

Royal Decree on General Shareholders' Meetings and Board Meetings in the context of Covid-19

9 April 2020

General

- In response to the issues faced by various companies in organising shareholders' meetings and board meetings in the context of Covid-19, the Belgian government has published a [new Royal Decree](#) today which provides in a number of exceptional measures of limited duration (applying for an (extendable) period from 1 March up to 3 May 2020) to ensure proper functioning of these corporate bodies (the **Royal Decree**).
- The Royal Decree offers companies the following 2 options with respect to any upcoming (annual) general shareholders' meetings (**GMs**), which have already been convened or are to be convened prior to 3 May 2020:
 - hold the GM remotely (even if this possibility is not provided for in the articles of association, through proxy or remote (electronic) voting by shareholders; this option also applies for GMs to be held after 3 May 2020, insofar as their convocation took place prior to this date); or
 - postpone the annual GM (by up to 10 weeks after applicable legal deadlines) and any convened extraordinary/special GM (within certain limits).

We discuss each of these 2 options further below.

- In addition, the Royal Decree clarifies that all board meetings may be held by unanimous written resolutions or through any form of telecommunication allowing for joint deliberation (even if no statutory authorisation exists and notwithstanding any statutory provision to the contrary).

Scope

In-scope entities: Any company, association, legal person governed by the Belgian Code of Companies and Associations (the **BCCA**), the (old) Belgian Companies Code and the 27 June 1921 Law on non-profit associations, foundations, European political parties and European political foundations, any professional union, European economic interest groupings, collective investment undertakings established by contract and any legal person incorporated under a law or a particular regulation which has a management body and/or a GM. (This scope may be expanded through a further royal decree to companies whose shares/certificates are traded on MTFs/OTFs.)

Time: The provisions of the Royal Decree apply for the period from 1 March 2020 up to 3 May 2020 (extendable). The Royal Decree clarifies that its provisions also apply to GMs to be held after 3 May 2020 insofar as if they are convened before this date.

Holding a GM remotely

Prior to the GM – Voting remotely / Proxy

Even without statutory authorisation, the board may require shareholders to exercise their respective rights in respect of a GM exclusively:

- by voting remotely prior to the GM through a form made available to them by the board, or on the company's website, in accordance with the relevant procedure set out in the BCCA (insofar as this is not contrary to the provisions of the Royal Decree); and/or
- by granting a proxy prior to the GM, in accordance with the relevant provisions of the BCCA (insofar as this is not contrary to the provisions of the Royal Decree). In this context, the board may require the shareholders to appoint any person designated thereto by the board (with application of the conflict of interest procedure insofar as relevant) as proxyholder (the **Designated Proxyholder**). The Designated Proxyholder may exercise the voting right on behalf of the shareholder only if he/she has received specific voting instructions for each item on the agenda. If the company has already received a valid proxy containing specific voting instructions, but for which the proxyholder is not the Designated Proxyholder, the votes or abstentions expressed in application of this proxy shall be taken into account, without the need for that proxyholder to be present.

Attendance formalities: The aforementioned form and/or proxy, once supplemented and executed, must be sent to the address indicated by the company and this may be done by "all possible means" (including through email attaching a photograph or scan of the supplemented/executed form or proxy). For listed companies holding the GM, these documents must reach the company by no later than on the 4th day preceding the date of the GM. Other companies holding a GM may, however, also impose the same deadline (ie require that the documents reach them by no later than on the 4th day preceding the date of the GM).

No physical presence / electronic participation / right to ask questions: If the board adopts this option:

- the board may prohibit any physical presence of shareholders (or proxyholders) at the location of the GM, when the company cannot guarantee that it will be able to comply with the measures imposed due to the Covid-19 pandemic which are in force at that time;
- the board may make available to the participants in any GM electronic means of communication in view to their electronic participation at the GM in accordance with the relevant provisions of the BCCA (even if this possibility is not provided for in the articles of association); and
- the board may require that shareholders exercise their right to ask questions only in writing at the latest by the 4th day prior to the date of the GM. The company must answer the written questions (i) in writing at the latest on the date of the GM, but before the vote, or (ii) orally, during the GM if the board opts for a live or a recorded (by audio or videoconference) broadcast of the GM in a manner accessible to any person entitled to participate to the GM. The answers, if given in writing, shall (i) for listed companies, be published on their website and (ii) for other companies, be published in manner reasonably allowing the persons entitled to participate in the GM to acknowledge the answers.

