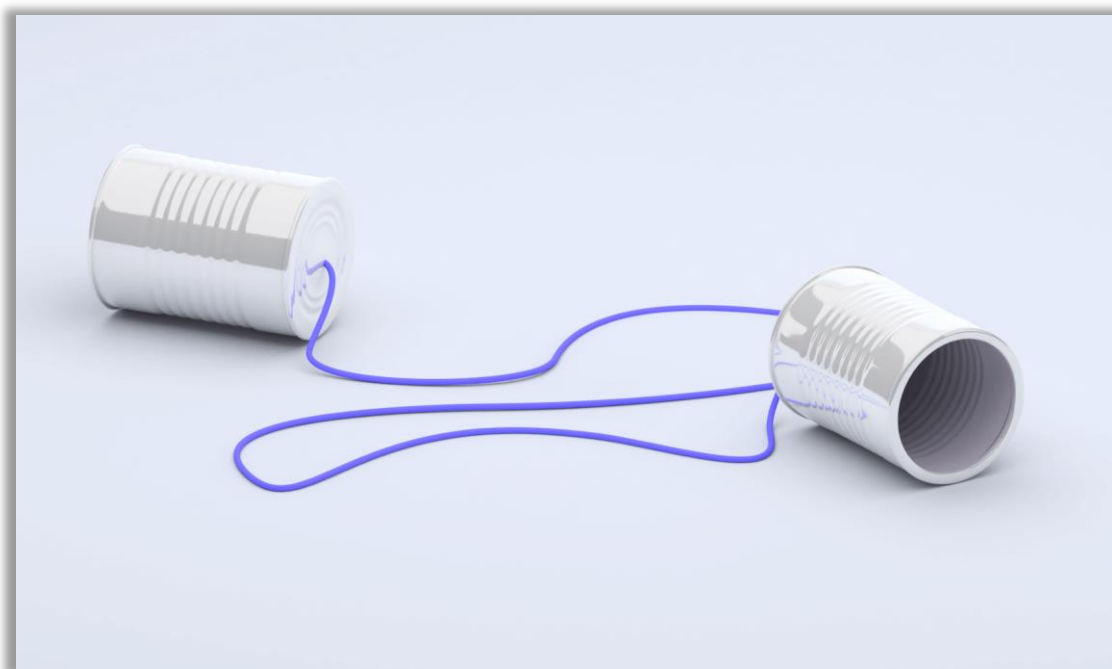


**Keeping the lights on and the drains flowing
during the COVID-19 pandemic.**

CONDUCTING SHAREHOLDER AND DIRECTOR MEETINGS IN LIGHT OF THE PANDEMIC



A guide for Company Title Buildings

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CONDUCTING SHAREHOLDER MEETINGS AND BOARD MEETINGS IN LIGHT OF COVID-19

These are uncertain and unprecedented times. We are being advised to incorporate **social distancing** in our daily interactions, both in a business context and a personal context. What does this mean for companies, especially company title home buildings where communal living can make social distancing difficult?

The decision making process in a company title home building is conducted through meetings of the shareholder and meeting of the directors. Without the proper calling and convening of these meetings, the decision making process is stifled, and at worst, can stall completely.

With the rise of COVID-19 and the need to maintain social distancing, the conduct of shareholder and board meetings has now become uncertain.

The purpose of this short guide is to help directors, shareholders and managers implement strategies to ensure your building remains well run, with little disruption to stakeholders.

VIRTUAL AND HYBRID MEETINGS

Despite the need to maintain social distancing, a company title home building can still employ measures to ensure that the decision making process continues and the building remains well run.

With the rise of cheap and accessible 'teleconferencing' and 'distributed forum' services like [Zoom](#), [Skype](#) and [GoToMeeting](#),¹ meetings can now be facilitated through technology. This alleviates the need for a group of stakeholders to meet and vote on a proposed resolution in person. Stakeholder meetings can take the form of a 'hybrid meeting' or a 'virtual meeting'.

¹ Often the free versions of these platforms are sufficient for the sort of meetings necessary in the context of a company title building. Furthermore, these platforms can be accessed on a computer or using a smart phone.

