

## Luxembourg companies allowed to hold virtual meetings until 31 December 2020

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With the aim of allowing more flexible governance measures, Luxembourg has passed another law extending the possibility to hold board and shareholders' meetings in companies and other legal entities<sup>[1]</sup> remotely up to and including 31 December 2020. The Law<sup>[2]</sup> was published in the Official Journal on 23 September 2020 and will enter into force on 1 October 2020 (the **New Law**).

As the coronavirus pandemic continues to have an impact on society and good corporate governance, the New Law will extend the measures allowing companies and other legal entities to hold their general meetings and other necessary meetings without physical presence, that were initially provided for by the Grand-Ducal regulation of 20 March 2020<sup>[3]</sup> and extended by the law of 20 June 2020<sup>[4]</sup>, which will cease to apply on 30 September 2020.

Indeed, the current health measures justify maintaining this possibility for companies and other legal entities to hold their meetings remotely, however, this must be provided for by law, since a company that holds a general meeting by videoconference or passes written resolutions when the articles of association do not permit so, risks exposing its directors or managers to liability for violation of the articles of association or the law.

Article 1<sup>[5]</sup> of the New Law will continue to allow more flexibility in terms of corporate governance measures and enable companies to hold their meetings by submitting voting forms in writing or by electronic format, by a proxy holder, or exclusively digitally by videoconference or via any other means of telecommunication allowing their identification.

The following rules apply notwithstanding any provision to the contrary in the articles of association of the relevant company and regardless of the number of participants relating to (i) general meetings and (ii) meeting of board of directors/managers:

### (i) General Meetings

A company may, irrespective of the intended number of participants in its general meeting, hold any general meeting without a physical meeting, and may require its shareholders or members and other participants in the meeting to attend the meeting and exercise their rights exclusively by:

- a vote in writing or in electronic form provided that the full text of the resolutions or decisions to be taken has been provided to the participants of the meeting;
- a proxy appointed by the respective company; or
- video conference or other means of telecommunication which enables the identification of the participants to the meeting.

Shareholders who participate by such means are deemed present for the calculation of the quorum and majority at such meeting. This provision is also applicable to meetings of bondholders.

## **(ii) Meeting of board of directors/managers**

Board of directors/managers, supervisory boards or any other bodies of a company may hold their meetings without a physical meeting by way of;

- written circular resolutions; or
- video conference or other means of telecommunication enabling the identification of the members of the body participating in the meeting.

Again participants through such aforementioned means will be considered present for the purposes of determining the quorum and majorities of the meeting.

Article 2<sup>[6]</sup> extends the measures in Article 1 to the legal entities listed in the Law including, inter alia, mutual insurance companies and as provided for by the law of 20 June 2020.

Article 4<sup>[7]</sup> repeals the law of 20 June 2020.

Article 5<sup>[8]</sup> provides that the law enters into force on 1 October 2020 and have effect up to and including 31 December 2020.

Notwithstanding the implementation of the New Law, in the event of a derogation from the articles of association, the board meeting of a company or other legal entity should discuss the contingency measures and the minutes of such meeting should be detailed to remind of such context.

[1] Including without being limited to non-profit organisations (*asbl*) and public institutions (*établissements publics*).

[2] The Law of 23 September 2020 on measures concerning the holding of meetings in companies and other legal persons

[3] Grand-Ducal Regulation of 20 March 2020 introducing measures concerning the holding of meetings in companies and other legal persons. The regulation was adopted on the basis of article 32(4) of the Luxembourg Constitution.

[4] The Law of 20 June 2020 extending the measures relating to the holding of meetings in companies and other legal entities

**[5] Art. 1.**

(1) A company may, notwithstanding any contrary provisions in the articles of association and irrespective of the intended number of participants in its general meeting, hold any general meeting without a physical meeting and may require its shareholders or members and the other participants in the meeting to attend the meeting and exercise their rights in one or more of the following forms of participation:

1° by a remote vote in writing or in electronic form allowing their identification and provided that the full text of the resolutions or decisions to be taken has been published or communicated to them;

2° by video conference or other means of telecommunication allowing their identification.

A shareholder, partner or other participant may also participate in the general meeting and exercise his or her rights through a proxy appointed by the company. In the event that a shareholder or partner or another participant has appointed a proxy other than the one referred to in paragraph 2 in accordance with Article 8 of the amended law of 24 May 2011 on the exercise of certain rights of shareholders at general meetings of listed companies, such proxy may only participate in the meeting in the manner provided for in points 1° and 2°.

Shareholders or partners participating by such means shall be deemed to be present for the calculation of the quorum and majority at such meeting.

This paragraph is applicable to the meeting of bondholders.

(2) Notwithstanding any contrary provisions in the articles of association, the other corporate bodies of any company may hold their meetings without a physical meeting:

1° by written circular resolutions; or

2° by video conference or other means of telecommunication enabling the identification of the members of the corporate body participating in the meeting.

Members of such corporate bodies participating by such means shall be deemed to be present for the calculation of the quorum and the majority.

**[6] Art. 2.**

The provisions of Article 1 shall also apply, where applicable, to general meetings of members, shareholders or members and to meetings of the legal or statutory management bodies of the following legal entities:

1° non-profit associations and foundations established in accordance with the amended law of 21 April 1928 on non-profit associations and foundations;

2° agricultural associations established in accordance with the amended Grand Ducal decree of 17 September 1945 revising the law of 27 March 1900 on the organisation of agricultural associations;

3° mutual insurance companies governed by the law of 1 August 2019 on mutual insurance companies;

4° economic interest groups formed in accordance with the amended law of 25 March 1991 on economic interest groups;

5° European economic interest groupings set up in accordance with the amended law of 25 March 1991 laying down various measures for implementing Council Regulation (EEC) No 2137/85 of 25 July 1985 on the establishment of a European Economic Interest Grouping (EEIG);

6° the Housing Fund established pursuant to the law of 24 April 2017 on the reorganisation of the public establishment called "*Fonds du Logement*" (Housing Fund);

7° trade unions governed by the amended law of 16 May 1975 on the status of co-ownership of built-up areas;

8° the Institute of Company Auditors governed by the amended law of 23 July 2016 on the audit profession;

9° the Order of Chartered Accountants governed by the amended law of 10 June 1999 on the organisation of the profession of Chartered Accountant.

**[7] Art. 4.**

The law of 20th June, 2020 extending the measures concerning the holding of meetings in companies and other legal persons is repealed.

## **[8] Art. 5.**

This law shall enter into force on 1st October, 2020 and shall remain in force until 31st December, 2020 inclusive.

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