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RESEARCH ARTICLE

Virtual Annual General Meetings in South Africa: Navigating Governance Challenges

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Abstract

Virtual annual general meetings (AGMs) have become the most common format for conducting AGMs for South African public listed companies. Although they have many advantages, they also raise concerns about potential infringements of shareholders' rights, the quality of shareholder engagement with the board of directors and the equitable treatment of shareholders by the board – concerns that could compromise the validity of decisions taken at an AGM. This article examines three key governance concerns associated with virtual AGMs in South African companies: the management of shareholders' questions, the integrity of electronic voting and digital security risks. In addressing digital security risks, the focus is on verifying shareholders' identities during a virtual AGM, managing technical disruptions on virtual platforms and mitigating cybersecurity threats. The article concludes with recommendations for amending the South African Companies Act 71 of 2008 to address these governance concerns in the context of virtual AGMs.

Keywords: virtual annual general meetings; shareholder engagement; electronic voting; identification of shareholders; technical disruptions on virtual platforms; cybersecurity; Companies Act 71 of 2008

Introduction

During the COVID-19 pandemic in 2020, companies worldwide had to adapt to holding annual general meetings (AGMs) virtually due to lockdowns that restricted physical gatherings,[1] driving companies to integrate technology into their meetings. While many countries enacted crisis-related legislation to accommodate virtual AGMs during the pandemic,[2] South Africa did not need to do so, since the South African Companies Act 71 of 2008 (Companies Act), which came into

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1 In South Africa, a national state of disaster was declared on 15 March 2020 under the Disaster Management Act 57 of 2002 (in terms of Government Notice R 313 in Government Gazette 43096 of 15 March 2020). The lockdowns imposed in response to the pandemic were implemented from 26 March 2020, in terms of Government Notice R 398 in Government Gazette 43148 of 25 March 2020, during which gatherings were prohibited. The National State of Disaster ended on 4 April 2022 (see Government Notice R 1988 in Government Gazette 49167 of 4 April 2022).

2 For example, Australia passed the Treasury Laws Amendment (2021 Measures No 1) Act 8 of 2021 to allow companies to hold virtual and hybrid shareholders' meetings (sec 15). This provision was made permanent by the Corporations Amendment (Meetings and Documents) Act 9 of 2022 (sec 11 of Schedule 2), which allows virtual shareholders' meetings if expressly required or permitted by the company's constitution (sec 249R of the Corporations Act 2001). In Hong Kong, sec 583A of the Companies Ordinance (Cap 622) now allows companies to hold virtual and hybrid general meetings.

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force in 2011, already empowered companies to hold both virtual-only shareholders' meetings and hybrid shareholders' meetings (whereby shareholders can participate by electronic communication in a shareholders' meeting held in person), unless prohibited by the company's Memorandum of Incorporation (constitution) from doing so.[3]

A few years later, virtual shareholders' meetings have remained the most popular option globally.[4] Australia had the highest share of hybrid meetings between 2021 and 2023, with 60 per cent of its meetings being held in a hybrid format.[5] Since 2022, of the 703 AGMs facilitated by the Johannesburg Stock Exchange Limited (JSE) (South Africa's largest securities exchange) and Computershare South Africa,[6] 63 per cent of listed companies held their AGMs virtually, 25 per cent in a hybrid format and only 12 per cent in person.[7] For South African public listed companies, virtual AGMs have become the most common format.[8]

Virtual AGMs allow companies to reach more shareholders across different jurisdictions, unlike in-person AGMs, which may experience lower attendance due to travel costs and time constraints. They also save costs for companies by avoiding expenses associated with hiring large venues to accommodate shareholders, although costs for digital equipment to host the virtual meeting may still be incurred.[9] As virtual AGMs enable more shareholders to participate in the meeting and vote on shareholders' resolutions, they may enhance shareholder activism while also preventing shareholder demonstrations and disruptions that sometimes occur at physical AGMs.[10] They would thus be regarded by companies as a strong security measure. Transparency is enhanced, as companies may make recordings available on their websites for viewing by shareholders who were unable to attend the meeting.[11] Hybrid AGMs, offering both in-person and virtual participation, have also grown in popularity and are said to provide the best of both worlds.[12] Yet hybrid meetings can be complicated

In 2022, Germany introduced the option in the German Stock Corporation Act for companies to hold virtual general meetings by amending the company's constitution, which decision can be valid for a maximum of five years (sec 118a).

3 South African Companies Act 71 of 2008 (Companies Act), sec 63(2).

4 For example, since 2022, 70% of shareholders' meetings in the USA have been held virtually, 60% in Canada, 50% in the Middle East and nearly two-thirds of listed companies in South Africa. See Organisation for Economic Co-operation and Development (OECD) *Shareholder Meetings and Corporate Governance: Trends and Implications* (2025, OECD Publishing) at 25, available at: <https://doi.org/10.1787/2d36fa5c-en> (last accessed 2 August 2025).

5 Ibid.

6 Computershare South Africa is a transfer agency which provides financial administration services in South Africa, such as share registry and custodial services (see *Computershare*, available at: <https://www.computershare.com/za> last accessed 26 August 2025).

7 See OECD *Shareholder Meetings and Corporate Governance*, above at note 4 at 90.

8 Id at 101.

9 OECD "Policies and practices for remote participation in AGMs: A background note prepared for the OECD-Asia Roundtable on Corporate Governance" (October 2023) at 4, available at: <https://www.oecd.org/content/dam/oecd/en/publications/reports/2023/10/policies-and-practices-for-remote-participation-in-agms_7de69fe8/f022d904-en.pdf> (last accessed 25 September 2025).

10 R Cassim "Corporate governance" in FHI Cassim (ed) *Contemporary Company Law* (3rd edn, 2021, Juta) 641 at 678. Shareholder activism at South African AGMs has increased in recent years, especially around environmental, social and governance-related proposals and climate change issues. For example, in November 2023, climate-related protests by shareholder activists disrupted Sasol's AGM, forcing its cancellation (see "Climate protesters disrupt Sasol shareholders' meeting" (17 November 2023) *Reuters*, available at: <https://www.reuters.com/business/energy/climate-protesters-disrupt-sasol-shareholders-meeting-2023-11-17/> (last accessed 2 September 2025). Following this event, some listed companies opted to hold virtual-only AGMs to avoid similar disruptions (T Davies "AGMs should also be free and fair" (6 June 2024) *Financial Mail*, available at: <https://www.businesslive.co.za/fm/opinion/on-my-mind/2024-06-06-tracey-davies-agms-should-also-be-free-and-fair/> (last accessed 2 September 2025)). For a discussion on shareholder activism in South Africa, see R Cassim "An analysis of trends in shareholder activism in South Africa" (2022) 30/2 *African Journal of International and Comparative Law* 149.

11 Y Nili and MW Shaner "Virtual annual meetings: A path toward shareholder democracy and stakeholder engagement" (2022) 63/1 *Boston College Law Review* 123 at 188.

12 T Lim "Reinvigorating the AGM: Is hybrid the answer?" (2017) 69/11 *Governance Directions* 676 at 676.

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by the need to manage both in-person and virtual participants[13] and they may also be costly, as companies incur expenses related to hiring a venue and a digital services provider to facilitate the virtual meeting.[14] Therefore, some companies prefer virtual-only AGMS.

Although virtual AGMs have increased in popularity and offer many advantages, they also raise concerns about potential infringements on shareholders' rights, the quality of shareholder engagement with the board of directors and the board's equitable treatment of shareholders. If a company fails to comply with an AGM formality at its virtual AGM or infringes shareholders' rights, a decision made at the AGM could be challenged by shareholders and declared invalid. It is therefore imperative for companies to ensure that virtual AGMs (whether virtual-only or hybrid) comply strictly with the formalities of AGMs under the Companies Act.

The first part of this article examines the legal requirements for holding AGMs under the Companies Act, including the requirements for holding virtual shareholders' meetings. It then examines three key governance concerns associated with virtual AGMs. The first relates to the management of shareholders' questions. In a virtual AGM, the ability of shareholders to ask questions is often diminished, which may enable boards to avoid meaningful engagement with shareholders and thereby undermine board accountability. The second is the integrity of electronic voting. The Companies Act fails to regulate how electronic votes should be cast or counted, creating uncertainty about what constitutes a valid voting process in a virtual AGM and increasing the risk that unverified third parties could cast electronic votes on behalf of shareholders. The third concern relates to digital security risks. The article focuses on three issues: (i) verifying shareholders' identities during a virtual AGM, which is essential because of the risk of identity theft; (ii) managing technical disruptions on virtual platforms, which may impede shareholders' participation in the meeting and potentially affect the AGM's validity; and (iii) mitigating cybersecurity threats, since cyberattacks could lock out shareholders, disrupt or manipulate voting and prevent shareholders from engaging in the meeting, thereby compromising the AGM's validity. This article recommends amendments to the Companies Act to address these governance concerns arising from virtual AGMs. It also proposes practical measures companies could adopt when conducting virtual AGMs to mitigate these concerns. For the purposes of this discussion, the term "virtual AGM" also includes the virtual component of hybrid AGMs, where the same governance concerns may arise.

