

Consequences of Coronavirus on General and Governance Bodies' Meetings and Annual Accounts Approvals

April 21, 2020

Lockdown and social distancing measures in response to the covid-19 pandemic have led to the adoption of temporary and exceptional measures to facilitate the holding of meeting of French companies' governance bodies in the current context of health crisis.

Orders No. 2020-321 and No. 2020-318 dated March 25, 2020

Pursuant to the emergency law No. 2020-290 dated March 23, 2020 to face the covid-19 pandemic, **Order No. 2020-321 dated March 25, 2020** adapting the rules for meetings and deliberations of the shareholders and governing bodies of private-law entities due to the covid-19 epidemic and **Order No. 2020-318 dated March 25, 2020** adapting the rules for the approval and publication of annual accounts and other documents provide temporary and exceptional measures to facilitate the holding of corporate bodies' meetings:

- possibility of holding all general meetings without the shareholders being present in person (i.e., "*à huis clos*") or by videoconference or conference call or by written consultation;
- possibility of holding all corporate bodies' meetings by videoconference or conference call or by written consultation;
- 3-month extension of the legal deadline to approve annual accounts.

These new rules relating to the holding of general meetings and corporate bodies' meetings apply retroactively from March 12, 2020 and until July 31, 2020 in order to allow companies to regularize the meetings held at the beginning of the lockdown (i.e. before March 12, 2020 and March 25, 2020).

While such measures are not mandatory, an executive officer who would decide to maintain an in-person meeting would violate the circulation ban imposed by Decree No. 2020-293 dated March 23, 2020, which could subject him/her to potential liability.

Holding of general meetings of shareholders

General meetings of shareholders may be held:

- **by audiovisual conference or conference call** provided that (i) the identification of all participants to the meeting (shareholders, auditor, representatives of the works council) and (ii) the continuous and simultaneous retransmission of the deliberations are guaranteed;
- **by written consultation** when written consultation is already permitted by applicable law (i.e. for limited liability companies (SARL), general partnerships (SNC), but not for joint stock companies (SA));
- **by closed session ("*à huis clos*")**: upon decision of the Board of Directors or Supervisory Board, the general meeting may be held without the shareholders or their proxies being present in-person.

Such measures apply without the need for a specific clause in the articles of association, and any clause included in the articles of association contrary to this temporary regime will be deemed without effect.

If a corporate body has already begun all or part of the process to convene the general meeting but decides to change the manner in which the meeting will be held and selects one of the above-listed ways, the persons who have the right to attend the meeting must be informed of this decision by any means which ensures that they are effectively informed at least three working days before the date of the meeting. In such a case, the formalities already carried out for convening the meeting do not have to be renewed and the change in the manner in which the meeting will be held will not affect the regularity of the meeting.

Holding of corporate bodies' meetings (Board of Directors, Supervisory Board or Management Board)

The meetings of the Board of Directors, Supervisory Board or Management Board may be held:

- **by audiovisual conference or conference call:** provided that (i) the identification of all participants to the meeting and (ii) the continuous and simultaneous retransmission of the deliberations are guaranteed;
- **by written consultation.**

Such measures also apply without the need for a specific provision in the articles of association or the internal regulations of the Board, and any provision included in the articles of association or the internal regulations of the Board which are contrary to this regime will be deemed ineffective.

Extension of the deadline for the approval of annual accounts

Commercial companies, which must approve their annual accounts within six months of the end of the financial year (except for simplified joint stock companies (SAS)), will benefit from a 3-month extension of the deadline for approving their annual accounts and convening the annual general meeting (i.e., until September 30, 2020 for a company which closed its 2019 financial year on December 31, 2019), provided that the following conditions are met:

- this measure applies to all companies closing their accounts between September 30, 2019 and the expiration of the one-month period following the termination of the state of health emergency (i.e., June 24, 2020, unless further extended);
- this measure will not apply to companies which appointed a statutory auditor who has issued his/her report on the accounts before March 12, 2020.

This measure should thus allow companies whose accounts were being prepared at the time of the beginning of the lockdown to have a few extra months to finalize their annual accounts.

Moreover, even if simplified joint stock companies (SAS) are not required to approve their annual accounts within six months of the end of the financial year, they are also impacted by these measures since the payment of their dividends must be made within nine months after the end of the financial year.

Decree No. 2020-418 dated April 10, 2020

Decree No. 2020-418 dated April 10, 2020 adjusting the rules for the holding and deliberations of shareholders' meetings clarifies the provisions of order No. 2020-321 dated March 25, 2020 with respect to the following points:

- **delegation of authority to convene the general meeting:** the delegation of authority to convene the general meeting granted by the competent corporate body to the legal representative of the company must be established in writing and specify the duration for which it is granted and the identity and capacity of the delegatee;
- **electronic voting:** the competent corporate body to convene the general meeting or the legal representative acting on delegation may decide that participants in the meeting may vote electronically, without the need to include any specific provision in the articles of association granting this power;

- **postal voting:** if the legislative or regulatory provisions governing the meeting, the articles of association or the relevant issuance documentation allow participants in the meeting to vote by post, the competent corporate body to convene the general meeting or the legal representative acting by delegation may decide that such participants may vote by post, provided that they must send their voting instructions by email to the email address indicated in the convening notice;
- **proxy given by the shareholders:**
 - shareholders' voting mandates must be received at the latest four days before the date of the general meeting;
 - instructions sent by the proxies for the exercise of their mandates must be received by the company or the authorized intermediary by email at the latest four days before the date of the general meeting;
- **change in the method of participation to the general meeting:** in the event where any shareholder has already sent a proxy by post, he/she can still choose another method of participation, provided that his/her instructions are received by the company within a period of time compatible with those set out in the point mentioned above (*proxy given by the shareholders*);
- **chairman and observers (*scrutateurs*):** meetings held behind closed doors, which may not be chaired by the chairman of the Board of Directors or Supervisory Board (or in his absence, by the person provided for in the articles of association), may be chaired by the person appointed by the Board of Directors or Supervisory Board (i) from among its members, or (ii) in the event of unavailability, from among the executive officers;
- **minutes of the corporate bodies' meetings:** the minutes of the meeting must mention whether the meeting was held by audiovisual conference or conference call or by written consultation of the shareholders and must indicate the administrative measures which limited or prohibited the in-person holding of the meeting.

Decree No. 2020-418 dated April 10, 2020 applies to general meetings and corporate bodies' meetings to be held until July 31, 2020.

For further information on the above, do not hesitate to contact one of the lawyers below or your usual contacts within Davis Polk.

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