other members. Larger charities should consider how best to calculate a show of hands if using Zoom and where the number of participants is high. Even where electronic participation is permitted, charities should prepare for the possibility that the disruption caused by COVID-19 may result in the usual technology being unavailable for the AGM, and therefore it is advisable that electronic participation is not be relied upon to achieve a quorum.

For charities where the constitution does not permit electronic participation, putting in place electronic communication facilities to deliver information to shareholders may be employed as a means to minimise personal attendance, even where they will not be deemed present at the meeting. Other mechanisms to keep shareholders informed, without formal participation in the meeting might include; live-streaming the meeting, arranging for shareholders to submit questions ahead of the meeting (via online portal or a dedicated email address), a pre-recorded video of the CEO's presentation, and making a recording or transcript of the meeting available to members after the AGM.

4. Meeting the Charity's Quorum Requirements

Often the quorum for a general meeting will be expressed to be a number of persons "present in person or by proxy". If possible it is advised that charities fulfil their quorum requirements by having the minimum requisite number of members (and proxies if necessary) physically present at the specified venue. This is not always essential but it definitively removes any debate about the presence of a quorum. Where a charity company is unable to hold a quorate meeting through minimal physical attendance it may be able to rely on section 176(4) to hold a completely virtual meeting.

5. Proxy

Where a substantial membership means that conducting voting through a virtual platform will be cumbersome members should be encouraged to vote by proxy. The proxy form should appoint the chairperson of the meeting as proxy and not the chairperson of the board or a specific director who may, given the restrictions, be unable to attend. Where the form of proxy has not yet been finalised, it is recommended that there is a full power of substitution included in the proxy to maximise flexibility in the event of unforeseen circumstances arising.

Planning your virtual AGM once you have clarified from the above information whether you can hold an virtual AGM:

STEP 1:

Set a date and a time – Ensuring you can give members 21 days’ notice and have time to put the pack together.

STEP 2:

Choose your electronic method for the virtual meeting – Boardmatch recommend using Zoom for the virtual meeting. Our research shows that it is the easiest tool for everyone to get connected. Boardmatch have created a separate guide for **How to Use Zoom for Virtual Meetings** with tips that are specific to that tool:

<https://www.boardmatch.ie/content/how-use-zoom-virtual-meetings>

STEP 3:

The notice should include: Details of how-to login/dial in to the VGM and send all members the Boardmatch **“Trustee Guide for Virtual Meetings”**. This will help those not familiar with Zoom or video calls. Start the VGM 15 minutes early so anyone with technical difficulties has an opportunity to resolve them.

STEP 4:

Start preparing the agenda – you may need to send this out with the notice. The agenda is a list of the information/business to be conducted. It may be necessary to limit this so that it is practical (as well as legal) by virtual meeting.

STEP 5:

Take the necessary time to prepare documents and reports. It takes time to prepare all of the various statements, reports, and documents you will need for the AGM, so start early.

STEP 6:

Board Elections – If there will be new board elections from the members, make sure to do a skills gap analysis, identify the gap, and write a board role spec to send out with the pack. That way members with the required skills know to go forward for election.

STEP 7:

Send the notice - You need to send a formal "Notice of Meeting" to all members. Typically, a notice of meeting must include the date, time, duration, and venue of the AGM. You will need to state that elections are being held when applicable. You may include the entire agenda of the meeting, or you may opt to mention one or two key items. Check the organisation's Constitution to determine the correct procedure.

STEP 8:

Prior to the VGM – Practice all presentations to ensure presenters are comfortable with using Zoom and all is working with no technical hiccups.