

Emergency law on conducting digital shareholder meetings proposed

April 15, 2020

As a consequence of the outbreak of the corona virus with its mandatory restrictions on movement and gatherings of peoples, the Dutch Ministry of Security and Justice has submitted a proposal for an emergency law on the expansion of conducting digital shareholders' meetings (the **"Proposal"**). Below you find an outline of the key provisions of said Proposal.

1. Introduction

All associations, cooperatives, mutual societies, public and private limited liability companies are annually required to conduct a general meeting. This general meeting is generally held in spring, within six months after the end of the financial year. During this annual general meeting (i) the annual accounts for the prior financial year are adopted, (ii) discharge is granted to the managing and supervisory board members, and (iii) managing and supervisory board members are (re)appointed.

In order to limit the spread of COVID-19, it is undesirable for the shareholders, managing directors and supervisory directors to physically attend the general meeting. Although the Dutch Civil Code (the **"DCC"**) already offers facilities to attend a general meeting electronically, not all companies have implemented this facility in their articles of association. For the avoidance of any doubt as to the validity of resolutions adopted by general meetings which are not conducted in accordance with Dutch law and/or the articles of association as a result of the corona virus, the bill aims to allow temporary derogations of said law and/or articles of association in respect of conducting general meetings as well as the postponement of certain legal deadlines and sanctions.

2. Requirements

In order to safeguard the principles of a proper general meeting as laid down in the DCC, the following requirements will apply in relation to conducting a digital general meeting.

- In the event that the management board has determined that the general meeting will take place electronically, the convocation must include such announcement;
- If the convocation has already been sent, the management board is allowed to amend the convocation in accordance with above mentioned requirement no later than 48 hours prior to the general meeting;
- All shareholders are required to be given access to electronically attend the general meeting;
- The shareholders shall be given the opportunity to submit questions in writing in relation to the topics mentioned in the convocation no later than 72 hours prior to the general meeting;
- The submitted questions will be discussed during the digital general meeting. After the general meeting, the answers will be made available electronically (website, e-mail, shared drive);
- The management board will attempt to discuss every comment or question submitted during the general meeting;
- The voting procedure will be one of the following: (i) shareholders are authorized to submit their vote in writing prior to the general meeting, or (ii) the shareholders are exclusively authorized to submit their votes electronically during the general meeting. The management board will decide which voting procedure will be applied.

3. Managing and supervisory board meetings

Pursuant to the Proposal, the articles of association may also be temporarily derogated from in the event such articles contain provisions for conducting a physical managing and/or supervisory board meeting within a certain period of time. In that event, the managing and/or supervisory board has to electronically adopt its decisions, provided that all board members have agreed with this manner of decision making.

Pursuant to the DCC, the management board must provide the general meeting with the annual accounts within five months after the closing of the financial year. The shareholders of the general meeting are authorized to extend this term with another five months. Pursuant to article 16 of the Proposal, this authority now could be assigned to the management board.

The Proposal was submitted to the Second Chamber of the Dutch States General on 8 April 2020. Once both the Second and First (Upper) Chamber accept the Proposal, the emergency law will come into force and have effect -retroactively- from 23 March 2020 up to 1 September 2020. If necessary, the emergency law can be extended with another two months.

The emergency law is expected to be accepted on an expedited basis. In anticipation thereof, companies have announced to start implementation of the Proposal.

Should you have any questions on how this Proposal will affect your business, please do not hesitate to contact your regular contact at WLP-Law, Amsterdam or any of the undersigned.

Kind regards,

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