

CORONAVIRUS: MEASURES CONCERNING HOLDING OF MEETINGS IN COMPANIES AND OTHER ENTITIES APPLICABLE UNTIL 30 JUNE 2021

In response to the Coronavirus (Covid-19) sanitary crisis, the Luxembourg government has adopted since 20 March 2020, a series of measures allowing the adoption of corporate approvals without any physical presence so as to ensure both the safety of the participants and the business continuity of companies and other entities¹. The application of these measures has been extended by the legislator pursuant to the law of 23 September 2020 implementing measures concerning the holding of meetings in companies and other legal entities, as amended (the "Law"), which will have effect until 30 June 2021. 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 of 20 March 2020 introducing measures for the holding of meetings in companies and other entities 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. The legislator extended for the first time the application of these measures pursuant to the law of 20 June 2020 for 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. The Law, entered into force on 1 October 2020, repealed the law of 20 June 2020, while retaining the same measures and extending them initially until 31 December 2020. More recently, the law of 25 November 2020 amended the Law to *inter alia* further extend the application of these measures until 30 June 2021.

ALTERNATIVES TO PHYSICAL MEETINGS FOR SHAREHOLDERS

The 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.

Alternatives to physical meetings for shareholders

- Participation to shareholders' meeting by video conference
- Voting at shareholders' meeting in writing or in electronic format
- Adoption of written resolutions by shareholders
- Representation of the shareholders to general meeting by proxy

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 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 the 1915 Law nor in their articles of association. Under the Law, companies and other legal entities may hold their shareholders' meeting without the physical presence of shareholders and other participants and require that shareholders participate to the meeting and exercise their rights by one or more of the following ways of participation. Shareholders participating by the means provided in the Law are deemed to be present for the quorum and majority requirements of such meeting. The measures provided for in the Law are also applicable to meetings of the bondholders.

Voting at general meetings in writing or in electronic form

Under the Law, companies and other legal entities may require that shareholders cast their vote in writing or in electronic form at enabling their identification, provided that the full text of the resolutions has been published or provided to them.

Participation to general meeting by video conference

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

Participation to general meeting by proxy

The Law also provides that 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. As to the shareholders of Luxembourg listed companies, the 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 Law, it is worth mentioning that according to the 1915 Law the *société anonyme* with a sole shareholder and the *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* and by *société anonyme* with a sole shareholder.

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 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 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.

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.

Circular resolutions

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

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.

Alternatives to physical meetings for the management body

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

Actions for companies

- Consider available options to hold meetings
- Make sure that appropriate contingency discussions take place and are reflected in the minutes of the relevant meetings

CONTACTS



Katia Gauzès
Partner

T +352 48 50 50 205
E katia.gauzes@cliffordchance.com



Christian Kremer
Senior Partner

T +352 48 50 50 201
E christian.kremer@cliffordchance.com



Dunja Pralong-Damjanovic
Counsel

T +352 48 50 50 222
E dunja.pralong-damjanovic@cliffordchance.com



Aurélien Le Ret
Knowledge Lawyer

T +352 48 50 50 446
E aurelien.leret@cliffordchance.com

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

www.cliffordchance.com

Clifford Chance, 10 boulevard G.D. Charlotte,
B.P. 1147, L-1011 Luxembourg, Grand-Duché
de Luxembourg

© Clifford Chance 2020

Abu Dhabi • Amsterdam • Barcelona • Beijing •
Brussels • Bucharest • Casablanca • Dubai •
Düsseldorf • Frankfurt • Hong Kong • Istanbul •
London • Luxembourg • Madrid • Milan •
Moscow • Munich • Newcastle • New York •
Paris • Perth • Prague • Rome • São Paulo •
Seoul • Shanghai • Singapore • Sydney •
Tokyo • Warsaw • Washington, D.C.

Clifford Chance has a co-operation agreement
with Abuhimed Alsheikh Alhagbani Law Firm
in Riyadh.

Clifford Chance has a best friends relationship
with Redcliffe Partners in Ukraine.