

Amendments to Belgian corporate law to facilitate remote shareholders' meetings

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Since the outbreak of the COVID-19 pandemic, the provisions of the Companies and Associations Code (the "CAC") on the functioning of corporate bodies have proved to be too restrictive, particularly with regard to the remote organisation of shareholders' meetings for listed companies or companies having many shareholders.

FACILITATING REMOTE SHAREHOLDERS' MEETINGS

Following the Royal Decree No. 4 of 9 April 2020 (as extended by the Royal Decree of 28 April 2020) which has expired, [the Law of 20 December 2020](#) has been adopted notably to facilitate the remote shareholders' meetings of companies and (international) non-profit associations (A(I)SBL/(I)VZW) on a long-term basis.

In its current version, the CAC required a specific authorisation in the articles of association to organise a shareholders' meeting using electronic means of communication. This requirement disappears with the newly adopted measures (for the SA/NV, see the new text of article 7:137 of the CAC).

For all companies (listed or not) and associations ("ASBL"/"VZW"), the option to hold a remote shareholders' meeting is now at the discretion of the management body. However, the meeting will always need to be held at the same time in a "presential" form. Consequently, unlike what was provided for in the Royal Decree no. 4, directors may not refuse the physical presence of shareholders at the meeting.

Members of the bureau are required to participate in person. The directors and, where applicable, the statutory auditor can attend remotely provided they are able to answer the shareholders' questions with the used communication means.

CONDITIONS TO ORGANISE REMOTE SHAREHOLDERS' MEETINGS

Several conditions have to be met by companies and associations wishing to organise a remote shareholders' meeting:

- The entity must be able to verify the capacity and identity of its shareholders/members. The means used should be adapted to the shareholding/membership structure. The Parliamentary works list as examples: Teams, Zoom, Skype or a similar system.

- The convening notice to the shareholders' meeting must contain a clear and precise description of the procedure to participate remotely. If the company or the ASBL/VZW has a website, the procedure must be made accessible on it.
- A "two-direction" communication is mandatory. Accordingly, shareholders or members must be able to directly, simultaneously and continuously follow discussions, exercise their voting rights, actively participate in the debates and ask questions. However, the new regulation allows for a one-way communication – not allowing shareholders or members to actively participate in the discussions – until 30 June 2021 provided it has valid reasons to do so which are justified in the convening notices. Shareholders or members who wish to actively participate in the discussions will then have to attend the meeting in person.

OUR ANALYSIS

The Covid-19 outbreak has proved the importance to dispose of legal and technical resources to organise remote participation and voting to shareholders' meetings. In addition, remote participation may encourage certain shareholders to participate in shareholders' meetings. From this perspective, the adaptations made to the CAC are welcome.

However, contrarily to the measures taken during the first lockdown, the legislator did not leave a certain margin of appreciation to allow the management body to prohibit shareholders' physical presence. Thus, shareholders' meetings will, at most, remain hybrid meetings. This may be problematic if the social distancing measures are extended for several months, especially as the period for organising the shareholders' meetings, notably for listed companies, is coming. One way to limit the number of shareholders present in person may be to encourage the granting of proxies to a single person suggested in the convening notices.

In addition to the amendments concerning remote meetings, the newly adopted measures extend to the members of an ASBL/VZW the possibility to (i) take unanimously and in writing all decisions which fall within the powers of the shareholders' meeting, except for the amendment of the articles of association and (ii) to vote at a distance before the shareholders' meeting by way of electronic means if the articles allow it.

The amendments summarised above entered into force on 24 December 2020.

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