

CLIENT ALERT

Remote Shareholders' Meeting: FAQs

May 20, 2022

AUTHORS

Jean-Quentin De Cuyper | Diego Lambrecht

At a time when many annual shareholders' meetings are taking place, some questions arise as to whether they can be held remotely, and under what conditions. The COVID-19 pandemic has triggered new rules in this respect¹, some of which have been confirmed or tweaked more permanently in Belgian law. This paper will focus on a few tips and tricks on that topic, it being specified that this does not replace a full and tailored advice.

1. What is a remote meeting? May shareholders, for instance, use a WhatsApp vocal note?

What we commonly call in Belgium a "remote", or sometimes also a "virtual", "digital", or "electronic" general meeting actually refers to the possibility of participating remotely through electronic communication made available by the company whose general meeting is convened.

One thinks first about a video-conference (e.g., via Zoom or Teams) or a conference call. But a written meeting, particularly via an instant messenger or chat (e.g., a WhatsApp group), is a possibility too, under certain circumstances. In such a case, may one participant send a WhatsApp vocal note to the others as part of the meeting? Although such vocal note does not, technically speaking, seem to meet the legal requirement of a real-time transmission (see below), there are nevertheless good arguments in favor of saying yes.

In any case, some minimal modalities must be observed in the case of remote participation. They mainly aim at ensuring the identity of the participants as well as that the transmission, communication and vote (if applicable) are in real time.

¹ For more details, we refer to our previous client alert published about two years ago, available [here](#).

Remote Shareholders' Meeting: FAQs

What about a secret vote? This is now also possible remotely: modern tools and programs exist nowadays for this.

2. Can all Belgian companies enable remote shareholders' meetings?

Yes, provided that it is the management body (*i.e.*, usually the board of directors) that convenes the meeting and, if the company is a Belgian “partnership” (*société de personnes / personenvennootschap*), that its articles of association do not explicitly prohibit such remote participation (See Section 4 below).

3. In the absence of any express authorization in the articles of association, may Belgian companies decide that a shareholders' meeting can be held remotely?

It should first be clarified that if the company's articles of association provide that the shareholders' meeting can be held remotely, then it can be, of course.

But even if the articles of association are silent on this matter, the management body, usually the board of directors, may nevertheless suggest remote general meetings. In Belgian “partnerships”, such power is moreover not limited to the management body only but also extends to any other person or body entitled to convene the general meeting.

4. May the articles of association explicitly restrict or prohibit remote meetings?

The recommended way, in the case of such statutory restriction or prohibition, is to amend the articles of association in order to delete that restriction or prohibition and make remote meetings (explicitly) possible.

However, even if the articles are not amended accordingly, it can be argued, although this is debated in legal doctrine, that in most companies and associations, the management body may nevertheless decide to allow remote meetings despite the statutory restriction or prohibition. The justification behind such position basically lies in the fact that the Belgian legal provisions enabling remote general meetings should be considered as mandatory (or even as public policy, under certain circumstances), and that therefore they may not be deviated from in the articles of association.

The above does not apply to Belgian “partnerships” (*sociétés de personnes / personenvennootschappen*) because there is no explicit (mandatory) legal rule allowing remote meetings in such companies. Remote meetings are nevertheless permitted in such companies, but on another basis – particularly on common sense – and to the extent not expressly prohibited in the articles of association.

5. May the articles of association reinforce the procedure of remote meetings in favor of the participants? For instance, can the management body be *required* to allow remote participation?

Imagine that the articles of association provide that the management body is not merely *authorized* (as is currently the case in the Belgian Code of Companies and Associations for most company types) but instead *obliged* to always enable

Remote Shareholders' Meeting: FAQs

remote participation. Or imagine that the articles of association provide that remote meetings may be authorized, not only by the *management body* (as is currently the case in the Belgian Code of Companies and Associations for most company types), but also by *any other person or body* entitled to convene the general meeting.

