

# Post-Trade Risk and Custody Specialists

## Webcast Series

### 3. COVID-19 and the Future of Shareholder Meetings

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# The Covid-19 outbreak and the future of Shareholder Meetings

## Introduction

It is generally agreed that active shareholder participation in Annual general Meetings of shareholders, also known as AGMs, represents a good practice in governance standards. AGMs often serve as an opportunity for management to update shareholders on company developments, for shareholders to ask questions of management and directors, to consider shareholder proposals and to review the company's performance.

Due to the recent Covid-19 outbreak and its related public health concerns, most companies have restricted or cancelled all business travel, conferences, internal meetings, and even closing their physical offices to have all or most employees working on a remote basis. In addition, measures implemented by governments around the world, including restrictions on meetings of more than 5, 10 or 50 people, means that many companies have been unable to hold their AGMs with physical attendance and voting of shareholders as it was the previous practice.

The outbreak in western economies (Europe and the Americas) started in March and peaked somewhere between March and May, which is right in the middle of the peak season for holding annual general meetings of shareholders in many markets.

This impossibility to hold AGMs prompted regulators around the world to issue or amend their existing rules in respect of shareholder meetings. While remote voting was already allowed in some countries such as Brazil, most of Europe and USA, virtual AGMs were very rare or unheard of in most markets. Virtual shareholder meetings are those that are held exclusively through the use of online technology without a corresponding in-person meeting.

## Examples of regulators allowing virtual meetings

The Kenyan Capital Markets Authority (CMA) issued guidelines in June 2020 on holding virtual general meetings. The guidelines establish that listed companies can hold annual general meetings if they obtain a No Objection letter from the CMA before issuing the notice to shareholders on the

intended general meeting. The details of how the meeting will be held and how the information will be provided to shareholders must be provided to the CMA.

In Argentina, the Argentinian Securities Market Commission published General Resolution No. 830/2020 by which it added a new chapter to its rules to authorise issuers to hold remote general meetings (GMs), even when such mechanism is not included in the company's bylaws. This measure, which is effective only while the lockdown decreed by the Government is in effect, included some minimum requirements such as the guarantee of free access to the remote meetings for all the shareholders, with the right to speak and vote.

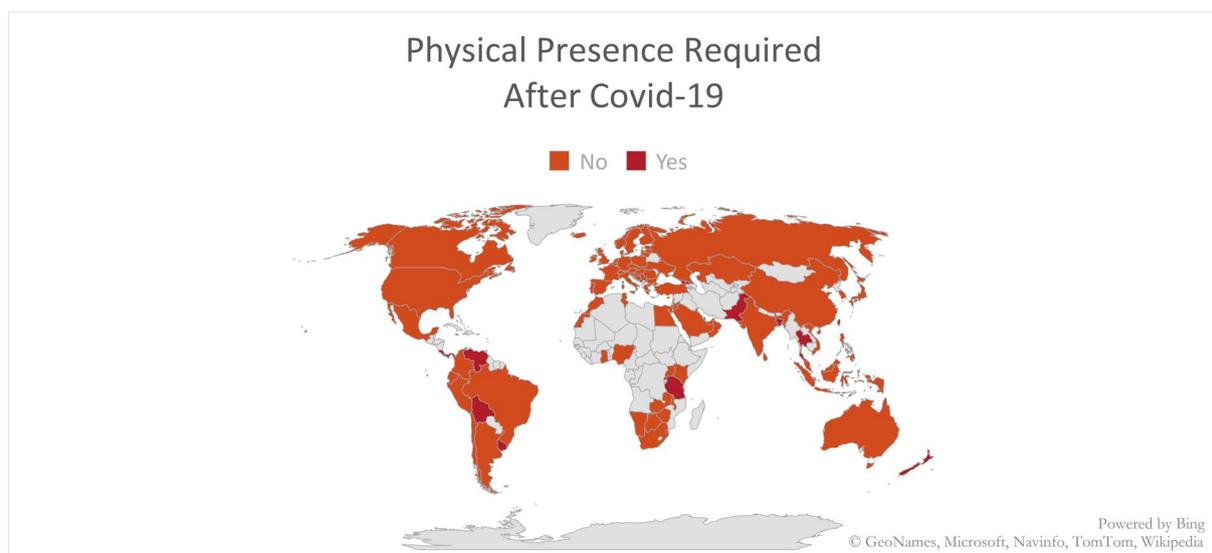
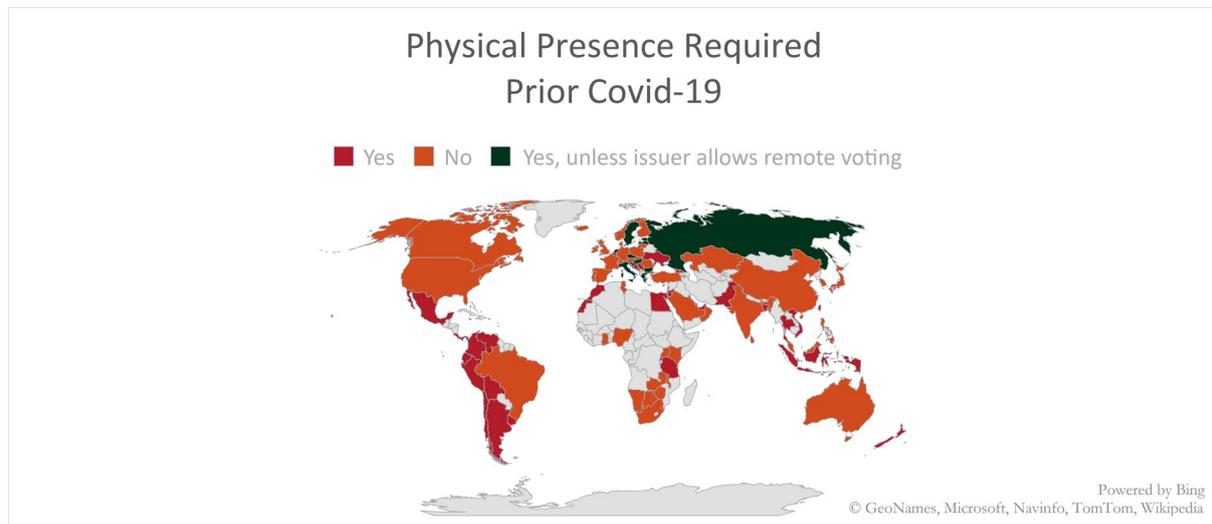
Similarly, other regulators in Latin America issued amendments to allow for virtual AGMs such as the Brazilian Securities and Exchange Commission (CMV) through Instruction No. 622, which defines the terms and conditions for remote voting and virtual AGMs in Brazil.

