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## AVOCATS A LA COUR



### Corporate Finance & Transactional - 25 June 2020

#### **Covid-19: law of 20 June 2020 extending measures concerning the holding of meetings in companies and in other legal entities**

The law of 20 June 2020 extends the measures which had initially been adopted in a grand ducal regulation of 20 March 2020, authorizing companies and other legal entities to adopt resolutions without physical meetings (see [our newsletter of 23 March 2020](#)).

The law was published in the Official Journal on 25 June 2020 and entered into force on the same day.

#### **Context and legal basis**

In the context of the Covid-19 crisis, on 18 March 2020 the Luxembourg government declared the state of crisis on the basis of article 32 (4) of the Constitution. This decision was confirmed by a law of 24 March 2020, extending the state of crisis for a period of three months. Since the state of crisis and the temporary measures adopted by grand ducal regulations during the crisis are now expiring, some of these measures are being extended by a series of laws adopted by Parliament. This is notably the case of the law of 20 June 2020, which extends (and slightly adapts) the measures initially adopted on 20 March 2020.

The new law also has to be seen in the context of the law of 22 May 2020 providing for the extension of certain submission and publication deadlines concerning annual accounts, consolidated accounts and reports related thereto (see [our newsletter of 3 June 2020](#)).

#### **General meetings of shareholders**

Companies may require, even in the absence of a provision to this effect in the articles of incorporation, and without regard to the expected number of participants in the general meeting, that any general meeting is held without a physical meeting, and they may impose on their shareholders and members and on other participants in the meeting to take part in the meeting and to exercise their voting rights in one or several of the following manners:

- by remote vote in writing or electronically in a form allowing for their identification, provided

that the full text of the proposed resolutions or decisions has been published or communicated to them; or

- by videoconference or other means of telecommunication allowing for their identification.

The shareholders, members or other participants may also participate in the meeting and exercise their rights through the intermediary of a proxyholder appointed by the company.

The above rules apply to listed and non-listed companies. In addition, with respect to listed companies, if a shareholder, member or other participant has appointed a proxyholder other than the one referred to above in accordance with article 8 of the amended law of 24 May 2011 on the exercise of certain rights of shareholders in general meetings of listed companies, this proxyholder may participate in the meeting only in the manners referred to in (i) and (ii) above.

The shareholders or members participating by any such means are deemed present for the calculation of quorum and majority at the meeting.

The above rules also apply to meetings of bondholders.

### **Meetings of other corporate bodies (in particular board of directors, board of managers, supervisory board)**

Notwithstanding any provisions to the contrary in the articles of incorporation, and without it being required that the articles of association provide for this possibility, the other corporate bodies ("*organes sociaux*") of a company may hold their meetings without a physical meeting:

- by written circular resolutions; or
- by videoconference or other means of telecommunication allowing for the identification of members participating in the meeting.

The members participating by any such means are deemed present for the calculation of quorum and majority at the meeting.

### **Reconvening of general meeting of shareholders**

Any company which has convened its general meeting in accordance with the terms applicable prior to the coming into force of the grand ducal regulation of 20 March 2020 and which decides to reconvene the general meeting in accordance with the terms provided for in the new law, has to publish its decision and, as the case may be, notify the shareholders, members and/or other participants in the form in which it had convened this meeting, or by publication on its website, at the latest on the third working day preceding the meeting.

### **Date of meetings**

The new law applies to meetings held during the period mentioned in article 3 of the law of 22 May 2020 providing for the extension of certain submission and publication deadlines concerning annual

accounts, consolidated accounts and reports related thereto (as referred to above). This article provides that the annual general meeting of the undertakings referred to in article 8 of the Luxembourg commercial code (*Code de Commerce*) may be convened at a date within nine months after the end of their financial year.

In practice, this means that companies may hold their meetings in accordance with the new law during a period ending nine months following the end of the last financial year (*i.e.* 30 September 2020 for companies whose last financial year ended on 31 December 2019).

### **Legal entities other than companies**

The above rules are also applicable to economic interest groupings ("*groupements d'intérêt économique*") and European economic interest groupings ("*groupements européens d'intérêt économique*"), as well as to non-profit associations and foundations ("*associations et fondations sans but lucratif*") governed by the law of 21 April 2020 and some other legal entities.

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