Where relevant, this article draws on the legal frameworks governing virtual shareholders' meetings in Singapore and Hong Kong to identify ways in which South Africa can improve its regulation of virtual AGMs. This comparative approach is supported by section 5(2) of the Companies Act, which provides that, to the extent appropriate, a court interpreting or applying the Companies Act may consider foreign law. As South African courts have observed,[15] while South African company law has for many decades closely tracked the English system and judicial pronouncements, section 5(2) encourages South African courts to look further afield and to have regard in appropriate circumstances to other corporate law jurisdictions, be they American, European, Asian or African, in interpreting the Companies Act.

Singapore and Hong Kong are appropriate comparative jurisdictions for South Africa for several reasons. All three jurisdictions share a common-law heritage and Singapore, like South Africa, is a Commonwealth country. Both Singapore and Hong Kong rely on a combination of legislative provisions and best-practice guidance in their company law regulatory frameworks, which aligns with South Africa's reliance on the Companies Act and corporate governance codes. Notably, both Singapore and Hong Kong have published best practice guidelines on virtual shareholders' meetings, with Singapore offering the most comprehensive rules and guidance globally on the conduct of

13 OECD *Shareholder Meetings and Corporate Governance*, above at note 4 at 133.

14 OECD "Policies and practices for remote participation in AGMs", above at note 9 at 4.

15 See *Nedbank Ltd v Bestvest 153 (Pty) Ltd; Essa and Another v Bestvest 153 (Pty) Ltd and Others* 2012 (5) SA 497 (WCC), para 26; *DH Brothers Industries (Pty) Ltd v Gribnitz NO and Others* 2014 (1) SA 103 (KZP), para 10; *Booysen v Jonkheer Boerewynmakery (Pty) Ltd and Another* 2017 (4) SA 51 (WCC), para 46.

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shareholders' meetings.[16] Singapore has also amended its Companies Act 1967 Republic of Singapore (Singapore Companies Act) to accommodate virtual shareholders' meetings. The regulation of virtual shareholders' meetings in Singapore and Hong Kong is not merely specific to these jurisdictions but addresses universal governance concerns relating to virtual AGMs, which are adaptable to South Africa. Notably, in 2025, Singapore and Hong Kong were ranked second and third, respectively, among the world's most competitive economies by the International Institute for Management Development.[17] For these reasons, Singapore and Hong Kong provide a sound comparative basis for informing South Africa's regulation of virtual AGMs.

Although virtual AGMs have become increasingly common following the Covid-19 pandemic, there has been limited scholarly analysis of the governance challenges they pose in South Africa under the Companies Act, or guidance on how these challenges should be addressed. This article seeks to fill this gap by examining selected governance concerns and assessing whether the current framework under the Companies Act adequately regulates virtual AGMs. It further contributes to current scholarship by drawing on comparative insights from Singapore and Hong Kong and by proposing amendments to the Companies Act aimed at strengthening the regulation of virtual AGMs in South Africa and safeguarding shareholders' rights.

Legal requirements for holdings AGMs in South African companies

Companies required to hold AGMs

Under section 61(7) of the Companies Act it is mandatory for public companies to hold AGMs.[18] While section 179(1)(a) of the previous South African Companies Act 61 of 1973 made it mandatory for all companies to hold AGMs, the current Companies Act does not contain an equivalent provision. Even so, certain provisions in the Companies Act suggest that the obligation to hold AGMs may extend beyond public companies.

For example, section 90(1) of the Companies Act requires state-owned companies[19] to appoint an auditor each year at their AGM, thereby implying that state-owned companies must also hold AGMs. Furthermore, companies other than public companies may, for practical purposes, decide to hold AGMs if they are required to appoint an auditor to audit the company's financial statements, either under the Companies Act or the Companies Regulations, 2011.[20] Additionally, section 90(1A) of the Companies Act specifies that companies required by their Memorandum of Incorporation to have their annual financial statements audited voluntarily as contemplated in sections 34(2) and 84(1)(c)(ii) must appoint an auditor at a shareholders' meeting at which the requirement first applies to the company, and thereafter annually at the shareholders' meeting. As indicated by section 60(5) of the Companies Act, companies other than public companies may voluntarily include a requirement

16 See OECD *Shareholder Meetings and Corporate Governance*, above at note 4 at 11.

17 In 2025, the International Institute for Management Development World Competitiveness Centre benchmarked the performance of 69 economies based on numerous criteria measuring different facets of competitiveness. South Africa was ranked 64th out of 69 ("World Competitiveness Ranking" *IMD*, available at: <https://www.imd.org/centers/wcc/world-competitiveness-center/rankings/world-competitiveness-ranking/rankings/wcr-rankings/> (last accessed 1 September 2025).

18 A "public company" is defined as a profit company that is not a state-owned company, a private company or a personal liability company, while a "profit company" is defined as a company incorporated for the purpose of financial gain for its shareholders (sec 1 of the Companies Act).

19 "State-owned companies" are enterprises registered as companies under the Companies Act that are either listed as a public entity in sched 2 or 3 of the Public Finance Management Act 1 of 1999 or are owned by a municipality as contemplated in the Local Government: Municipal Systems Act 32 of 2000 (sec 1 of the Companies Act).

20 Under sec 84(1)(c)(i) of the Companies Act, a private company, a personal liability company and a non-profit company may be required by the Companies Act or the Companies Regulations, 2011 to have their annual financial statements audited every year. See reg 28(2) of the Companies Regulations, 2011 for details of companies required to have their annual financial statements audited.

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in their Memorandum of Incorporation to hold an AGM, and they must convene an AGM when required by their Memorandum of Incorporation.[21]

Thus, while AGMs are mandatory for public companies under section 61(7) of the Companies Act, the obligation to hold AGMs in South Africa is not confined to public companies. So, the legal framework governing virtual AGMs under the Companies Act applies not only to public companies but also to state-owned companies, private companies,[22] personal liability companies[23] and non-profit companies, if they are legally required to hold AGMs or elect to do so.

Prescribed period to convene AGMs

The prescribed period for a public company to convene an AGM, under section 61(7) of the Companies Act, is not more than 18 months after the company's date of incorporation and thereafter once in every calendar year, but not more than 15 months after the date of the previous AGM, or within an extended time allowed by the Companies Tribunal, on "good cause" shown.[24] The right to apply for an extension balances the need to accommodate public companies that face legitimate delays in convening AGMs with the rights of shareholders to engage with the board at AGMs.

The term "good cause" is not defined in the Companies Act. It is a question of fact and depends on the particular circumstances of each case.[25] The Companies Tribunal has endorsed the definition of "good cause" by the Constitutional Court in *Minister of Defence and Military Veterans v Motau and Others*[26] as meaning "a substantial or legally sufficient reason" for a choice made or action taken.[27] A company requesting an extension must provide adequate reasons to support its case, together with a proposed date for the AGM to be held under the extension.[28] To succeed in its application for an extension, there should not be a self-created urgency or circumstances within the company's control.[29] For example, in *Ex parte Ebotse Golf and Country Estate*,[30] the company sought a one-month extension to hold its AGM because the board had been requested to hold a hybrid AGM, and the only facility large enough to accommodate the meeting was unavailable. The Companies Tribunal rejected this request because it found that the company had not provided all the relevant facts to justify why the AGM could not have been held earlier.[31] Circumstances outside the company's control would be regarded as constituting "good cause". For example, in *Ex parte Aqua Vista Home Owners Association*,[32] the Companies Tribunal granted an extension because the company was unable to convene a physical AGM due to restrictions on physical meetings during the COVID-19 lockdown, and its Memorandum of Incorporation prohibited it from holding online meetings.

21 Section 60(5) of the Companies Act provides that any business of a company that is required by the Companies Act or the company's Memorandum of Incorporation to be conducted at an AGM of the company may not be conducted by means of a round robin resolution without holding a formal meeting. This provision implies that any company may include a provision in its Memorandum of Incorporation requiring it to convene an AGM (see *Ex parte Gauteng Cricket Board NPC* (case no CTR.001112012, 8 April 2013), paras 12 and 13).

22 A "private company" is a profit company that is not a public, personal liability or state-owned company and its Memorandum of Incorporation prohibits it from offering any of its securities to the public and restricts the transferability of its securities (secs 1 and 8(2)(b) of the Companies Act).

23 A "personal liability company" is a profit company that meets the criteria for a private company and its Memorandum of Incorporation states that it is a personal liability company (secs 1 and 8(2)(c) of the Companies Act).

24 Companies Act, sec 61(7)(a) and (b).

25 *Ex parte South African Airways Technical SOC Limited* (case no CT01517ADJ2023, 7 November 2023), para 16.

26 2014 (5) SA 69 (CC), para 54.