The Chilean Financial Market Commission (CMF) through General Normative No.435 and Circular Letter (Oficio Circular) No.1,141, regulated the mechanisms for remote participation and voting in shareholders' meetings, bondholders and fundraiser assemblies in March 2020.

Also in March 2020, the Securities and Exchange Commission (SEC) of the Philippines released guidelines for corporations to formulate their internal procedures and by-laws to allow stockholders or members to participate and vote in meetings in absentia or through remote modes of communication.

And these are not isolated cases. The relevant regulatory authorities in Sweden, Norway, Belgium, Colombia, Australia, Ecuador, France, South Africa, Poland, Oman, Japan, to name a few, also amended their regulations to allow for remote participation through electronic means.

The charts show the change in the way shareholders meetings are held prior and after COVID-19. Although the requirement to have a physical presence to participate in AGMs had already been removed in some countries, the number of countries allowing remote voting significantly increased in 2020 as a result of the COVID-19 pandemic and the lockdown measure declared by several countries.



## Virtual Vs Physical AGMs

One could argue that holding shareholders meetings virtually is an efficient way to enable shareholders to actively participate in these meetings without incurring the expense and inconvenience of traveling to the meeting site resulting in higher levels of shareholder participation. However, the lack of physical attendance may restrict the ability of investors to ask questions and engage with directors. Although new technologies can now assure an effective communication and participation, some may argue that the current Internet communication technology is not a good replacement for a physical meeting.

However, technology is not the only concern. The main issue would be around the procedures implemented by the actual companies to ensure a fair and transparent participation to all shareholders regardless of whether they are participating physically or virtually. To maximise the efficiency of virtual AGMs, companies must (i) incorporate principles and publish those principles for online participation in shareholder meetings, just as they would for physical meetings; (ii) establish procedures to validate online meeting participants as shareholders and for shareholders to vote remotely and to have their votes properly recorded; (iii) publish guidelines for questions from shareholders intending to participate online in shareholder meetings; (iv) arrange for a shareholder to present his/her shareholder proposal in-person or through telephone or video connection; and (vi) archive the meeting on a publicly available website for a specific period of time.

## Conclusions

It may be too early to assess the full impact in respect of efficiency and shareholder participation. However, what is clear is that this could have a long-term effect in the way shareholder meetings are held and how investors can participate. Although some governments have issued these provisions on a temporary basis due to the Covid-19 outbreak, if proven successful, issuers may be allowed to hold virtual meetings or at least hybrid meetings (a mix between in-person attendance and online participation) in the future. It may also help regulators realise the positive effects of virtual and remote voting in the company's development due to increased investor participation. The regulators' fears that physical attendance is required to guarantee a fair voting may be dismissed. Emerging technology may also facilitate remote participation and improve communications with shareholders and between investors and directors.

Transparency and robust company disclosure prior, during and after the meeting remain key for a successful virtual meeting to ensure that shareholders will have the same opportunities to participate as they would at an in-person meeting. In addition, the technology used, whether inhouse or provided by a third party, must be robust and strong enough to meet regulatory and shareholder requirements.