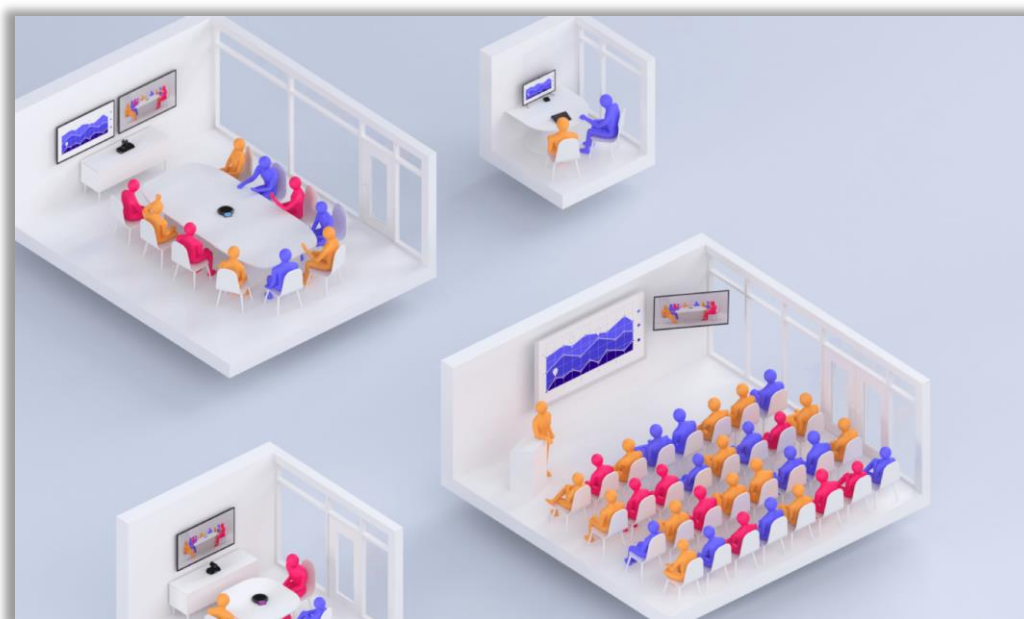
1. HYBRID SHAREHOLDER MEETINGS

Under the *Corporations Act 2001* (Cth), companies are authorised to conduct shareholder meetings through technological means **and** through a physical venue. This is known as a 'hybrid meeting'.

Conducting a hybrid shareholder meeting give rise to little risk, as it definitively satisfies the requirements of the *Corporations Act 2001* (Cth) for a valid shareholder meeting.

Those requirements are:

- The meeting must be held at a reasonable time,
- The meeting must be held at a reasonable **place**, *and*
- Shareholders must be provided with the opportunity to participate in the meeting.



1.2 JFMLAW's recommendation - hybrid meetings

It is essential that all shareholders are provided with an **opportunity to participate** in a general meeting (whether it is an Annual General Meeting or an Extraordinary General Meeting). However, not all shareholders may be familiar with the teleconferencing services or be comfortable using such technology. This is why

conducting a **hybrid** meeting is important. The hybrid element means that people still have a physical 'place' to attend the meeting should they wish to do so.

As a rule, JFM LAW recommends that hybrid meetings are conducted for any upcoming EGMs or AGMs. This provides people who can physically attend to do so, but also allows people who cannot physically attend to participate via the nominated teleconferencing platform.

As you will know, all meetings are required to be called by a valid **notice** to the shareholders. The notice for a hybrid meeting should contain the following:

1. The notice should provide shareholders with an opportunity to submit their vote through **more than more than one mode of technology**. This could be through Skype, teleconference, the company title manager's online forum, Zoom etc.
2. The notice should provide shareholders with an opportunity to submit their vote through a '**voting form**' which could be mailed to the registered office of the company. This may take the form of an electronic form, emailed form or paper form.
3. The notice should also provide that the meeting will be chaired or conducted by the company title manager from the **registered office** (usually the company title manager's office). Ideally, only the company title manager would be in attendance, but there should be the opportunity for others to attend in person, should they wish to do so (and be able to do so under law, i.e. provided they are not 'locked down').
4. The notice should contain a **strong recommendation** that in light of social distancing recommendations arising from COVID-19, the Board strongly recommend that shareholders exercise their vote through the nominated technological avenues on the notice.
5. If a shareholder does not have access to any form of technology, that shareholder may attend the office of the manager, but must stay 1.5 meters away from others (or such other distance as is mandated by the authorities at that time).

6. Board members and the company manager must ensure that all notices are **correctly drafted**. This is more important than ever. The following points should be considered:

- Ensure the notice contains the requisite **21 day's notice** requirement (or more if the Constitution provides for a longer notice period),
- Ensure that the wording of all **proposed resolutions** are valid,
- Ensure that any complex resolutions contain **supporting material** such as an explanatory memorandum so that shareholders have enough information to cast their vote, *and*
- Ensure that the form of the notice is correct.

2. VIRTUAL SHAREHOLDER MEETINGS

Companies also have the option of convening shareholder meetings **solely** through technological means. This means that the meeting is not conducted through a physical venue and, and shareholders can only attend through the nominated technological forum.

There is some uncertainty over the validity of shareholder meetings conducted through purely technological forums, as the meeting does not provide a physical **'place or venue'**.