27 See *Ex parte Modern Business Holdings (Pty) Ltd* (case no CT00337ADJ2020, 29 April 2020), para 4.4; *Ex parte South African Airways Technical SOC Limited*, above at note 25, para 16.

28 *Ex parte South African Airways Express SOC Limited* (case no CT007DEC2014, 17 April 2015), paras 8 and 9; *Ex parte South African Airways Technical SOC Limited*, above at note 25, para 18.

29 See *Ex parte Ebotse Golf and Country Estate* (case no CT01884/ADJ/2024, 22 August 2024).

30 Id, para 2.3.

31 Id, para 4.4.

32 (case no CT00489ADJ2020, 20 November 2020), paras 4 and 10.

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Notably, the jurisdiction of the Companies Tribunal to grant an extension to hold an AGM under section 61(7)(b) of the Companies Act extends to public companies only. Other companies failing to hold an AGM within the required time frame cannot seek an extension from the Companies Tribunal.[33] If a public company fails to convene an AGM within the prescribed period and fails to apply for an extension, or if a company required by its Memorandum of Incorporation to hold an AGM fails to do so, a shareholder may apply to court for an order requiring the court to convene an AGM on a date, and subject to any terms, that the court considers appropriate in the circumstances.[34] This right given to shareholders highlights the significance of the AGM.

The notice of an AGM must be delivered to each shareholder as of the meeting record date[35] at least 15 business days before the meeting (for public or non-profit companies with voting members) or ten business days in other cases.[36] It must be in writing, and state the date, time and place for the meeting; the record date; the meeting purpose; the resolutions to be considered and voting thresholds; and include or summarize the financial statements with directions for obtaining the full version.[37] The notice must also inform shareholders of the right to appoint a proxy (who need not be a shareholder) and that, under section 63(1) of the Companies Act, participants must provide satisfactory identification.[38]

The business to be transacted at AGMs

Under section 61(8) of the Companies Act, the following business must at a minimum be transacted at an AGM: (i) the presentation of the directors' report, audited financial statements for the immediately preceding financial year, audit committee report, social and ethics committee report and remuneration report;[39] (ii) the election of directors; (iii) the appointment of an auditor for the ensuing financial year, as well as an audit committee and a social and ethics committee; and (iv) any matters raised by shareholders, with or without advance notice to the company.

As is clear from the nature of the business that must be transacted at an AGM, these meetings serve as a crucial forum for dialogue and engagement between the board and shareholders. This is further evidenced by section 61(8)(d), which entitles shareholders to raise any matters at the AGM, with or without advance notice to the company. Even a single shareholder may raise a matter of his or her own at the AGM without providing advance notice to the company and without having to give the board an opportunity to prepare a response to such matter.

AGMs enable shareholders to hold boards to account. They are key mechanisms for promoting accountability and transparency in the management of the company's affairs. They act as a check on directors' power, and give shareholders an opportunity to assess the company's performance and direction.[40] AGMs also promote communication among shareholders, who can raise matters with the

33 *Ex parte Gauteng Cricket Board NPC*, above at note 21, para 33; *Ex parte Cedar Creek Home Owners' Association NPC* (case no CT011Nov2017), 22 November 2017), paras 5.2 and 5.18; *Ex parte Irene Farm Home Owners' Association HOA NPC* (case no CT00400ADJ2020, 27 August 2020), para 12.

34 Companies Act, sec 61(12). The company must compensate the shareholder for the costs of this court application (sec 61(13)).

35 The board of directors may set a record date to determine, inter alia, which shareholders are entitled to receive notice of a shareholders' meeting and participate in and vote at a shareholders' meeting (id, sec 59).

36 Id, sec 62(1). Under sec 62(2), a company's Memorandum of Incorporation may provide for longer or shorter minimum notice periods than those specified in sec 62(1).

37 Id, sec 62(3).

38 Id, sec 63(1). See sec 58 of the Companies Act on the shareholders' right to be represented by a proxy.

39 Section 30A(2)(a) of the Companies Act requires public and state-owned companies to present a remuneration policy at the AGM for approval by ordinary resolution. If not approved, it must be resubmitted at the next AGM or at a shareholders' meeting called for this purpose. They must also present a remuneration report for the previous financial year for approval (sec 30B(2)). For JSE-listed companies, para 3.83(k) of the Listings Requirements requires annual non-binding advisory votes on both the remuneration policy and implementation report.

40 Nili and Shaner "Virtual annual meetings", above at note 11 at 126.

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board and other shareholders,[41] and are traditionally regarded as the primary forum for the exercise of shareholders' rights of intervention in corporate decision-making.[42] AGMs have been described as fulfilling four principal functions: reporting, questioning, deliberating and decision-making.[43] In essence, the AGM acts as an "annual audit of management's stewardship of the business".[44]

While AGMs are traditionally regarded as a cornerstone of shareholder democracy, in practice they do not always achieve their objectives and their role has long been contested. Critics argue that over the years, AGMs have become largely ceremonial and formulaic events, with a list of standard agenda items and little real influence by shareholders.[45] Attendance is sometimes low, with many shareholders – particularly institutional investors – choosing to vote by proxy prior to the meeting rather than to attend, which reduces the deliberative value of AGMs and limits meaningful engagement between shareholders and the board of directors.[46] Consequently, AGMs do not always function as the forum for questioning, deliberating and decision-making that they were intended to be.

Legal regulation of virtual AGMs under the Companies Act

Section 63(2) of the Companies Act regulates the holding of virtual shareholders' meetings. It provides:

> "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."

Under section 63(2), a company may hold shareholders' meetings entirely in a virtual format or in a hybrid format, unless this is prohibited by the company's Memorandum of Incorporation. Public companies do not, however, have the discretion to restrict the holding of virtual shareholders' meetings in their Memorandums of Incorporation. Under section 61(10) of the Companies Act, every shareholders' meeting of a public company must be reasonably accessible for electronic participation by shareholders within South Africa in the manner contemplated in section 63(2) of the Companies Act, irrespective of whether the meeting is held in South Africa or elsewhere. Thus, a shareholders' meeting of a public company, including an AGM, may be held in a purely virtual format, but if the meeting takes place in a physical format, it must also be accessible electronically (that is, in a hybrid format).[47]

Companies must ensure that the manner in which they conduct virtual AGMs (whether in a purely virtual or hybrid format) does not infringe shareholders' rights, and that shareholders are

41 Id at 143.

42 M Moore and M Petrin *Corporate Governance: Law, Regulation and Theory* (2017, Palgrave) at 83.

43 Australian Government Corporations and Markets Advisory Committee "The AGM and shareholder engagement: Discussion paper" (2012) at 12–13, available at: <https://takeovers.gov.au/sites/takeovers.gov.au/files/2021-04/agm_and_shareholder_engagement_discussion_paper.pdf> (last accessed 23 September 2025).

44 DE Pease "Preparing for the annual general meeting: The pressures and problems" (1976) 1/2 *Delaware Journal of Corporate Law* 302 at 304.

45 A Nyqvist "The corporation performed: Minutes from the rituals of annual general meetings" (2015) 4/3 *Journal of Organizational Ethnography* 341 at 348 and 353; B Hannigan *Company Law* (6th ed, 2021, Oxford University Press) at 378.

46 J Harris, A Hargovan and M Adams *Australian Corporate Law* (6th ed, 2018, LexisNexis Butterworths) at 375; Hannigan *Company Law*, above at note 45 at 378.

47 P Delport *Henochsberg on the Companies Act 71 of 2008* (vol 1, 2011, LexisNexis) at 235.

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given the right to participate reasonably effectively in the meeting, as required by section 63(2) of the Companies Act. As emphasized by the court in *Re Compaction Systems Pty Ltd*:[48] "The right to receive notice of a meeting, and to attend, and to be heard, is not an insubstantial right. The right to advance arguments and to influence the course of discussion may in some circumstances have an effect, even a decisive effect, on the decision reached".

The requirements of participating "reasonably effectively" in the meeting have not, however, been defined. Whether a shareholder has been given the opportunity to participate "reasonably effectively" in the meeting depends on the circumstances of that meeting. While it is also not clear what an "intermediary" would constitute, it appears that the purpose of section 63(2) is to enable shareholders to engage directly and freely with the chair, the directors and each other so that no person acts as an intermediary between the participants in the virtual meeting.[49]

If a company provides for participation in a meeting by electronic communication, the meeting notice must inform shareholders of this option and provide the necessary information to enable shareholders or their proxies to access the available medium or means of electronic communication.[50] Access to the medium or means of electronic communication is at the shareholder's or their proxy's expense, unless the company determines otherwise.[51]

Governance concerns with holding virtual AGMs in South African companies

As discussed earlier, although virtual AGMs may enhance shareholder attendance and participation and offer many advantages,[52] they also raise governance concerns relating to potential infringements of shareholders' rights, the quality of shareholder engagement with the board and the equitable treatment of shareholders by the board. This part of the article discusses three governance concerns associated with holding virtual AGMs in South African companies.

