

Luxembourg companies to hold virtual meetings until 31 December 2022

News - 23/12/2021

On 17 December 2021, a new law aiming to maintain flexible corporate governance measures in Luxembourg until 31 December 2022 was published (the **Law**).

The Law extends the provisions of the 23 September 2020 law concerning the holding of remote meetings in companies and other legal entities (the **Covid-19 Law**) until 31 December 2022. It also extends the suspension of the obligation for directors to file for bankruptcy within 30 days of the cessation of payments until 30 June 2022.

As a reminder, the Covid-19 Law enables companies to hold their meetings by submitting voting forms in writing or by electronic format, by a proxy holder, or exclusively digitally by video conference or via any other means of telecommunication allowing their identification.

The following rules will continue to 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) meetings of board of directors or managers.

General Meetings

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

- a vote in writing or by electronic form, provided that the full text of the resolutions or decisions to be taken has been given to the meeting's participants;
- 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 in meetings by such means are deemed present for the calculation of the quorum and majority. This provision is also applicable to meetings of bondholders.

However, the Law does not provide for further extension regarding the holding of annual general meetings and the approval and filing of annual accounts.

Meetings of board of directors or managers

A board of directors or 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 who attend through such aforementioned means are considered present for the purposes of determining the quorum and majorities.

Suspension of the obligation for directors to file for insolvency

As a general principle, where a Luxembourg company is in financial difficulty, a director or manager has an obligation to file for bankruptcy within a thirty day period of a meeting where it is determined that the company is unable to pay its debts as they fall due and there is a loss of creditworthiness.

The Luxembourg legislator is taking the view that the situation, whatever the evolution, might not be normalised before the end of the year. Therefore, the suspension of the obligation for directors to file for insolvency is now extended until 30 June 2022.

Directors are still allowed to file for insolvency (aveu de faillite), and may feel obliged to do so depending on the circumstances of the company. Creditors may also petition for insolvency.

For more information on this update, please contact a member of the team or your usual Ogier contact.

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