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ASSURANCE INSIGHTS MARCH 2020: LOCKDOWN : HOW TO ORGANIZE DIRECTORS' AND SHAREHOLDERS' MEETINGS

Following the COVID-19 outbreak and the recently imposed lockdown, companies might find themselves in precarious circumstances hindering the organization of physical board meetings and the annual general meeting of shareholders. Current legislation and the company's articles of association may however contain certain possibilities allowing remote participation via electronic means or the use of written resolutions in order to avoid or reduce the physical presence at these meetings.

1. DECISIONS OF THE MANAGEMENT BODY

The Belgian Code on Companies and Associations (hereafter, "BCCA") is rather flexible and does not require board members to gather in a physical setting. It is therefore allowed to hold board meetings **through electronic means**, to the extent that the articles of association do not exclude this process.

The company's management body is likewise allowed to take all decisions unanimously in writing on the sole condition that the articles of association do **not exclude or restrict this written decision-making process**.

2. SHAREHOLDERS' MEETING

2.1 ADJOURNMENT OF THE ANNUAL ORDINARY GENERAL MEETING OF SHAREHOLDERS

The Board of Directors must inform the members of the General Meeting that the AGM is adjourned and will not be held on the statutory date due to the current exceptional circumstances of the lockdown. This announcement must be made in accordance with the prescribed formalities and deadlines provided for convening the adjourned general meeting. The Board does not yet have to propose a new date for the AGM, but has to clearly mention that the shareholders will be convened within the timeframe as prescribed by the BCCA.

2.2 ELECTRONIC PARTICIPATION TO THE SHAREHOLDERS' MEETING – ART. 5:89 (LLC) – 6:75 (CC) – 7:137 (PLC)

The BCCA offers companies the possibility of remote participation in the general meeting by means of **electronic communication** made available by the company, provided that the company's articles of association effectively allow for such remote participation. Shareholders participating in the annual meeting through such means are considered to be present at the place where the meeting is being held in order to meet the quorum and majority

requirements. The electronic communication device as described hereabove should allow the company to confirm the capacity and identity of the shareholder wishing to participate in the general meeting. Furthermore, the precise procedure and conditions for the remote participation need to be set out in the articles of association. Additional clauses in the company's bylaws could further specify the means as to confirm the shareholder's actual presence at the assembly, as well as the framework in order to guarantee the safety of the communication device.

Within the context of the paragraph hereabove and without prejudice to any further restrictions imposed by or under the law, the chosen means of electronic communication would have to allow a direct, simultaneous, and uninterrupted possibility for all participants to take note of the ongoing discussions and, for the shareholders, to exercise their voting rights regarding all items on the agenda of the AGM.

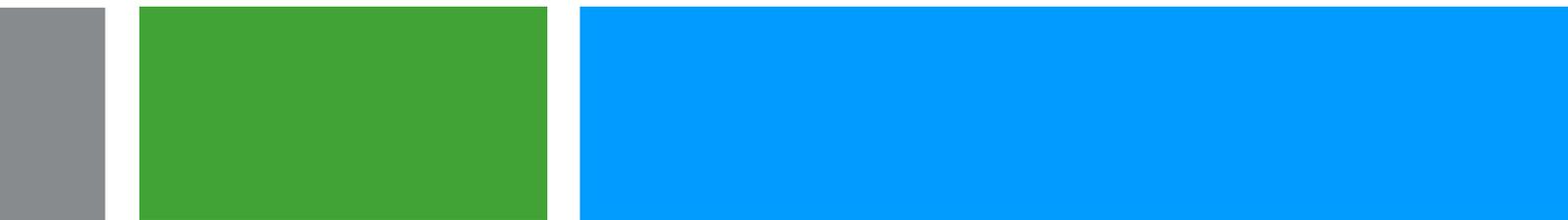
The company's articles of association may provide in the possibility that the electronic communication device also enables the shareholders to participate in the deliberations and to exercise their right to ask questions during the meeting.

The convocation to the general meeting should clearly mention said possibility of participating remotely through electronic means, together with a detailed description of the procedure for such electronic participation as laid down in the company's articles of association.

Note however that remote participation to the shareholders' meeting as set forth in the BCCA has not been formally extended to the non-profit sector. The rather exceptional circumstances urging the need of remote participation and awaiting the Royal Decree as mentioned here below in paragraph three, make it however plausible that these meetings could likewise be held remotely through electronic means. As in the other cases, the chosen means of the electronic communication device must allow for a verification of the participant's identity and his continuous presence during the meeting. It is recommended that both the exceptional circumstances under which the meeting was deemed necessary alongside the procedure of how the participants' presence was organized, are duly noted in the meeting's minutes (who was present, who voted and how, questions, etc).

2.3 WRITTEN DECISION-MAKING : ART. 5 :58 (LLC) – 6:71 (CC) – 7:133 (PLC)

The shareholders may unanimously and in writing take all decisions that fall within the powers of the general meeting barring those decisions that need to be recorded in an authentic notarial deed. The written procedure does not require the usual convocation



formalities. The company's directors, the statutory auditor, bondholders or any other titleholders can consult the content of these written decisions on their request.

The written-decision making procedure has once again not been extended for entities in the non-profit sector. Given the exceptional circumstances which may urge the need for this procedure and pending a royal decree referred to in paragraph three of this document, the meeting could be held by means of unanimous written resolutions, provided that the number of members are scarce enough to justify such a meeting.

2.4 POSSIBILITY TO APPLY ARTICLE 5 :99 (LLC) - 6 :84 (CC) – 7 :150 (PLC) OF THE BCCA – AGM POSTPONEMENT OF MAXIMUM 3 WEEKS

During the meeting, the management body shall have the right to adjourn the resolution on the approval of the annual accounts for three weeks. For listed companies, such period shall amount to five weeks. The right to adjourn the general meeting while it is in session is a prerogative of the Board of Directors. In limited liability companies and public limited companies, the directors can decide individually.

The right to adjourn the AGM can only be exercised at the general meeting during which the annual accounts are submitted for approval (annual general meeting). The directors present at the general meeting ask the chairman to interrupt and adjourn the meeting. This decision does not have to be motivated. Nevertheless, the board of directors must exercise the right of postponement in the interest of the company, and not merely in its own interest. The chairman then declares that the general meeting as adjourned. The adjournment of the annual general meeting does not only result in the deletion of the agenda items relating to the approval of the annual accounts but also of all the items connected with those, such as the discharge to the board of directors and the statutory auditor. Other decisions remain valid, unless the general meeting decides otherwise. The next AGM shall take place three weeks (maximum) after the original date of the first general meeting. This possibility is once again not provided to entities in the non-profit sector.

3. IMPORTANCE FOR THE FUTURE

Discussions between the accounting professions and the Minister of Justice are currently taking place examining whether and potentially which measures could be taken to soften these formal obligations for

all companies (both listed and unlisted) and associations.

A Royal Decree which is currently being drafted should introduce the opportunity for companies to postpone their general meetings and/or alter their voting rules and the AGM participation requirements, even if the convening notice would have already been published.

This Assurance Insights will be updated regularly with respect to the latest developments.

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