Management of shareholders' questions in a virtual AGM

A significant concern among shareholders is that their right to ask questions in virtual AGMs is often diminished. In a study conducted by shareholder activist group Just Share, which evaluated the AGMs of 25 South African public listed companies held in 2025, it was found that only half the companies had ensured equal opportunities for online and in-person shareholder participation.[53] Moreover, 40 per cent of the companies did not allow shareholders to ask questions through written, verbal, telephonic or video form during their virtual AGMs, and 48 per cent of the companies allowed shareholders to ask questions only after the voting had taken place.[54]

Virtual AGMs give the board greater control over interactions during the AGM, a control not feasible in physical meetings.[55] In virtual AGMs, companies may more readily disregard shareholders'

48 [1976] 2 NSWLR 477 at 485.

49 See OECD *Shareholder Meetings and Corporate Governance*, above at note 4 at 97.

50 Companies Act, sec 63(3)(a).

51 Id, sec 63(3)(b).

52 See H Gao, J Huang and T Zhang "Can online annual general meetings increase shareholders' participation in corporate governance?" (2020) 49/4 *Financial Management* 1029 at 1048, which found that online AGMs significantly increase the participation of shareholders, especially minority shareholders, and are associated with an improvement in corporate governance, such as a higher likelihood of a resolution being vetoed.

53 Just Share "AGMs under the microscope: Insights into legal compliance and effectiveness of the 2025 annual general meetings of 25 leading public companies" (August 2025) at 3, available at: <https://justshare.org.za/wp-content/uploads/2025/08/250825-AGM-compliance-briefing.pdf> (last accessed 29 September 2025).

54 Id at 3 and 10.

55 E Denis and D Blume "Using digital technologies to strengthen shareholder participation" *OECD Going Digital Toolkit Notes* (Policy Paper No 9, 2021, OECD Publishing) at 15, available at: <https://www.oecd.org/en/publications/using-digital-technologies-to-strengthen-shareholder-participation_0fe52016-en.html> (last accessed 29 September 2025); Nili and Shaner "Virtual annual meetings", above at note 11 at 191.

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questions, as the absence of physical presence diminishes shareholders' ability to collectively voice objections or garner support from other shareholders.[56] Consequently, questions posed by shareholders are sometimes not addressed at all, with boards tending to filter out challenging or controversial questions and addressing more favourable ones.[57] There have also been reports of meeting chairs disabling microphones in a virtual AGM.[58] In some instances, companies require shareholders to submit their questions before the virtual AGM rather than allowing them to ask questions in real time during the meeting.[59] Another concern is that shareholders cannot see the questions other shareholders are asking in real time, as these are hidden from each other, which contributes to a lack of transparency and undermines the collective discourse element of the AGM, where shareholders can interact with each other.[60] In some virtual AGMs, a third party, such as the company secretary, moderates shareholders' questions. Technical issues can also hinder shareholders from asking questions during virtual AGMs, further hindering engagement. Consequently, a notable governance concern associated with virtual AGMs is the potential for boards to avoid engagement with shareholders by limiting opportunities for meaningful dialogue, thereby undermining board accountability.[61]

Legal implications in South Africa

If South African companies do not permit shareholders to ask questions in a virtual AGM or restrict their rights to do so, they contravene section 61(8)(d) of the Companies Act, which requires an AGM to deal with any matters raised by shareholders, with or without advance notice to the company. If communication in the virtual AGM is conducted through a third party, such as a company secretary, who moderates shareholders' questions or limits their communication, this action contravenes section 63(2) of the Companies Act, which provides that the electronic communication used must ordinarily enable all persons participating in that meeting to communicate concurrently with each other without an intermediary. Section 63(2) of the Companies Act would also be contravened if shareholders are prohibited from asking "live" questions during a virtual AGM or are required to submit their questions in writing before the AGM as this would not constitute concurrent communication between all persons participating in that meeting.[62]

In 2024, the Companies and Intellectual Property Commission (CIPC)[63] issued a non-binding legal opinion stating that if companies fail to permit shareholders to ask questions in "real time" during a virtual AGM without an intermediary, or require all shareholders' questions to be submitted in advance, this meeting will not constitute an AGM for the purposes of the Companies Act.[64] The CIPC stressed that decisions cannot be made or a consensus reached if shareholders are unable to interact effectively and efficiently.[65] It recommended that companies should ensure that sufficient

56 Lim "Reinvigorating the AGM", above at note 12 at 676; DA Zetzsche et al "Enhancing virtual governance: Comparative lessons from COVID-19 company laws" (2022) 22/1 *Journal of Corporate Law Studies* 115 at 140.

57 Lim "Reinvigorating the AGM", above at note 12 at 675.

58 OECD *Shareholder Meetings and Corporate Governance*, above at note 4 at 134.

59 Id at 18.

60 Lim "Reinvigorating the AGM", above at note 12 at 676; Nili and Shaner "Virtual annual meetings", above at note 11 at 192. A 2025 study by Just Share found that only 36% of the 25 South African public listed companies it evaluated allowed shareholders to interact with each other during their virtual AGMs (Just Share "AGMs under the microscope", above at note 53 at 9).

61 OECD *Shareholder Meetings and Corporate Governance*, above at note 4 at 96.

62 Delport *Henochsberg*, above at note 47 at 204(2B).

63 Under sec 186 of the Companies Act, the CIPC's objectives include registering companies, maintaining accurate, up-to-date and relevant information concerning companies, promoting compliance with the Companies Act and enforcing the Companies Act.

64 "Non-binding legal opinion in terms of section 188(2)(b)(i) of the Companies Act 71 of 2008 (as amended): Interpretation and implication of section 61(7) & (10) of the Companies Act, 2008 specifically the holding of AGMs by listed companies via electronic means" (5 April 2023) *CIPC*, available at: <https://www.cipc.co.za/wp-content/uploads/2023/04/NON-BINDING-LEGAL-OPINION-AGMs.pdf> (last accessed 18 August 2025).

65 Ibid.

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time is allocated in a virtual AGM for a meaningful question-and-answer session, when shareholders can ask questions in real time, engage with the board and each other on the questions and be allowed to ask follow-up questions if necessary.[66]

Still, in a 2024 case, the CIPC dismissed a complaint by shareholder activist group Just Share against Ninety One Limited, whose virtual AGM lasted 11 minutes before the voting took place, with only two minutes for the question-and-answer session.[67] Just Share filed a complaint with the CIPC under section 168(b) of the Companies Act,[68] contending that the AGM of Ninety One Limited held on 25 July 2024 had failed to comply with section 61(8)(d) of the Companies Act, as it did not allow for any matters to be raised by shareholders in the AGM.[69] Ninety One Limited attributed the lack of questions at the AGM to "human error" by the AGM platform provider it used, Lumi, which resulted in shareholders being unable to ask questions during the AGM.[70] The CIPC nevertheless found no valid breach of the Companies Act and dismissed this complaint on the basis that Just Share had failed to allege any facts which, if proven, would constitute grounds for a remedy under the Companies Act.[71] The CIPC was satisfied that Ninety One Limited had answered the shareholders' questions, even if this was done in writing after the AGM had ended.[72]

The CIPC's decision raises significant legal concerns. The fact that Ninety One Limited had answered the shareholders' questions after the AGM had ended infringed the shareholders' right to raise matters in the AGM, as enshrined in section 61(8)(d) of the Companies Act. This action also contravened the shareholders' right to participate reasonably effectively in the meeting, as enshrined in section 63(2) of the Companies Act. Allowing shareholders' questions to be answered only after the AGM had ended further undermines the deliberative function of an AGM. The CIPC's treatment of post-meeting written responses as sufficient compliance with sections 61(8)(d) and 63(2) of the Companies Act also raises serious concerns about the adequacy of oversight of virtual AGMs in South Africa and about the safeguarding of shareholders' rights when electronic platforms are used to facilitate holding those AGMs.[73] Moreover, the CIPC's dismissal of this complaint contradicted its earlier legal opinion published in 2023, in which it had stated that an AGM will not be valid if a company does not allow shareholders to ask questions in real time without an intermediary. This inconsistency creates ambiguity about the legal standards companies must meet when holding virtual AGMs, and underscores the urgent need for legislative clarity on conducting virtual AGMs in South African companies.

CIPC guidelines for virtual AGMs

The CIPC later issued guidelines in 2024 for holding virtual AGMs,[74] recommending that companies that choose to conduct an AGM virtually should allow for:

66 Ibid.

67 "Ninety One Limited 2024 AGM round up" (30 July 2024) *Just Share*, available at: <https://justshare.org.za/mailpoet/ninety-ones-agm-not-compliant-with-the-companies-act/> (last accessed 18 August 2025).

68 Under sec 168(b) of the Companies Act, any person may file a complaint in writing with the CIPC alleging that a person has acted in a manner inconsistent with the Companies Act or that the complainant's rights under the Companies Act, or its Memorandum of Incorporation or rules, have been infringed.

