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AVOCATS A LA COUR



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Covid-19: new law of 23 September 2020 regarding the holding of meetings in companies and other legal entities (the “Law”)

The purpose of the new Law is to extend the existing measures regarding the holding of meetings during the Covid-19 pandemic for a further period of three months, until the end of the year.

These measures had initially been adopted in the grand ducal regulation of 20 March 2020, which authorised companies and other legal entities to adopt resolutions without physical meetings. They had been extended by a law of 20 June 2020, for a period expiring on 30 September 2020 (see [our newsletter of 25 June 2020](#)).

The new Law was published in the Official Journal on 23 September 2020 and will enter into force on 1 October 2020. It shall produce its effects until (and including) 31 December 2020.

Context and background

The law of 20 June 2020 was adopted to provide for a legal regulation of the temporary measures initially included in the grand ducal regulation of 20 March 2020.

As (i) the Covid-19 pandemic continues to affect the corporate governance of companies and other legal entities in Luxembourg and (ii) the measures and provisions of the law of 20 June 2020 will expire on 30 September 2020, it has been decided to further allow the holding of meetings of corporate bodies of companies and other legal entities without a physical meeting until 31 December 2020.

The prolongation of the possibility to hold meetings without physical presence is justified by the current sanitary measures in place, which have also been extended by a (separate) law of 23 September 2020. It is important to allow the corporate organs of a company or a legal entity to proceed with non-physical meetings in order to maintain the proper government and management

of the companies and legal entities.

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:

1. 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
2. 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 1. and 2. 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:

1. by written circular resolutions; or
2. 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.

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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