

# COVID-19 and corporate governance - relief measures for shareholders' and board meetings

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The profound impact of the measures being taken across the globe to contain the spread of the Coronavirus COVID-19 is creating a number of issues for companies.

The Luxembourg Government declared a state of emergency on 18 March 2020 for a period of three months in accordance with article 32, paragraph 4, of the Constitution and passed legislation introducing a series of measures including those relevant to maintaining the good corporate governance of companies. These measures have applied with immediate effect.

Among the measures introduced by the Government, certain rules introduce the possibility for the meetings of companies to be held **exclusively in digital form** without requiring the physical presence of their members<sup>1</sup> and will therefore be able to conduct such meetings in a manner that protects the health and safety of their shareholders and board members.

The following rules apply regardless **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 (ii) meeting of board of directors/managers (iii) annual general meetings and (iv) additional delay to file annual accounts including:

## (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 the meeting 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.

## **(iii) Annual General Meetings**

Furthermore, companies are allowed to convene their annual general meeting at the later of the following two dates:

- a date that is within six months after the end of its financial year, or
- a date that is within a period ending on June 30, 2020.

Any company which has already convened its meeting and which takes such a decision shall publish it and, where appropriate, notify it to its shareholders or associates or other participants in the form in which it had convened the meeting or by publication on its website no later than the third working day before the meeting.

## **(iv) Additional delay to file annual accounts**

All Luxembourg companies will automatically benefit from a relief period of 4 months to make their financial data filings at the Luxembourg Trade and Companies Register. Thus, for a company having a financial year ending on 31 December 2019, the filing of its annual accounts can be made up to 30 November 2020 (instead of 31 July) without any penalty.

As a result of such measures introduced by the Government, Luxembourg companies may continue to function as usual and hold their meetings electronically while avoiding any breach

of the provisions of their articles of incorporation or of the law.

The current environment, extent of the COVID-19 and its potential impacts is fraught with uncertainty. This makes it even more important that directors and managers are proactive in ensuring the appropriate strategies are put in place to anticipate and to mitigate the potential commercial impacts of a pandemic, and to ensure compliance with their duties and legal obligations.

For further information, please contact Ogier in Luxembourg.

1. Grand-ducal regulation of 20 March 2020 introducing measures concerning the holding of meetings in companies and in other legal persons

<http://www.legilux.lu/eli/etat/leg/rgd/2020/03/18/a165/jo>

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