69 "Ninety One Limited 2024 AGM round up" *Just Share*, above at note 67.

70 Ibid.

71 "CIPC dismisses request to probe Ninety One over AGM" (17 October 2024) *Citywire South Africa*, available at: <https://citywire.com/za/news/cipc-dismisses-request-to-probe-ninety-one-over-agm/a2452152> (last accessed 18 August 2025).

72 See A Crotty "Short-changed shareholders: A tale of AGMs gone bad…" (4 October 2024) *Currency*, available at: <https://currencynews.co.za/short-changed-shareholders-a-tale-of-agms-gone-bad/> (last accessed 16 August 2025).

73 Ibid.

74 CIPC "Guideline for annual general meetings conducted electronically" (Guideline 1 of 2024 of 31 October 2024), available at: <https://www.cipc.co.za/?p=21771> (last accessed 18 August 2025).

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(i) a combination of written, verbal, telephonic and video questions to ensure reasonably effective participation at the AGM;
(ii) an agenda to be provided at the start of the AGM so that shareholders will know when they will be called on to ask questions;
(iii) shareholders to be able to see and know who else is attending the AGM online and to be able to interact with each other without an intermediary; and
(iv) all participating board and executive members to be visible in real time for the entire AGM, regardless of who is speaking.[75]

These recommendations are commendable as they align with section 61(8)(d) of the Companies Act, requiring companies to address matters raised by shareholders at the AGM, and with section 63(2) of the Companies Act, which ensures that shareholders are able to communicate with each other concurrently without any intermediary. Yet these recommendations are guidelines, and are not binding on companies.

Recommendations

It is submitted that the Companies Act should be amended to incorporate the above CIPC guidelines on submitting and answering questions in a virtual AGM. To promote transparency, the Companies Act should also require companies to ensure that all written questions asked by shareholders in a virtual meeting are visible to other shareholders at the AGM.

Even though current South African law does not regulate whether all the shareholders' questions must be answered during a virtual AGM, the King V Code on Corporate Governance for South Africa 2025 (King V Code)[76] recommends that the board should ensure that shareholders are equitably treated.[77] The equal treatment of shareholders is a foundational principle of company law, which is protected in the Companies Act.[78] Notably, the G20 / Organisation for Economic Co-operation and Development (OECD) Principles of Corporate Governance 2023 (G20 / OECD Principles)[79] emphasize that virtual shareholders' meetings should be conducted in a manner that ensures equal opportunities for all shareholders to participate. In line with the principle of equitable treatment of

75 Ibid.

76 Institute of Directors South Africa "King V Code on Corporate Governance for South Africa 2025" (2025), available at: <https://cdn.ymaws.com/www.iodsa.co.za/resource/collection/927F0970-C1E9-4F30-803C-D74BF386A2B6/King_V_Code.pdf> (last accessed 2 November 2025). The legal status of the King V Code is that of a set of voluntary principles and practices, and the application and disclosure regime is that of "apply and explain" (King V Code at 3). The principles and recommendations are persuasive and not binding on boards of directors, save for listed companies (see paras 7.F.8 and 3.84 of the Listings Requirements of the JSE, which requires an applicant issuer to implement the King Code through the application of the King Code disclosure and application regime).

77 King V Code, principle 13, recommended practice 142.

78 The Companies Act protects the equal treatment of shareholders in sec 37(1) which requires all the shares of a particular class authorized by a company to have preferences, rights, limitations and other terms that are identical to those of other shares of the same class. Section 163 of the Companies Act also protects the equal treatment of shareholders by allowing shareholders to seek relief if any act or omission of the company or a related person has had a result that is oppressive or unfairly prejudicial to them or that unfairly disregards their interest. Oppressive conduct is conduct that is unjust, harsh and wrongful and involves a lack of probity or fair dealing towards a shareholder (*Aspek Pipe Co (Pty) Ltd and Another v Mauerberger and Others* 1968 (1) SA 517 (C) at 526; *Louw and Others v Nel* 2011 (2) SA 172 (SCA), para 23; *Grancy Property Ltd v Manala and Others* 2015 (3) SA 313 (SCA), para 22; *Off-beat Holiday Club and Another v Sanbonani Holiday Spa Shareblock Ltd and Others* 2017 (5) SA 9 (CC), para 27). The principle of equal treatment of shareholders is also generally linked with the fiduciary duties of directors to act in good faith and for a proper purpose (see sec 76(3)(a) of the Companies Act and P Mazur "Equal treatment of shareholders and general principles of law" (2025) *International Doctoral and Postdoctoral Conference in the Law and Law Related Fields – Splitlaw – Book of Proceedings* 1 at 11–12).

79 These principles appear in the appendix to the OECD Recommendation on Principles of Corporate Governance and were endorsed by the G20 in September 2023. Although they are non-binding, they are the main international benchmark for good corporate governance (see OECD *G20 / OECD Principles of Corporate Governance* (2023, OECD Publishing) at 3 and 6, available at: <https://www.oecd.org/content/dam/oecd/en/publications/reports/2023/09/g20-oecd-principles-of-corporate-governance-2023_60836fcb/ed750b30-en.pdf> (last accessed 29 September 2025).

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shareholders, the recommendation of the King V Code and the best practice recommendation of the Hong Kong Companies Registry Guidance Note – Good Practice on Holding Virtual or Hybrid General Meetings (Companies Registry Hong Kong Guidance Note),[80] it is submitted that if a South African company holds its AGM in a hybrid format, the company should ensure that a balanced number of questions are addressed and responded to from shareholders attending in person and those participating virtually, without discrimination between the two formats. Companies should also promptly respond to all substantial and relevant questions posed by shareholders.[81] Where immediate responses are not possible, shareholders should be advised when their questions will be answered and where they may find responses to them, preferably on the company's website.

As regards directors engaging with shareholders at the AGM, the King V Code encourages the board to ensure that the company encourages proactive and constructive engagement with shareholders at the AGM.[82] This includes ensuring that meetings are set up to be accessible to shareholders and promote effective communication and participation, regardless of whether the meeting is held virtually, in person or as a hybrid of both.[83] While the King V Code does not recommend that all the directors on the board should be available at the AGM to respond to shareholders' queries on how the board executed its governance duties, it recommends that the chair or another representative of each board committee should be available at the AGM to respond to shareholders' queries on how the board executed its governance duties.[84] It is submitted that companies should ensure that a significant number of directors and board committee representatives are available at virtual AGMs to address shareholders' questions, thereby enhancing board accountability and promoting shareholder engagement.

The integrity of electronic voting in a virtual AGM

A second governance concern arising from virtual AGMs relates to the integrity of electronic voting in the meeting. A shareholder's right to vote is a proprietary right, a cornerstone of effective corporate governance and a core function of a shareholders' meeting.[85] Voting enables shareholders to express support or concerns about the company's direction and to influence its governance, even when their votes may not be sufficient to secure a majority.[86] There appears to be a link between shareholder voting rights and corporate performance in that being able to exercise shareholder voting rights and engage with companies via dialogue or other means has a positive effect on corporate performance.[87] In essence, voting to approve or reject the resolutions proposed at the AGM is a fundamental right of shareholders.[88]

80 Companies Registry "Guidance note – Good practice on holding virtual or hybrid general meetings" (with effect from 28 April 2023 and updated on 23 May 2025), para 6.13, available at: <https://www.cr.gov.hk/en/companies_ordinance/docs/Guide_GoodPracticeonHoldingVirtualorHybridGM-e.pdf> (last accessed 22 August 2025). The Companies Registry Hong Kong Guidance Note is not legally binding but provides best practices for companies to comply with the statutory provisions in the Companies (Amendment) Ordinance 2023 (which is legally binding) on holding virtual and hybrid meetings.

81 Id, para 6.11.

82 King V Code, principle 13, recommended practice 139.

83 Ibid.

84 Id, recommended practice 140.

85 *Sammel and Others v President Brand Gold Mining Co Ltd* 1969 (3) SA 629 (A) at 680; *Desai and Others v Greyridge Investments (Pty) Ltd* 1974 (1) SA 509 (A) at 519; *CDH Invest NV v Petrotank South Africa (Pty) Ltd and Another* 2018 (3) SA 157 (GJ), para 44; Denis and Blume "Using digital technologies to strengthen shareholder participation", above at note 55 at 4 and 10; T David, AD Guili and A Romec "CEO reputation and shareholder voting" (2023) 83 *Journal of Corporate Finance* 102467 at 102467; SNUH Shah and Y Li "Shareholders' voting behaviour and annual general meetings resolutions: Corporate governance implications" (2025) 14/2 *Journal of Governance & Regulation* 275 at 276.

86 Denis and Blume "Using digital technologies to strengthen shareholder participation", above at note 55 at 5.

87 See C Mallin and A Melis "Shareholder rights, shareholder voting, and corporate performance" (2012) 16 *Journal of Management & Governance* 171 at 173.