These two examples of statutory reinforcements of the procedure of remote general meetings go further than the minimal legal framework, but support such meetings and are therefore admitted (and even recommended).

6. Who can decide that a shareholders' meeting may be held remotely?

In Belgian companies and associations other than “partnerships”, only the management body, *i.e.*, generally the board of directors, has the right to decide to enable participants to attend the general meeting remotely.

However, the articles of association could extend such right to other persons or bodies too. This may be useful because it is not always the management body that convenes the general meeting: it can also be, under certain circumstances, the company's auditor or liquidator, or any person to whom the articles of association – or the internal regulations (*règlement d'ordre intérieur / intern reglement*) – grant the right to convene the general meeting.

If the articles of association do not extend the right to allow remote meetings to these other persons or bodies, the latter may nevertheless have such right, but only in the case of serious and exceptional situations jeopardizing public health and preventing the participants from being physically present (except if expressly prohibited by the articles of association).

The above restrictions do not apply to Belgian “partnerships”, where remote general meetings can be permitted by anyone entitled to convene the meeting except if otherwise provided in the articles of association or in the internal regulations.

7. Who is authorized to participate remotely?

In Belgian companies and associations other than “partnerships”, if remote participation is authorized by the management body, the persons who will be authorized to participate remotely are, according to the Belgian Code of Companies and Associations: the shareholders, convertible bond holders, warrant holders, and/or certificate holders.

This list looks incomplete, and it could be argued that the following persons, to the extent they are not part of the *bureau* (see Section 8 below), should also be considered as included on that list: the directors, the auditor, the holders of profit stocks (*parts bénéficiaires / winstbewijzen*), or any other person authorized (by the articles of association, for instance) to participate in the general meeting.

8. Who is *not* authorized to participate remotely?

The participants always have the right – but not the obligation – to participate physically, even when they are given the opportunity to participate remotely.

Remote Shareholders' Meeting: FAQs

Some persons, however, have the *obligation* to participate physically and may thus never participate remotely. That is particularly the case for the members of the *bureau* (in Belgian companies and associations other than “partnerships”), including at least the chairman, and for contributors during notarial general meetings. If there is no *bureau* in place (in Belgian companies and associations other than “partnerships”), a remote meeting might be jeopardized.

9. May “internal regulations” (instead of the articles of association) authorize or organize remote general meetings?

The answer here is generally negative, except in Belgian “partnerships”.

10. What are the sanctions?

If any of the above rules are not complied with, sanctions may apply unless all the shareholders and other potential participants unanimously waive the observance/application of the rule in question.

The main possible sanctions are, depending on the concrete circumstances: the nullity of (some of) the decisions taken during the general meeting (provided that the non-compliance may have influenced the deliberation or vote, or was committed with fraudulent intent), and/or the directors' liability to the extent damages have been incurred. If it is not the management body (*i.e.*, the directors) who convene the meeting, but rather the auditor or the liquidator, then these latter persons might also be subject to liability.

Remote Shareholders' Meeting: FAQs

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

Jean-Quentin De Cuyper **Diego Lambrecht**

+32 2 290 18 20

+32 2 290 18 20

jdecuyper@willkie.com

dlambrecht@willkie.com

Copyright © 2022 Willkie Farr & Gallagher LLP.

This alert is provided by Willkie Farr & Gallagher LLP and its affiliates for educational and informational purposes only and is not intended and should not be construed as legal advice. This alert may be considered advertising under applicable state laws.

Willkie Farr & Gallagher LLP is an international law firm with offices in Brussels, Chicago, Frankfurt, Houston, London, Los Angeles, Milan, New York, Palo Alto, Paris, Rome, San Francisco and Washington. The firm is headquartered at 787 Seventh Avenue, New York, NY 10019-6099. Our telephone number is (212) 728-8000 and our fax number is (212) 728-8111. Our website is located at www.willkie.com.