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CAPITAL MARKETS | Dividends: withdrawal and amendment

Introduction

On 29 April 2020, the UK's Chartered Governance Institute ("ICSA") released guidance in regard to the withdrawing and amending of dividend resolutions at AGMs. The guidance will be useful to provide some clarity to companies that, since the announcement of a dividend, have decided that it is no longer appropriate to recommend a dividend, or who have concluded that the dividend should be paid at a lower amount than that which was announced. This is particularly helpful in the current climate as companies continuously review the impact of COVID-19 on their cash flow. Importantly, however, the ICSA guidance is subject to the articles of each company, which must be considered on a case-by-case basis when a company is considering whether to take any action in relation to a previously announced dividend.

[A copy of the ICSA guidance can be found here](#).

What this means in practice

Ultimately, the ICSA guidance does not introduce any changes as a matter of law, and reflects the current position as a matter of law. The additional practical guidance will, we expect, be welcomed by companies, given the challenges posed by the ever-evolving environment of the COVID-19 pandemic.

Questions and answers…

1. What can a company do if it wants to withdraw or amend its dividend resolution?

If the AGM notice has not been published, the resolution recommending or declaring a final dividend should be removed or amended accordingly before publication.

If the AGM notice has already been published, the issuer will need to notify shareholders and provide an explanation as to why the resolution is being amended or withdrawn. Listed companies will need to do this by way of a stock exchange announcement.

The chair has discretion to allow the withdrawal or amendment of the dividend resolution at the AGM any time before the resolution is put to shareholders. In exercising their discretion, the chair must act in good faith and will also need to have regard to any provisions of the company's articles as to the procedure to be followed upon any proposed withdrawal or amendment. The ICSA guidance also suggests that the chair should explain to the meeting the reasons for the decision.

Companies cannot withdraw or amend final dividends after they have been declared by shareholders.

2. If the resolution is being amended to reduce the dividend after proxy votes have been submitted, how should proxy votes be treated?

Where a resolution is amended to reduce the dividend after proxy votes have been submitted, the proxy should aim to give effect to what the person appointing him or her would have wanted if faced with the amended resolution. Ordinarily, this would mean voting in favour of the amended dividend resolution if appointed to vote in this manner.

3. Does the stock exchange announcement need to say it contains inside information under the Market Abuse Regulation?

The issuer's advisers will need to be consulted but the ICSA would expect that the announcement is likely to constitute inside information.

4. If the company is withdrawing or reducing the dividend, should the stock exchange announcement make a trading update at the same time?

While there is no legal requirement which makes it necessary for a company to include a trading update at the same time as the RIS announcement disclosing that the dividend resolution will be withdrawn or amended, many companies are providing a general update as background to the board's decision to withdraw or reduce the dividend.

5. Any other considerations?

Issuer's advisers should be consulted in light of the companies usual dividend payment practice. The company's articles must be consulted in order to assess the available options and the expectations of shareholders must be considered.

Should you have any questions regarding the ICSA's guidance in relation to withdrawing or amending dividend resolutions, please contact **Kate Ball-Dodd or Harriet Hainsworth.**

Authors

- [Kate Ball-Dodd](#)
- [Harriet Hainsworth](#)