88 Shah and Li "Shareholders' voting behaviour and annual general meetings resolutions", above at note 85 at 276.

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The G20 / OECD Principles emphasize in Principle II.C that "[s]hareholders should have the opportunity to participate effectively and vote in general shareholder meetings, and should be informed of the rules, including voting procedures, that govern shareholder meetings". Principle II.C.2 stresses further that the processes, format and procedures for general shareholder meetings should allow for equitable treatment of all shareholders, and that "[c]ompany procedures should not make it unduly difficult or expensive to cast votes". It is therefore essential to minimize, or ideally eliminate, any barriers hindering shareholders from voting effectively in virtual AGMs.

Legal regulation of voting under the Companies Act

The Companies Act provides for voting by shareholders on a show of hands and by polling, but there is no explicit provision for electronic voting at virtual meetings. Section 63(5) of the Companies Act provides that if voting is by a show of hands, any person who is "present at the meeting", whether as a shareholder or as proxy for a shareholder and entitled to exercise voting rights, has one vote, irrespective of the number of voting rights that person would otherwise be entitled to exercise. Concerning voting on a poll, section 63(6) of the Companies Act provides that if voting on a particular matter is by polling, any person who is "present at the meeting", whether as a shareholder or as proxy for a shareholder, has the number of votes determined in accordance with the voting rights associated with the securities held by that shareholder. The phrase "present at a meeting" is defined in section 1 of the Companies Act as meaning present in person, or "able to participate in the meeting by electronic communication" or to be represented by a proxy who is present in person or "able to participate in the meeting by electronic communication". While this definition allows for voting by electronic communication when voting takes place by a show of hands or on a poll, the Companies Act does not regulate how the electronic votes should be cast or counted. The absence of this regulation creates uncertainty about what would constitute a valid voting process during a virtual AGM. It also increases the risk of unverified third parties casting electronic votes on behalf of shareholders.

Electronic voting

Electronic voting is regulated for public listed companies that use Strate[89] to make trades. Strate Directive SC.5[90] regulates both manual voting[91] and voting through an electronic system. As regards electronic voting, paragraph 3.3 of Strate Directive SC.5 provides that participants and their clients[92] may execute and submit voting instructions, proxy appointments and other instructions electronically, in a manner that: (i) enables a client to exercise their voting rights and participate in meetings in accordance with applicable law; and (ii) protects the integrity of a client's voting instructions, proxy appointments and any other instructions executed to facilitate a client's participation in meetings. Strate has a central e-voting platform, Strate e-Voting, which facilitates electronic voting at shareholders' meetings for South African public-listed companies,[93] but it does not apply to unlisted public companies or to any other company holding a virtual AGM.

By contrast, section 173J of the Singapore Companies Act expressly provides for electronic voting. A reference in the Singapore Companies Act to a vote of a member of a company at a meeting, or

89 Strate is a South African central securities depository that handles the electronic settlement of financial trades, and stands for "Share Transactions Totally Electronic". See further *Strate*, available at: <https://www.strate.co.za> (last accessed 21 August 2025).

90 Directive of Strate (Pty) Ltd Special Gazette No S12-2024 State Directive SC.5 "Voting Procedure-Equities", available at: <https://www.strate.co.za/wp-content/uploads/2025/04/Strate-Directive-SC.5-Voting-Procedure-Equities-20250401.pdf> (last accessed 21 August 2025).

91 See para 3.1 of the Strate Directive SC.5, which provides for voting through a participant, and para 3.2, which provides for voting through a nominee.

92 A "participant" is a person authorized by a licensed central securities depository to perform custody and administration services or settlement services in terms of the depository rules (most of whom are banks), while "clients" are persons to whom a regulated person provides securities services (sec 1 of the Financial Markets Act 19 of 2012).

93 See Strate "Strate e-Voting", available at: <https://strate.co.za/Brochures/eVoting_brochure/e-Voting-Brochure.pdf> (last accessed 21 August 2025).

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to voting by a member of the company at a meeting, or to the entitlement or right of a person to vote at a meeting, or to voting by a person on a show of hands at a meeting includes, where the person is present by virtual meeting technology, voting by the person by electronic means.[94] This section is subject to the proviso that the person voting by electronic means can be identified by any method that may be prescribed relating to the verification or authentication of the identity of the persons attending the meeting, or if no method is so prescribed, by any method that the directors of the company may determine.[95] The South African Companies Act lacks similar legislative clarity.

Recommendations

Section 63 of the South African Companies Act should be amended to make explicit provision for electronic voting. This is necessary to protect shareholders' rights to exercise their voting rights electronically in a virtual AGM, regulate the exercise of shareholders' rights by electronic voting by proxies acting on their behalf and ensure the integrity of electronic voting. In a similar manner to section 173J of the Singapore Companies Act, sections 63(5) and 63(6) of the Companies Act, respectively, should be amended to provide that a reference to voting on a show of hands or on a poll at a meeting includes, where the person is present by electronic communication, voting by electronic means. This should be subject to the proviso that the person voting by electronic means can be identified by a method determined by the directors for verifying or authenticating the identity of the person attending the meeting. Some methods of verification and authentication are discussed further below.

Shareholders must be able to cast their votes electronically in real time during a virtual or hybrid meeting.[96] Consequently, companies must ensure that safeguards are in place to validate submitted votes.[97] It is suggested that a new section 63(8) be inserted into the Companies Act to require companies to implement safeguards to validate votes submitted electronically by shareholders. These safeguards, based on the guidance in the Companies Registry Hong Kong Guidance Note[98] and the Singapore Exchange Limited (SGX) Rulebooks,[99] should include the following:

- the electronic voting system used must accurately count all votes cast at the meeting;
- the electronic voting system used must be able to provide an audit trail of records on the operation of the electronic voting system, including the accuracy of the recording and counting of votes; and
- each vote that is cast must be verified by the company as cast by shareholders entitled to vote.

It is submitted that the risks of inaccurate vote counting and unverified voting arising from the absence of explicit regulation of electronic voting in the Companies Act would be mitigated if the above safeguards were to be incorporated in the Companies Act. These safeguards are not specific to Singapore and Hong Kong but are capable of being implemented within the Companies Act.

It is further submitted that section 63(3)(a) of the Companies Act should be amended to provide that the notice of the AGM should inform shareholders and their proxies how electronic voting in real time will be conducted and how they may cast their votes electronically.

94 Singapore Companies Act, sec 173(4)(c)–(f).

95 Id, sec 173J(4)(f).

96 Companies Registry Hong Kong Guidance Note, above at note 80, para 6.14.

97 Id, para 6.15.

98 Ibid.

99 See para 5.2 of Practice Note 7.5 General Meetings of the SGX Rulebooks, which provides guidance on the conduct of general meetings for companies listed on the SGX. The Practice Notes are non-binding guidelines and explain the application and interpretation of the SGX-ST (Singapore Exchange Securities Trading Limited) Listing Manual, comprising the Mainboard Rules and Catalist Rules (collectively called the "SGX Listing Rules"). Practice Note 7.5 explains SGX Listing Rule 730A relating to facilitating interaction with shareholders.

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As for declaring the voting results, paragraph 3.91 of the JSE Listings Requirements requires public listed companies to release an announcement on the Stock Exchange News Service (SENS)[100] within 48 hours after each AGM, providing details of the voting results in respect of the resolutions passed at the meeting. The announcement must include details of the resolutions proposed at the meeting, the shares voted in person or by proxy disclosed as a number and a percentage, the shares abstained disclosed as a percentage and the votes carried for and against each resolution, disclosed as a percentage. This requirement applies only to public listed companies. It is submitted that the Companies Act should include a similar provision to address the release of the voting results for all companies where voting takes place electronically in a virtual AGM. Publicly disclosing AGM voting results promotes transparency in the company's affairs and aligns with the recommendation of the King V Code that directors should individually and collectively cultivate and exemplify the characteristic of transparency.[101]

Digital security risks in a virtual AGM

Beyond the integrity of electronic voting, the reliability of the virtual environment itself raises further governance challenges. As virtual AGMs are vulnerable to cyberattacks, companies must be vigilant about digital security risks when holding these AGMs and implement appropriate safeguards to protect both the company and its shareholders. Three digital security concerns in virtual AGMs are discussed below.

Verifying shareholder identities in a virtual AGM

Accurate identification of the people attending and voting at the AGM and their proxies is essential to protect the integrity of the AGM.[102] This is particularly important because of the risks of identity theft. Without physical presence, it becomes difficult to verify that a person attending the AGM virtually is indeed the authorized shareholder or proxy. Unauthorized people could disrupt the meeting or access confidential and sensitive data. Risks such as email identity fraud because of the internet techniques of "spoofing" (which happens when an email header is forged so that the message appears to have originated from someone other than the actual source) and "phishing" (where messages appear to be sent from a legitimate company's website or domain address when they are not) make secure authentication critical.[103] Internet server hacking may also result in fraudulent impersonations.[104]

Legal framework to identify shareholders attending a meeting

Under section 63(1) of the Companies Act, before any person may attend or participate in a shareholders' meeting, that person must present "reasonably satisfactory identification", and the chair of the meeting must be "reasonably satisfied" that the right of that person to participate and vote, either as a shareholder, or as a proxy for a shareholder, has been reasonably verified. As mentioned earlier, shareholders would be aware of this requirement, as the Companies Act requires the meeting notice to inform shareholders that, under section 63(1), meeting participants must provide satisfactory identification.[105] At a virtual AGM, companies must not only ensure that meeting participants are properly identified and that no unauthorized persons attend, but also that shareholders with the right to attend are not excluded.

