

## Special serie COVID-19 - n°2 How to deal with corporate law questions?



**Mrs. Saskia Myners**  
Partner

[myners@mnks.com](mailto:myners@mnks.com)



**Mrs. Catherine Baflast**  
Partner

[baflast@mnks.com](mailto:baflast@mnks.com)



**Mr. Mathieu Scodellaro**  
Principal

[mathieu.scodellaro@pwclegal.lu](mailto:mathieu.scodellaro@pwclegal.lu)



**Mr. Jean-Yves Lhommel**  
Partner

[jean-yves.l.hommel@pwclegal.lu](mailto:jean-yves.l.hommel@pwclegal.lu)

In the context of the difficult, evolving situation in connection with COVID-19, most companies are currently facing unprecedented legal issues within their organisations. As a result, they have to adapt significantly their way of working to go through this unique time in the best possible and efficient manner. In order to assist you in this task, we have identified several hot topics. We will address each of these topics in a separate newsletter which will be published in the coming days, and where we will provide you with practical tips on how to efficiently deal with this situation.

A main impact of this sanitary crisis on daily life is the impossibility to gather. This constraint also applies to holding of corporate meetings.

Many companies will currently be organizing board meetings or anticipating their upcoming annual general meeting. The Luxembourg government has issued guidelines in this respect through the Grand-Ducal Regulation of 20 March 2020 introducing measures regarding the holding of meetings in companies and other legal entities (the "Regulation"). The measures introduced by the government concern general meetings of shareholders (1), meetings of other corporate bodies (2), as well as some specific measures regarding the approval and filing of financial statements (3).

### **Ability to hold general meetings of shareholders without physical attendance**

The Regulation allows any company (including regulated or listed companies) to hold any general meeting without physical attendance, notwithstanding any contrary provisions of its articles of association.

The management body may require the shareholders to exclusively participate in meetings through one of the following means:

- via remote or electronic vote, provided that the full text of the resolutions has been communicated to the shareholders; or
- through a power of attorney granted to an intermediary designated by the company; or
- via videoconference or audio conference, which must allow the identification of each shareholder.

Shareholders attending general meetings through any of such means will be considered as present for quorum and majority computation purposes.

The above provisions are also applicable to bondholders.

### **Decisions of other corporate bodies taken remotely or by circular resolutions**

The Regulation also provides that other corporate bodies i.e. management bodies, such as board of managers, board of directors and supervisory boards, may hold meetings without any physical attendance.

The available alternatives areas follows:

- Holding board meetings remotely, by conference call / video; or
- Written circular resolutions.

As for general meetings, these options are permissible even in case of silence of or contrary provision in the articles of association of the company - the Regulation will prevail, regardless of any possible restriction in the articles of incorporation.

Electronic signatures are also an option to guarantee the authenticity of the signatures. Pursuant to the EU regulation N°910/2014, electronic signatures are allowed provided that the software/tool used for this purpose is a trusted certificate provided by a certified trusted company, which ensures the security and legal validity of the electronic signing, and would be possible for any kind of document except the ones listed by the EU regulation (e.g. contracts which create or transfer rights on real property, with the exception of the rental rights, contracts for which the law requires the intervention of tribunals, public authorities or professions exercising a public authority, family law or succession contracts, etc).

### **Specific measures relating to the approval and filing of financial statements**

Notwithstanding any contrary provisions in the articles of association, any company may convene its annual general meeting at the latest of one of the following dates: (i) a date that falls within a period of six months after the end of its financial year; or (ii) a date falling within the period ending on 30 June 2020.

While this measure will have no impact on companies whose financial year ends on 31 December, it could be interesting for companies with an earlier financial year end (e.g. for a company having its financial year ending on 30 September 2019, the annual general meeting may be held up until 30 June 2020, instead of 31 March 2020).

Companies may even postpone a general meeting that would already have been convened, provided that they inform their shareholders, through the same means through which they were originally convened (e.g. letter or publication) at the latest 3 business days prior to the general meeting.

Furthermore, the CSSF [1] has offered, for supervised entities that must issue a long-form report, the possibility to file these long-form reports up until 4 months after their annual general meetings, provided that if such supervised entities want to rely on this possibility, they will not be authorised to postpone their annual general meeting as authorised by the Regulation. The CSSF is nevertheless encouraging supervised entities to file their long-form reports within the usual timeframe whenever it is possible and does not affect the quality of the audit work.

Finally, the Luxembourg Business Register has released the following statement confirming that it will grant an additional administrative extension in the deadline for filing of financial statements: “Companies will have an additional administrative period of 4 months to make their financial data filings at the RCS, at the standard rate of € 19 excl. VAT. The surcharge for late filing of financial data is exceptionally suspended, until 30/11/2020 for filing delays of up to 4 months included. Thus, for a financial year ending, for example, on 31/12/2019, the filing of annual accounts will be subject, until 30/11/2020, to the standard administrative costs of € 19 excluding VAT.”

You will find below the links to the Regulation and Luxembourg Business Register announcement.

<http://www.legilux.public.lu/eli/etat/leg/rgd/2020/03/20/a171/jo>

<https://www.lbr.lu/>

As a consequence of the above, we recommend taking the following actions in the context of the Covid-19 quarantine:

- Make reference to the Regulation in the preamble of your board decisions;
- If you plan to postpone a general meeting, or hold it in different circumstances than usual, inform the shareholders that these measures are exceptionally permitted by law (the Regulation);
- When possible, take advantage of the digital signature and sign corporate documents with Luxtrust or DocuSign, or another permitted e-signature software.