

COVID-19 NEWS OF INTEREST

More flexibility for shareholders' and board meetings during lockdown in Belgium

April 17, 2020

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1. On 9 April 2020, a Belgian Royal Decree was adopted and published providing for specific measures related to conducting shareholders' and board meetings of Belgian companies and associations in the context of the current COVID-19 pandemic.

These measures are optional. They apply only if opted for by the board and only to meetings (to be) convened or held between 1 March and 3 May 2020 inclusive, subject to possible time extension by the Belgian government (hereafter referred to as the "lockdown period"). If a company adopts the measures, the latter will apply despite any contrary provisions in the company's articles of association. They do not apply to meetings already held.

Note that convening notices that have already been announced or sent out may be modified in order to benefit from the temporary rules set out in the Royal Decree.

2. As to general meetings of shareholders, the measures entitle the board to opt for the meeting (a) to be held during the lockdown period without physical presence of the participants period or (b) to be postponed until after the lockdown period.
 - (a) If the board chooses the first option, i.e. to prohibit physical participation in the meeting, the participants must be allowed to vote remotely prior to the meeting through a voting form (made available by the board of directors or via website) or through the appointment of a special proxyholder with specific voting instructions. The proxy must contain voting instructions for each point on the agenda.

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Alternatively, the meeting may be held via videoconference or any other proper means of electronic communication (regardless of any statutory authorization).

Members of the bureau, as well as members of the board, the statutory auditor of the company and the aforementioned proxyholder (if any) may attend the meeting by telephone or videoconference. If social distancing rules can be followed, they may also meet physically.

(b) If the board chooses to postpone the physical meeting, the Royal Decree provides for a 10-week extension for some specific legal deadlines, such as the deadline to submit the annual accounts. For shareholders' meetings other than the annual meeting, no postponement limit is foreseen, except that such meetings may not be postponed (i) if they relate to the so-called alarm bell procedure in case of negative net assets or (ii) if they have been convened at the request of the auditor or of holders of at least 10% of the shares/capital.

3. As to board meetings, they may, during the lockdown period and as an alternative to the ordinary rules, be either held by conference call or videoconference (or any other proper electronic communication means) or replaced by unanimous written resolutions.
4. On a final note, it is worth observing that the above optional measures during the lockdown period are subject to some particular rules or limits regarding:
 - the way the board should communicate the selected measures to the shareholders and to any other participants in the meeting. If the measure under 2(a) is elected, the initial convening notice, if already sent, can be amended accordingly without having to be re-sent, on the condition that such amendment comes to the knowledge of the shareholders and of any other participants. The same condition applies to the postponement decision if opted for under 2(b). In this respect, the Royal Decree mentions that such knowledge or information must be given "to the extent possible" by the most appropriate means. This unusual expression could mean that it entails a duty of means (*obligation de moyens - middelenverbintenis*) rather than a duty of result (*obligation de résultat - resultaatsverbintenis*);
 - the way to ask and answer questions at a virtual shareholders' meeting if option 2(a) is chosen. In this case, the board may require that any question be asked in writing and/or at the latest four days prior to the shareholders' meeting. The board must then answer the questions in writing prior to any voting and efficiently inform all shareholders and any other participants of such answers. The answers may also be given orally during the meeting if the latter is accessible to all via conference call or videoconference;
 - shareholders' or board meetings when they need to be held in front of a notary public by virtue of law. In such case, the physical presence of at least one person, for instance a special proxyholder, is still required;

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- listed companies that may also benefit from the above optional measures, subject, however, to some specific additional requirements, such as earlier notices or information to shareholders (four or six days beforehand, as the case may be), publication on their website and/or via press release, etc.;
- branches of foreign companies. The latter can indeed also, under certain circumstances, benefit from the 10-week extension mentioned above under 2(b).

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If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.

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