100 SENS is a news service for JSE-listed companies to disseminate relevant company information to the market on a real-time basis (see sched 9 of the JSE Listings Requirements on the procedural requirements of SENS).

101 King V Code, principle 1, recommended practice 1(f).

102 OECD *Shareholder Meetings and Corporate Governance*, above at note 4 at 83.

103 B Eichler "Directors and shareholder virtual meetings require cybersecurity" (20 November 2020) *New Jersey Law Journal*, available at: <https://www.bicklaw.com/Publications/DirectorandShareholdervirtualmeetingcybersecurity.htm> (last accessed 25 September 2025).

104 Ibid.

105 Companies Act, sec 62(3)(e)(iii).

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At a physical AGM, the company secretary or scrutineers usually verify a shareholder's identity in person, and attendees are generally required to complete a registration form and provide an official form of identification for the company to verify.[106] One approach to verifying shareholders in a virtual AGM is for participants to register for the meeting online and to upload proof of identity or a proxy authorization when acting as a proxy.[107] At the same time, this approach carries the risk that the company may not be able to reliably verify that the individual uploading the proof of identity is the same person registered as a shareholder, given the absence of the physical contact that would normally occur at an AGM in person. Requiring participants to upload proof of their identity may therefore not meet the criterion in section 63(1) of the Companies Act of presenting "reasonably satisfactory identification". To meet this criterion and the criterion of the meeting chair being "reasonably satisfied" that the right of the person to participate and vote in the virtual meeting has been reasonably verified, South African companies must ensure that they adopt reliable processes to verify and authenticate the identities of shareholders and their proxies attending an AGM virtually.

Recommendations

A recommended secure method of authenticating shareholders, as suggested by the Companies Registry Hong Kong Guidance Note, is for companies to send a one-time, unique personal identification number to a shareholder's mobile phone number or email address, enabling the shareholder to access the electronic platform to register and participate in the meeting.[108] Another suggestion, if registration and authentication of shareholders are through an online electronic platform or website using login details provided by the company, is for each shareholder to be provided with the invitation link to the platform or website, together with a meeting login ID and a password or access code that is unique to that shareholder.[109] But as also emphasized by the Companies Registry Hong Kong Guidance Note, the registration and authentication process should be simple so as not to become a barrier to attendance for shareholders, and the authentication methods should not be used to prevent any entitled shareholders from attending the AGM.[110]

Companies could also set up a virtual waiting room and validate participants' identities before allowing them to join the meeting.[111] While companies could "lock" the meeting when all participants have been admitted, and thus prevent unauthorized access,[112] it is submitted that they should preferably have processes for the rapid verification of participants who attend the meeting late to avoid unlawfully excluding shareholders who are entitled to attend the virtual AGM.

Managing technical disruptions on virtual platforms

Virtual AGMs depend on the stability of the virtual platform. Another digital concern relates to technical disruptions on the virtual platform used for the AGM, which could compromise shareholders' participation in the meeting and potentially affect the validity of the AGM. As regards the oversight of technology, the King V Code recommends that the board should ensure that arrangements are in place to provide for disaster recovery planning, and that there is effective management of the risks associated with the acquisition and utilization of outsourced technologies and services.[113] In line with these recommendations, companies holding virtual AGMs must manage the disruptive effects of technology on the meeting.

106 OECD *Shareholder Meetings and Corporate Governance*, above at note 4 at 98.
107 Ibid.
108 Companies Registry Hong Kong Guidance Note, above at note 80, para 6.2.
109 Ibid.
110 Id, paras 6.2 and 6.4.
111 A Ndlovu and F Khan "Cybersecurity in virtual gatherings: Risks and remedial strategies for video conferencing software" (2025) 2/4 *International Journal of Cyber Threat Intelligence and Secure Networking* 1 at 4.
112 Companies Registry Hong Kong Guidance Note, above at note 80, para 6.3(d); Ndlovu and Khan, above at note 111 at 4.
113 King V Code, principle 10, recommended practices 108(b) and 108f.

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One suggestion to do this, as recommended by the Companies Registry Hong Kong Guidance Note as a best practice, is for companies to consider contingency planning for technical issues by providing alternative means, such as dial-in or telephone conferencing facilities, to allow shareholders to continue to participate in the meeting if the internet connection is lost or disrupted.[114] Another suggestion is for the service provider of the electronic platform to provide backup systems to be used in the event of a failure of the electronic platform during a virtual AGM,[115] and for companies to communicate the details of these backup systems to shareholders before the virtual AGM.[116]

To ensure that no shareholder is excluded from participating in the virtual AGM, South African companies should implement measures to support shareholders who have difficulty accessing the digital platform for the virtual AGM and to accommodate shareholders who are less experienced with digital tools. A wise practice would be for companies to make a technical support team with the necessary technical knowledge and capacity available to shareholders, both online and via a telephone number for free, during the virtual AGM, or via a live chat system or email.[117] The AGM notice sent to shareholders should also include details of how technical support will be provided during the virtual AGM, so shareholders are informed well in advance.

Impact of technical disruptions on the validity of the virtual AGM

If there is a substantial technical disruption to the digital platform used for the AGM that cannot be resolved quickly or prevents many shareholders from participating in the meeting, companies may need to adjourn or postpone the AGM until the issues are resolved.[118] Under section 64(4) of the Companies Act, if the requisite quorum is not present within one hour after the appointed time for a meeting to begin, the meeting may be postponed without motion, vote or further notice, for one week.[119]

Although the Companies Act does not expressly provide for an AGM to be adjourned or postponed due to a substantial technical disruption on the virtual platform, section 64(5) of the Companies Act states that if a meeting does not have the requisite quorum because electronic communication has impeded the ability of shareholders to be present at the meeting, the chair of the meeting may extend the one-hour limit for a reasonable period. It follows that if a virtual AGM fails to have a quorum after one hour because a technical disruption has impeded the ability of shareholders to be present at the meeting, under section 64(5), the chair may extend the one-hour limit for a reasonable period before deciding to postpone the meeting for one week. Section 64(5) is a useful provision that companies may rely on if a technical disruption prevents them from obtaining a quorum for the AGM.

Where a technical disruption is caused by a shareholder, such as a failure in the shareholder's internet connectivity, this disruption cannot be attributed to the company and so would not affect the AGM's validity.[120] But where the technical malfunction is attributable to the electronic platform

114 Companies Registry Hong Kong Guidance Note, above at note 80, para 6.19.

115 Singapore Exchange Regulation, Singapore Institute of Directors and Chartered Secretaries Institute of Singapore "Singapore Standard for Vendors of Virtual/Hybrid General Meeting Systems" (2022), para 4.4, available at: <https://sid.org.sg/common/Uploaded%20files/Resources/StandardforVendorsofVirtual-Hybrid.pdf> (last accessed 1 September 2025).

116 Denis and Blume "Using digital technologies to strengthen shareholder participation", above at note 55 at 16.

117 See Singapore Exchange Regulation, Singapore Institute of Directors and Chartered Secretaries Institute of Singapore "Singapore Standard for Vendors of Virtual/Hybrid General Meeting Systems", above at note 115, para 3.1.10; Companies Registry Hong Kong Guidance Note, above at note 80, para 6.18.

118 The adjournment of a meeting is the suspension of the business of the meeting with the intention of continuing the meeting at a later time. By contrast, the postponement of a meeting entails deferring the date of a meeting before it is held. See R Cassim "Governance and shareholders" in Cassim (ed) *Contemporary Company Law*, above at note 10 465 at 510. On the adjournment of meetings, see Companies Act, sec 64(10)–(13).

119 A company may amend the one-hour limit or one-week period in its Memorandum of Incorporation or rules (Companies Act, sec 64(6)(a) and (b)).

120 OECD *Shareholder Meetings and Corporate Governance*, above at note 4 at 134.

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used to conduct the virtual AGM and is so significant as to result in a substantial interference with shareholder participation, the validity of the AGM may be called into question. The Companies Act lacks guidance on the implications of technical disruptions on the validity of electronic meetings.

By contrast, the Singapore Companies Act explicitly addresses the effect of technical disruptions on virtual meetings. Section 392(2A) of the Singapore Companies Act stipulates that a virtual meeting is not invalidated by reason of any technological disruption, malfunction or outage unless: (i) a court is of the opinion that the technical disruption, malfunction or outage has caused or may cause "substantial injustice" that cannot be remedied by an order of court; and (ii) a court by order declares the meeting to be invalid. It is essential to understand the meaning of the term "substantial injustice".