You should also look at the Memorandum and Articles of Association which may specify a restriction on holding a completely virtual AGM.

In our view, most meetings will involve a facilitator, usually the manager, coordinating the meeting, and the facilitator will be based in a physical 'place'. So, most meetings will be 'hybrid' rather than purely virtual. The thing that would make the meeting 'virtual' is if no other person was able to attend the same place as the facilitator, i.e. all attendees had to be in different places. This is a fine distinction, and in practice the key requirement is being able to offer shareholders reasonable opportunity to participate in the meeting.



2.1 ASIC's position in relation to virtual shareholder meetings

On 20 March 2020, ASIC released its *20-068MR Guidelines for meeting upcoming AGM and financial reporting requirements*. That guideline commented on the legal status attached to virtual **AGMs** and helps clarify some of the uncertainty attached to virtual AGMs.

The key takeaways from that publication are:

- ASIC have confirmed that **hybrid AGMs are valid** under the *Corporations Act 2001* (Cth).
- ASIC have commented that there is some **uncertainty** as to whether the *Corporations Act 2001* (Cth) contemplates the validity of completely 'virtual' AGMs.
- ASIC have confirmed that they will take a '**no action**' position on virtual **AGMs**.
- ASIC have confirmed that irregularities associated with shareholder meetings (such as through the conduct of a virtual AGM) could only be declared invalid if a person (such as an aggrieved shareholder) applies to the Court and seeks an order that the meeting is declared invalid.
- ASIC have confirmed that their 'no action' position will only be employed in circumstances where the technology '**provides members as a whole a reasonable opportunity to participate**'.

2.2 JFMLAW's Recommendation - virtual meetings

There is still some uncertainty over the validity of virtual meetings. However, ASIC's publication provides comfort to companies who choose to conduct virtual shareholder meetings during these uncertain times.

However, that comfort is only applicable where the company has provided its members with a reasonable opportunity to participate in the meeting. This would include the right to exercise their vote, and ask questions relating to the management of the company (if the meeting is an AGM).

3. DIRECTORS' MEETINGS

It is essential that directors remain engaged with their building. Directors remain responsible for the day-to-day conduct and management of the building. One way to ensure that directors remain engaged with the building and continue the decision making process, is to incorporate the use of technology in the process of calling and holding director meetings, as well as distributing relevant materials to the directors for the purposes of those meetings.

3.1 What is the legal position on directors' meeting held through technology?

Fortunately, the governing legislation applicable to a company title home building, the *Corporations Act 2001* (Cth), provides that a directors' meeting may be called or held through technology.

However, the legislation is very broadly written and doesn't specify the requirements of a valid directors' meeting held through electronic means.

3.2 What is required for a valid directors' meeting through technology?

Directors' meetings should still be conducted in a proper form and with an established protocol. We recommend the following checklist:

1. First, obtain the **consent** of each director that the meeting can be held using technology.
2. Second, nominate the **preferred method** of electronic communication. Will the meeting be held by way of teleconference, Skype, Zoom or other electronic forum?
3. Third, make sure an **agenda** is assembled that provides each director with sufficient notice and information to engage in an informed decision making process.

If the proposed resolutions are complex, or could impact shareholders significantly, it may be worthwhile preparing an 'explanatory statement' that

provides each director with **extra information**, so that they can cast their vote in an informed manner.

4. Fourth, make sure **minutes** are recorded that are accurate. This step is essential as minutes of a meeting are accepted by the courts (if a legal dispute arises) as evidence that the meeting was validly held, and decisions were properly made.
5. Finally, the minutes of the meeting should be signed in **hard copy** and kept in the Board minute book.

3.3 Next steps

Conducting board meetings through technology is a useful way to ensure that the decision making process in a company title home building continues in times when mobility may be restricted. This approach also ensures that meetings are run efficiently and responsibly during this high risk environment.

However, it's essential that all directors **consent** to the use of technology and are aware of the expectations required in an electronic board meeting. It is worthwhile, having a **simple policy** outlining basic ground rules and the etiquette required of board members in an electronic meeting.

How do you put this into action now?

In short, get us involved.

We will efficiently help you put in place robust procedures to ensure the continuity of your building's governance arrangements. We can also help you chose an appropriate teleconferencing platform, and provide you with simple resources to get everyone set up and communicating effectively.

To get this in place, call either:

John Morrissey on **0407 069 507** or

Mariam Chalak on **0410 914 128**.

Both John and Mariam have transitioned to work arrangements that will ensure they remain available to help you through these times.

If you would rather get in contact through email, send your questions through to Mariam at mariam.chalak@jfmlaw.com.au.

We look forward to hearing from you.