

CORONAVIRUS: MEASURES CONCERNING HOLDING OF MEETINGS IN LUXEMBOURG COMPANIES AND OTHER ENTITIES

On 20 March 2020, the Luxembourg government adopted a new regulation (the "Regulation"), further extended by the law of 20 June 2020 (the "New Law") introducing measures regarding corporate approvals so as to ensure business continuity of Luxembourg companies and other entities¹ in response to the Coronavirus (Covid-19) sanitary crisis. We have set out below an overview of the options for the adoption of resolutions both at shareholders and management level, constituting alternatives to physical meetings.

PERIOD OF APPLICATION

The Regulation was adopted on the basis of article 32(4) of the Luxembourg Constitution and therefore was only applicable during the state of emergency which ended on 24 June 2020. In order to extend these measures after the date hereof, the law of 20 June 2020 entered into force on 25 June 2020, *inter alia* to enshrine these measures during the period provided for in article 3 of the law of 22 May 2020, extending the deadlines for the filing and publication of annual accounts². Accordingly, as from 25 June 2020, the measures provided in the New Law apply to the meetings of shareholders and any other bodies including management bodies of all companies and other legal entities (including the Luxembourg listed companies and Luxembourg investment funds of the corporate type), convened within 9 months following the end of their last financial year.

ALTERNATIVES TO PHYSICAL MEETINGS FOR SHAREHOLDERS

The New Law provides for options relating to the adoption of shareholders' resolutions constituting alternatives to the holding of a physical meeting. These options are already provided for under the Luxembourg law of 10 August 1915, on commercial companies, as amended (the "1915 Law"), but are generally either applicable to only certain forms of entities or contingent on the provisions of the articles of association. The New Law extends these options to all companies and other legal entities (including the Luxembourg listed companies and Luxembourg investment funds of the corporate type), even if these possibilities are not provided for in their articles of association. Shareholders participating by the means provided in the New Law are deemed to be present for the quorum and majority requirements of such meeting.

Alternatives to physical meetings for shareholders

- Representation of the shareholders to general meeting by proxy or voting by correspondence
- Holding of shareholders' meeting by video conference
- Adoption of written resolutions by shareholders

¹ Including without being limited to non-profit organisation (*asbl*) and public institutions (*établissements publics*)

² For more information on this topic check out our flyer [Extension of deadlines for approval and filing of accounts](#)

The measures provided for in the New Law are also applicable to meetings of the bondholders.

Participation to general meeting by video conference

Under the New Law, shareholders of all Luxembourg entities may participate to shareholders meeting by way of video conference or by way of telecommunication means permitting their identification. Such means shall satisfy technical characteristics which ensure an effective participation in the meeting.

Participation to general meeting by proxy or voting by correspondence

Shareholders may vote by correspondence by submitting voting forms in writing or in electronic format, provided that the full text of the resolutions have been provided to the shareholders by publication or otherwise.

Shareholders have also the possibility to be represented at the shareholders meeting by a proxyholder designated by the company. This solution is already commonly adopted in practice by many companies and shareholders of Luxembourg companies. Regarding the shareholders of Luxembourg listed companies, the New Law also specifies that in the event that a shareholder has appointed a proxyholder other than the one designated by the company, such proxyholder may only participate to the meeting by correspondence or by video conference under the same conditions as provided for the shareholders.

Written resolutions

While this option is not specifically covered by the New Law, it is worth mentioning that in Luxembourg shareholders(s) of *société anonyme* with a sole shareholder and *société à responsabilité limitée* having less than 60 shareholders may adopt resolutions in written form (except for any amendment to the articles of association). Each of the shareholders shall receive the precise wording of the resolutions or decisions to be adopted. Such written resolutions may be circulated for signature by electronic means and executed by the shareholders on separate counterparts. This approach is already commonly used by *sociétés à responsabilité limitée* in Luxembourg.

ALTERNATIVES TO PHYSICAL MEETINGS FOR THE MANAGEMENT BODY

As to the adoption of resolutions at the management body level, articles of association typically provide options for members of such management body (the "**Board Members**") not to be physically present at the registered office for the adoption of corporate approvals. The New Law extends some of these options to all Luxembourg companies and other entities (including the Luxembourg listed companies and Luxembourg investment funds of the corporate type), notwithstanding any provision to the contrary in their articles of association and even if these possibilities are not provided for in their articles of association. The New Law further specifies that Board Members participating under these means are deemed to be present in person at such meeting and shall be counted in the quorum and entitled to vote.

For reminder, whatever the form chosen for the resolutions, each Board Member shall in any event be provided with a full board pack including amongst other each transactional document and related documents for their review enabling them to consider the envisaged operations and their implications.

Alternatives to physical meetings for the management body

- Holding of board meeting by video or phone conference
- Adoption of circular resolutions

Participation to meeting by conference call and other similar means

A Board Member may validly participate in a meeting via telephone conference, video conference or similar form of communication equipment, provided that all persons participating in the meeting are able to hear and speak to each other throughout such meeting.

As to the possibility for the phone or video conference to be initiated from a place located outside of Luxembourg, with no Board Member present at the registered office, while this is clearly not advisable under ordinary circumstances, in light of the current situation, this scenario could be envisaged on a case by case basis (if e.g. important decisions are to be taken and cannot be postponed and no manager is available to initiate the call from Luxembourg) upon seeking appropriate legal and tax advice. In case of derogation from the articles of association, the board meeting should discuss the contingency measures and the minutes should be detailed enough so as to remind of the context and Board Members should ensure that the appropriate discharge is granted to them by the shareholders in due course. Last but not least, amending the articles to allow initiating a call and holding meetings from abroad on an exceptional basis in a limited number of cases without jeopardising Luxembourg nationality of the company also seems a way forward (while hoping that the usefulness of such clause remains limited for as long as possible).

Circular resolutions

Resolutions of the management body may be adopted by written consent of the Board Members and may be executed in counterparts. The New Law specifically refers to written circular resolutions.

Actions for companies

- Consider available options to hold meetings
- Consider the likelihood of the postponement of the convening of the annual general shareholders' meetings
- Make sure that appropriate contingency discussions take place and are reflected in the minutes of the relevant meetings

If you would like the assistance with planning of your meetings and corporate governance issues please contact your usual Clifford Chance contact or the authors of this note.

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