Specific rule for listed companies: Listed companies are exempt from any obligation to communicate the convening notice and other documents to be made available to shareholders (and other persons entitled to receive them) by regular mail.

At the GM – Electronic holding of the GM

The Royal Decree clarifies that in the event the board decides to allow the shareholders to vote remotely and/or through proxy, the members of the bureau of the GM (if applicable), the members of the board, the auditor and, as the case may be, the Designated Proxyholder may validly participate remotely, for example, by means of telephone- or videoconference, and fulfil their duties with respect to the GM in this

manner. The Royal Decree does not require the companies to organise such means of electronic participation for the shareholders.

For extraordinary GMs requiring the involvement of a notary public, it suffices that (i) one board member (or any other person) holding the relevant mandate (in the event of remote voting) or (ii) the Designated Proxyholder physically appears before the notary to execute the deed.

GM already convened?

If the GM has already been convened on the date that the Royal Decree (retroactively) enters into force, the convening notice (which has already been published or sent) may be amended in order to implement the above options provided for in the Royal Decree or to change the location of the GM, and this without application of any legally and/or statutory required convening and attendance formalities.

Such modification must be notified to the shareholders (i) for listed companies, by means of a press release and on the company's website, at the latest on the 6th day before the date of the GM and (ii) for other companies, by any means appropriate in the circumstances to notify the shareholders (eg website, email or by mail if no email address is available).

Postponement of the GM

Annual GM

The board may postpone the annual GM and the approval of the annual accounts until a later date, ie up to 10 weeks after the applicable legal deadline (eg 10 weeks after 30 June 2020 for companies governed by the BCCA with financial years ending on 31 December, which means up to 8 September 2020; ie 10 weeks after the 6-month deadline for approval of the annual accounts (see article 3:1 §1 of the BCCA)). The board may decide on this even if the annual GM has already been convened beforehand.

In the event of such postponement, the following legal deadlines shall, among others, also be extended for 10 weeks each:

- period for filing annual accounts and related documents (ie 7-month period for companies governed by the BCCA (see articles 2:99, 3:10, 3:12 §1, 3:13, 3:26 §2 and 3:35 of the BCCA), hence, eg up to 10 weeks after 31 July 2020 for those companies with financial years ending on 31 December, which means up to 9 October 2020); and
- for listed companies, periods applicable for the publication of periodic financial information pursuant to articles 12 to 14 of the royal decree of 14 November 2007 (among others, 4-month period for the annual financial report and 3-month period for the half-yearly financial report).

Formalities: Such postponement must be announced (i) for listed companies, by means of a press release and on the company's website, at the latest on the 4th day prior to the date of the annual GM and (ii) for other companies, by any means appropriate in the circumstances to notify the shareholders (eg website, email or by mail if no email address is available). The postponed annual GM will be considered to be a "new" annual GM for the application of rules relating to convening, attendance formalities, proxies, remote voting and all other applicable modalities.

Please note that the Royal Decree contains specific rules applicable to foreign companies with a branch in Belgium.

Extraordinary / Special GMs

The board of directors may postpone any GM (other than the annual GM), which has already been convened, to the date of its choice, except for companies where:

- the net assets are likely to become or have become negative,
- the GM has been convened by or at the request of the statutory auditor;
- the GM has been convened at the request of the shareholders.

Please note that if one of the above exceptions apply, the relevant GM may still be held remotely (as set out at point 1. above).

Formalities: Such postponement shall be announced (i) for listed companies, by means of a press release and on the company's website and (ii) for other companies, by any means appropriate in the circumstances to notify the shareholders (eg website, email or by mail if no email address is available). The postponed GM will be considered to be a "new" GM for the application of rules relating to convening, attendance formalities, proxies, remote voting and all other applicable modalities.

If you would like to discuss any of the points covered in our ePublication in more detail, please let us know.

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