

COVID-19: EXCEPTIONAL MEASURES FACILITATING THE FUNCTIONING OF CORPORATE BODIES IN BELGIUM

Regulatory framework

1. Following the outbreak of the COVID-19 pandemic, a number of corporate entities are facing difficulty to organise their ordinary shareholders meetings and the meetings of their management bodies.

Many companies have also decided to hold extraordinary shareholders meeting to adapt their articles of association to the provisions of the new Companies and Associations Code (hereinafter, the “**CAC**”) this year at the same time as their ordinary shareholders meeting.

2. In response thereto, the Belgian Government has adopted a special Royal Decree¹ (hereinafter, the “**Royal Decree**”), providing flexible short-term solutions, which are optional, for the organisation of their corporate meetings derogating to different provisions of the CAC.

Entities concerned

3. All forms of companies, non-profit organisations, contractual collective investment undertakings and legal entities governed by public law may use the possibilities introduced by the Royal Decree, as summarized below.

4. This news will focus on the application thereof to companies and will not address the specificities applicable to the other entities concerned by the Royal Decree.

Board of directors: written proceedings and telecommunication

5. The board of directors may, in all circumstances, decide **unanimously in writing**, notwithstanding any restrictions in the articles of association.

In addition, any meeting of the board of directors may be held by means of **telecommunication techniques** allowing joint deliberation, such as telephone or video conferences.

¹ Arrêté royal n° 4 du 9 avril 2020 portant des dispositions diverses en matière de copropriété et de droit des sociétés et des associations dans le cadre de la lutte contre la pandémie Covid-19. / Koninklijk besluit nr. 4 van 9 april 2020 houdende diverse bepalingen inzake mede-eigendom en het vennootschaps- en verenigingsrecht in het kader van de strijd tegen de Covid-19 pandemie.

Shareholders meetings: remote meeting or postponement

a. Remote meeting

6. Companies may require shareholders to exercise their voting rights exclusively:

- by **voting remotely** using a form made available by the board of directors or via a website, in accordance with the provisions of the CAC; and
- by giving a **proxy** to another person prior to the shareholders meeting. The board of directors may appoint one person that may act as proxy. This person can validly represent a shareholder upon receipt of specific voting instructions for each item on the agenda.

7. The voting form and/or proxy may be forwarded to the company by any means, including e-mails and scans.

8. For listed companies these documents should reach the company at the latest on the fourth day prior to the date of the shareholders meeting. Other companies may impose the same time limit.

9. The company may **limit the number of participants** to the bureau of the meeting (if any), the members of the board of directors, the auditor and the proxyholder. The meeting may be held by conference call or video conference. It is not required in such case that the Company extend such solution to the participation to shareholders or other persons having the right to participate to the shareholders meeting, if the Company cannot guarantee compliance with the COVID-19 measures applicable at the time of the meeting.

10. Companies may require the shareholders to submit their **questions in writing**, and request them to do so at the latest the fourth day prior to the meeting. In such a case the board must answer to the questions submitted by the shareholders either **in writing** at the latest on the day of the shareholders meeting (before the vote) or **during the shareholders meeting** if its shareholders are allowed to follow the meeting live or in recorded form (webcam, conference call, etc.). Listed companies that opt for answers in writing should publish these on their website. Other companies may inform their shareholders by any other means, ensuring that their shareholders are reasonably able to take note of the answers.

11. For the rest, the modalities for convening remain generally applicable.

12. Companies that would **have already convened** their shareholders meeting may amend the convening notice without having to fulfil all formalities required by the CAC:

- For listed companies: by means of a press release and on the company's website no later than the sixth day prior to the date of the meeting already convened.
- For other legal entities: by the most appropriate means.

b. Postponement of shareholders meeting

13. The board of directors may decide to postpone the annual shareholders meeting and any other shareholders meeting, even if they have already been convened. This is not allowed for meetings convened in application of the warning bell procedure ("*sonnette d'alarme/ alarmbel*"), meetings convened at the request of the statutory auditor or meetings convened at the request of shareholders. "*sonnette d'alarme/ alarmbel*" procedure, meetings convened at the request of the statutory auditor or meetings convened at the request of shareholders.

14. The postponement must be announced:

- For listed companies: by means of a press release and on the company's website no later than the fourth day prior to the date of the scheduled meeting.
- For other legal entities: by the most appropriate means.

15. In the event the board decides to postpone the shareholders meeting, all formalities must be complied with for convening the new shareholders meeting.

16. The dates for the approval, the submission of the annual accounts or where applicable, publication of the financial report have been extended with 10 weeks following the deadlines provided by the CAC or by the Royal Decree of the 14 November 2007.

Companies whose financial year ends on 31 December 2019 could therefore approve the annual accounts until 8 September and have until 8 October to file the annual accounts with the National Bank of Belgium.

c. Video- and teleconference

17. Companies can also decide to hold a general meeting by video or teleconference in accordance with the CAC, even if this is not provided by the articles of association.. In such case, the general principles for general meetings remain applicable and procedures for deliberation, questions and voting should be put in place.

d. Video- and teleconference

18. It should be reminded that decisions of the shareholders meeting may be taken unanimously in writing in accordance with the CAC, except if such possibility is excluded by the articles of association. This may be done for companies with a small number of shareholders.

Notarial deed

19. For resolutions which require a notarial deed, the Royal Decree provides that only one director or any other person appointed by the board of directors should appear before the notary in person.

Entry into force

20. The measures enter into force retroactively as from **March 1, 2020** and will be applicable until **May 3, 2020**. The Royal Decree provides for a possibility of extension by another royal decree.

21. The measures may also be applied for meetings that are convened before May 3 but which are to be held after such date

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For any question, please contact the authors:

Sandrine Hirsch: sandrine.hirsch@simontbraun.eu

Tine Bauwens: tine.bauwens@simontbraun.eu

Nikita Tissot: nikita.tissot@simontbraun.eu

Maxime Born: maxime.born@simontbraun.eu