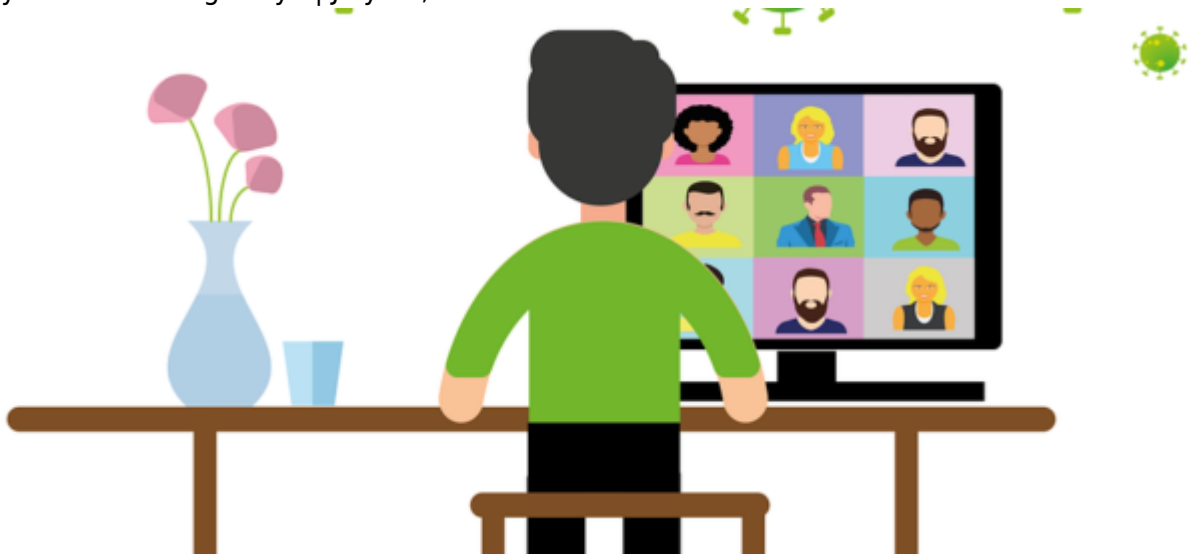
COVID-19 AND POPIAS IMPACT ON COMPANY AGMS

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On 15 March, due to the Covid – 19 pandemic, the state issued an order which prohibits the holding of public meetings. These clear measures were introduced to combat the spread of Covid – 19 and are expected to influence the chosen format of annual general meetings ("**AGMs**") for a long time. Against this background of the Covid – 19 pandemic, AGM's will increasingly be held as an electronic event ("**electronic AGMs**") without the physical presence of shareholders or their proxy-holders.

The processing of personal information is essential to an AGM and allows for the exercising of the shareholder's rights. It is necessary for inviting shareholders to participate in an AGM, enabling the right people to exercise their rights, verifying attendees in the register of shareholders.

When considering what is deemed 'lawful processing' of personal information for an AGM a company must look at the Protection of Personal Information Act 4 of 2013 ("**POPIA**") [1]. According to POPIA if one is processing personal data in South Africa, then one may be obliged to comply with POPIA.[2] Section 4 of POPIA sets out the legal basis for the conditions for lawful processing, this section provides the eight (8) conditions of lawful processing of personal information. In terms of an AGM meeting, a shareholder whose information is collected must be aware that the company is collecting such personal information from the data subject.

POPIA makes it clear that the processing of personal information in connection with something such as an AGM, a responsible party must ensure appropriate safeguards are in place to protect the information shared. Further, where the processing of that personal information occurs, it must be done for legitimate purposes and as proposed by the eight conditions.

When planning and conducting an AGM, the responsible party or company will therefore be required to uphold these eight conditions and obtain clear consent before collecting (or processing, storing, or sharing) personal information. Importantly, the responsible party must inform and create policies to notify the Information Regulator about these processing activities, such as a privacy policy.

In terms of convening an electronic meeting , Section 61 of the Companies Act 71 of 2008 ("**the Companies Act**") advises that when planning on conducting an AGM, the board of the company may determine the location for the shareholders' meeting. Section 73 of the Companies Act states that "a meeting of the board may be conducted by electronic communication; or one or more directors may

participate in a meeting by electronic communication, so long as the electronic communication facility employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate effectively in the meeting".

According to Section 63(2) of the Companies Act, unless prohibited by a company's memorandum of incorporation: companies are permitted to hold "electronic" annual general meetings. The Companies Act also provides conditions for requirements of acceptable electronic communication standards. When considering whether an electronic AGM is appropriate or not, you need to consider the views of the shareholders on any decision made regarding conducting an AGM and how their personal information will be processed for this electronic AGM.

The Covid – 19 pandemic will have a lasting impact on how and when AGMs are conducted. Some companies will be required to continue to alter their AGM plans as new state advice or disaster management legislation is announced and revised. Electronic meetings and AGM's will, therefore, be an ideal method of conducting meeting. Hoever, companies must safeguard how they process the personal information shared for that electronic AGM. If you require additional information on this matter, please contact us for more good, clear, precise advice

[1] On 22 June 2020 the President of South Africa has proclaimed POPIA will commences on 1 July 2020, but one has 12 months from that date to comply with POPIA.

[2] Section 3(2) of POPIA