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AVOCATS A LA COUR



Corporate Finance & Transactional - 3 June 2020

Covid-19 pandemic and its impact on annual general meetings, filings of annual accounts and meetings of Luxembourg companies

As a result of the Covid-19 outbreak, the Luxembourg government declared the state of crisis on 18 March 2020. The state of crisis was confirmed for a three month period by a law which was adopted and published on 24 March 2020. In connection therewith:

- on 20 March 2020, the grand ducal regulation introducing measures regarding meetings of corporate organs of companies and other legal entities entered into force (the “**Grand Ducal Regulation**”);
- on 27 March 2020, the Ministry of Justice submitted to Parliament the bill of law nr 7541 regarding the extension of deadlines for the filing and publication of annual accounts, consolidated accounts and reports related; this bill resulted in a law of 22 May 2020 which was published in the Official Journal (*Mémorial*) on 29 May 2020 (the “**Law of 22 May 2020**”);
- on 21 April 2020, the Ministry of Justice submitted the bill of law nr 7566 regarding the extension of measures regarding meetings in companies and other legal entities (the “**Bill of Law nr 7566**”).

A) Grand Ducal Regulation of 20 March 2020

1) General meetings of shareholders without physical presence, and possibility of postponement

According to article 1 (1) of the Grand Ducal Regulation, “*companies may require, notwithstanding any provisions 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 exclusively:*

- 1. by remote vote in writing or electronically, provided that the full text of the proposed resolutions or decisions has been published or communicated to them;*
- 2. through the intermediary of a proxyholder appointed by the company; or*

3. *by videoconference or other means of telecommunication allowing for their identification.*”

These rules apply to listed and non-listed companies.

According to article 1 (3) of the Grand Ducal Regulation, “*notwithstanding any provisions to the contrary in the articles of incorporation, any company is authorized to convene its annual general meeting for the later of the following dates : (i) a date within the period of six months following the end of the preceding financial year; or (ii) a date within the period ending on 30 June 2020.*”

2) *Meetings of other corporate bodies*

Article 1 (2) of the Grand Ducal Regulation states that “*notwithstanding any provisions to the contrary in the articles of incorporation, the other corporate bodies (“organes sociaux”) of a company may hold their meetings without a physical meeting (i) by written circular resolutions or (ii) 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.*”

For more details on this regulation, please refer to our newsletter of [23 March 2020](#).

This Grand Ducal regulation is an emergency regulation and remains in force only as long as the state of crisis continues. If the state of crisis in Luxembourg is not extended beyond 24 June 2020, the Grand Ducal Regulation shall cease to be in force at the end of the state of crisis.

It should also be noted that a Grand Ducal regulation of 29 May 2020 amended the regulation of 20 March 2020, in order to bring it in line with the new Law of 22 May 2020 (see below). In particular, following the entry into force of the Law of 22 May 2020, article 1 paragraphs (3) and (4) of the regulation shall no longer be applicable to undertakings referred to in article 8 of the Luxembourg commercial code.

B) Law of 22 May 2020

The Law of 22 May 2020 provides for the extension of certain submission and publication deadlines concerning annual accounts, consolidated accounts and reports related thereto during (and to some extent after) the state of crisis.

1) *Extension for deadlines for filing and publication of annual accounts and related documents*

The following deadlines as provided for in (i) the law of 19 December 2002 regarding the trade and companies register as well as the accounting and the annual accounts of companies, as amended (the “**2002 Law**”), and (ii) the law of 10 August 1915 on commercial companies, as amended (the “**1915 Law**”), are extended for a period of three months:

- deadline for filing of the annual accounts in accordance with article 75 paragraph (1) of the 2002 Law;

- deadline for publication of the annual accounts as well as the reports related thereto in the electronic journal of the trade and companies' register ("**RESA**") in accordance with article 79 paragraph 1 of the 2002 Law;
- deadline of publication of the report on payments made in favour of governments on the RESA in accordance with article 72*septies* of the 2002 Law;
- publication of consolidated accounts and reports related thereto as mentioned in article 1770-1 paragraph 1 of the 1915 Law;
- deadline for publication of the consolidated report on payments made in favour of governments in the RESA in accordance with article 1760-4 of the 1915 Law; and
- the deadlines mentioned in article 1500-2 of the 1915 Law.

2) Postponement of general meetings of shareholders

According to article 3 of the Law of 22 May 2020, the annual general meeting of the undertakings referred to in article 8 of the Luxembourg commercial code (*Code de Commerce*) can be convened at a date within nine months after the end of its financial year.

In practice, this means that companies will exceptionally have to hold their annual general meeting within nine months (instead of the usual six months) following the end of the financial year, *i.e.* until 30 September 2020 for those companies whose last financial year ended on 31 December 2019. After the meeting they will have one month for the filing of the accounts (and of other documents as referred to above) with the trade and companies register.

3) Application

Article 5 of the Law of 22 May 2020 states that the law shall apply only to annual accounts, consolidated accounts as well as to the related reports and to general meetings which refer to a financial year for which the deadline for filing and publication of the accounts or the holding of the general meeting had not yet expired by 18 March 2020.

C) Bill of Law nr 7566

The Bill of Law nr 7566 provides for the extension of measures regarding meetings in companies and other legal entities. Its objective is to extend the effects of the Grand Ducal Regulation regarding the means employed for the holding of shareholders' meetings and other meetings of corporate organs of legal entities for a couple of months beyond the end of the state of crisis.

Article 1 paragraphs (1) and (2) of the Bill of Law nr 7566 is identical to the wording of Article 1 paragraphs (1) (2) of the Grand Ducal Regulation (see above).

Article 1 (3) of the Bill of Law nr 7566 takes into account that a company might have convened a shareholders' meeting in accordance with article 1 (1) of the Grand Ducal Regulation and contrary to the provisions of its articles of association, and that the state of crisis ends before the

shareholders' meeting is actually held.

If, for example, a public limited liability company (*société anonyme*) or a limited liability company (*société à responsabilité limitée*) holds a shareholders' meeting by way of videoconference and such option is not foreseen in the articles of association, such meeting would be contrary to the articles of association and to corporate law. If the state of crisis ends, the Grand Ducal Regulation and hence the legal basis for the convening of the meeting comes to an end as well.

According to Article 1 (3) of the Bill of Law, it is therefore possible for the company to publish a notice or – as the case may be – to notify its shareholders or other participants to the shareholders' meeting in the form in which the meeting was convened or by way of publication on its internet site, at the latest three business day in advance of the meeting, with a reference to Article 1 (3) of the Bill of Law.

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