In *Golden Harvest Films Distribution (Pte) Ltd v Golden Village Multiplex Pte Ltd*,[121] the Singapore Court of Appeal clarified that the determination of "substantial injustice" under section 392 of the Singapore Companies Act, which addresses irregularities in meetings, involved a "holistic weighing and balancing of the various interests of all the relevant parties". Furthermore, in *The Oriental Insurance Co Ltd v Reliance National Asia Re Pte Ltd*,[122] the Singapore Court of Appeal said that "substantial" means "considerable", and that "injustice" pertains to "prejudice", and "substantial injustice … amounts to something greater than just ordinary prejudice". Additionally, in *Thio Keng Poon v Thio Syn Pyn and Others and Another Appeal*,[123] the Singapore Court of Appeal emphasized that there must be a direct link between the procedural irregularity in question and the substantial injustice suffered. It stressed that the injustice must be substantial, meaning that it must be real and not theoretical or fanciful, and that the aggrieved party must show that there may or could have been a different result if not for the occurrence of the procedural irregularity.[124]

In the light of these considerations, it is submitted that the Companies Act should adopt a provision analogous to section 392(2A) of the Singapore Companies Act. Such a provision would empower courts to invalidate a virtual AGM in instances of technical disruptions, malfunctions or outages that caused or may cause substantial injustice to shareholders that a court order cannot remedy.

Mitigating cybersecurity threats

With the rise in cybercrime in South Africa,[125] companies must implement robust measures to mitigate cybersecurity threats when conducting virtual AGMs. Cyberattacks targeting the electronic platform used for the virtual AGM could lock out shareholders, disrupt or manipulate voting and prevent shareholders from engaging in the meeting, potentially compromising the validity of the AGM.

Concerning the governance of technology, the King V Code recommends that the board should ensure that the company has effective cyber security strategies and practices to protect technology assets, resources, products and services.[126] Similarly, the G20 / OECD Principles recommend that, when selecting technology vendors to manage virtual shareholders' meetings, companies must

121 [2006] SGCA 44, para 54.

122 [2008] SGCA 18, para 107.

123 [2010] SGCA 16, para 75.

124 Ibid. For a further discussion of the meaning of the term "substantial injustice" in the context of sec 392 of the Singapore Companies Act, see PMC Koh "Irregularities in procedures–Reconsidering section 392" (2012) 2 *Singapore Journal of Legal Studies* 467.

125 Reports show that South Africa and Egypt suffered the highest number of ransomware incidents in Africa in 2024, and that the African countries of greatest interest to cyber criminals are South Africa (25%), Nigeria (18%) and Algeria (13%) (see Interpol *Interpol Africa Cyberthreat Assessment Report 2025* (4th ed, May 2025), available at: <https://www.interpol.int/en/News-and-Events/News/2025/New-INTERPOL-report-warns-of-sharp-rise-in-cybercrime-in-Africa> (last accessed 25 September 2025); "Cybersecurity threatscape for African countries: Q1 2023-Q3 2024" (9 November 2024) *Positive Technologies*, available at: <https://global.ptsecurity.com/en/research/analytics/cybersecurity-threatscape-for-african-countries-q1-2023-q3-2024/#Navigation-18> (last accessed 25 September 2025).

126 King V Code, principle 10, recommended practice 108e.

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ensure that they have technical and organizational security measures in place for each processing operation they carry out, especially where personal data is processed.[127]

In line with the recommendations above, companies conducting AGMs virtually must manage cybersecurity risks by using secure electronic communication platforms to avoid data breaches and cybersecurity risks.[128] The electronic platform chosen by companies to conduct virtual AGMs must be able to accommodate large numbers of participants to avoid the platform "crashing" during the AGM.[129] It must also be auditable and enable full, transparent participation in the virtual AGM. If the platform lacks strong security and end-to-end encryption, hackers could intercept communications during the virtual AGM or gain access to sensitive information discussed at the meeting. The electronic platform used must also be secure to protect the integrity of voting, guard against the risk of manipulation of the votes and have processes to allow for the security of votes cast prior to the AGM.[130]

Conclusion

The widespread adoption of virtual AGMs is a legacy of the COVID-19 pandemic, now firmly embedded in modern corporate governance practices. Although virtual AGMs offer convenience and several advantages, they also raise governance concerns that could compromise the validity of decisions made at the AGM or cast doubt on the AGM's validity. Companies must conduct virtual AGMs in a manner that does not infringe the Companies Act or shareholders' rights.

This article identified three key governance concerns associated with holding AGMs virtually in South African companies. The first involves managing shareholders' questions. Restricting or preventing shareholder engagement undermines board accountability and may contravene sections 61(8) and 63(2) of the Companies Act, which require AGMs to address shareholder matters and enable meeting participants to communicate concurrently with each other without an intermediary. The second relates to the integrity of electronic voting in a virtual AGM, as the Companies Act does not regulate how electronic votes should be cast or counted. The third involves digital security risks. Inadequate verification of shareholders and their proxies may breach section 63(1) of the Companies Act, which requires meeting attendees to present reasonably satisfactory identification, and for the chair to be reasonably satisfied that the right of shareholders and their proxies to participate and vote has been reasonably verified. Another digital security concern is technical disruptions on virtual platforms, which could impede shareholder participation in the virtual AGM and affect its validity. The final digital security concern discussed relates to cybersecurity threats, which could hinder shareholder engagement and compromise voting integrity or the AGM's validity.

This article has proposed several practical measures that companies could adopt to mitigate these governance concerns. However, to ensure that the use of technology enhances, rather than undermines, shareholders' rights in virtual AGMs, it is submitted that amendments to the Companies Act are necessary. Although issuing best-practice guidelines could help address these concerns, they are not sufficient since they are voluntary, and not all companies may adopt them. By contrast, amending the Companies Act would establish binding and enforceable rules and create a uniform, mandatory framework for virtual AGMs in South African companies, which is necessary to ensure the effective protection of shareholders' rights. The following series of submissions to amend the Companies Act are therefore suggested.

127 G20 / OECD Principles, recommendations under Principle II.C.3 at 16.

128 OECD *Shareholder Meetings and Corporate Governance*, above at note 4 at 98.

129 Ibid. South Africa currently has three platforms to facilitate virtual AGMs: Computershare, Lumi and The Meeting Specialist (Pty) Ltd (TMS) (see *Computershare Virtual Meeting Services*, available at: <https://apps.computershare.com/MeetingsShareholderWeb/FindMeeting?Country=ZA>; *Lumi Global*, available at: <https://www.lumiglobal.com/virtual-solutions> and *The Meeting Specialist*, available at: <https://www.tmsmeetings.co.za/> (last accessed 2 September 2025).

130 G20 / OECD Principles, recommendations under Principle II.C.3 at 16.

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The Companies Act should be amended to include the following specific rules of conduct regarding the submission and answering of questions in a virtual AGM:

(i) shareholders must be allowed to raise a combination of written, verbal, telephonic and video questions;
(ii) an agenda must be provided to shareholders at the beginning of the AGM, indicating when they will be called upon to ask questions;
(iii) all written questions from shareholders must be visible to all meeting participants;
(iv) the electronic platform must permit shareholders to see and interact with other participants without an intermediary; and
(v) participating directors must be visible in real time for the duration of the AGM.

Sections 63(5) and 63(6) of the Companies Act, respectively, should be amended to provide that a reference to voting on a show of hands or on a poll at a meeting includes, where the person is present by electronic communication, voting by electronic means. This should be subject to the proviso that the person voting by electronic means can be identified by a method determined by the directors for verifying or authenticating the identity of the person attending the meeting. Additionally, a new section 63(8) should be introduced in the Companies Act, requiring companies to implement safeguards to validate shareholder votes submitted electronically. These safeguards should include the following:

(i) the electronic voting system must accurately count all votes cast at the meeting;
(ii) the electronic voting system must be able to provide an audit trail of records on the operation of the electronic voting system, including the accuracy of the recording and counting of votes;
(iii) each vote that is cast must be verified by the company as cast by shareholders entitled to vote.

Section 63(3)(a) of the Companies Act should be amended to require the AGM notice to inform shareholders and their proxies about how real-time electronic voting will be conducted and how they may cast their votes electronically. To enhance transparency, a new provision should be inserted into the Companies Act to regulate the release of voting results when voting occurs electronically during a virtual AGM. Additionally, a new provision should be introduced in the Companies Act empowering courts to invalidate a virtual AGM in instances of technical disruptions, malfunctions or outages that caused or may cause substantial injustice to shareholders that cannot be remedied through a court order.

It is hoped that the recommendations above will enhance the conduct of virtual AGMs by South African companies, uphold the validity and integrity of these meetings and protect the rights of shareholders attending virtual AGMs.

Competing interests. None

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