

Covid – 19 update

Listed companies & Emergency Act Virtual GM

Introduction

Following an accelerated legislative procedure, the Temporary Act COVID-19 came into force in April 2020. The Act has retroactive effect until and including 16 March 2020. This "Emergency Act" provides, among other things, for special arrangements for general meeting of shareholders (**GM**) of companies. The Emergency Act would make it, originally at least until 1 September 2020, possible for GMs to be held completely virtually. Now, it is clear that Emergency Act will remain in force at least until **1 February 2021**. By providing more detailed rules on the convocation and by clarifying that certain sanctions that may affect the decision-making process cannot be invoked, the Emergency Act aims to provide the company and shareholders with legal certainty regarding decision-making.

Below we will explain the most important subjects for listed companies.

Basic principle

The basic principle of the Emergency Act is that provisions in the articles of association about the management board, the supervisory board and the GM having to meet physically, do not have to be complied with. Below, we will focus on the GM.

The management board may decide to have a GM that can only be attended by electronic means, the virtual GM.

Virtual GM

The management board may convene a virtual GM, provided that:

- the shareholders are able to follow the GM online via audio or video-livestream; and
- the shareholders can submit questions about the items on the agenda in writing or electronically (by e-mail) up to 72 hours before the GM. If, however, less than 5 days before the date of an already announced non-virtual GM, the management board still decides to have the GM virtually, which is possible up to 48 hours before the meeting, shareholders can submit questions up to 36 hours before the meeting.

Questions submitted in advance must be answered not later than at the GM, and the answers should be posted on the company's website whether or not prior to the GM. The management board should ensure that questions can be asked during the GM, unless this cannot reasonably be demanded in light of the circumstances. Thematization and bundling of questions is possible. The chairman of the GM monitors the order of the virtual meeting and can, for example, when opening the GM, indicate who is allowed to ask questions and limit the number of questions a shareholder may ask; he may also discuss other points of order.

According to the Minister, a listed company may even offer to only certain shareholders or interest groups (such as VEB, VBDO, Eumedion), instead of to all shareholders, the opportunity to submit further

questions during the AGM, for example via chat or e-mail. For such shareholder or organisation to ask further questions, it is then required that it also submitted written questions prior to the GM.

In case not all questions asked at the GM are answered at the GM itself, due to reasons of meeting efficiency, it can be argued that these questions must then be answered in (an annex to) the draft records of the GM, to be posted on the company's website not later than three months after the AGM.

The explanatory notes to the Emergency Act bill clarify that any technical defects in the online connection are for the risk and responsibility of the shareholder only, and that they do not affect the legal validity of the decision-making. The company could itself, in a policy for the virtual GM, provide clarity on how technical disruptions and suchlike will be dealt with during the virtual GM.

Convocation for physical GM is changed to virtual GM

As set out above, the management board may decide at a later point in time after having convened a physical GM, that the GM will instead be held as a virtual GM. The management board must announce this change regarding the way the meeting is held in the same manner as applying to the convening notice for the GM. An announcement on the company's website will therefore usually be sufficient.

Electronic voting

The Emergency Act does not oblige companies to offer remote online voting. As shown above, it is sufficient for a virtual GM that shareholders are able to follow the GM via a live stream and that they can submit questions in advance. So even if online voting is not possible, shareholders may be denied access to the GM. In that case, shareholders should be given the opportunity to vote by means of proxies with voting instructions issued prior to the GM.

The company may however offer the option that shareholders can vote remotely online at the GM. The Emergency Act makes this possible, even if the articles of association of the company concerned do not yet provide for it.

No extension of the term for preparing the annual accounts of a listed company

The option provided in the Emergency Act for legal entities that the management board extend the term for drawing up the annual accounts does not apply to listed companies. This means that, for listed companies, the period of four months continues to apply. A postponement would have too far-reaching consequences for listed companies, according to the Minister. The Minister did refer to the announcement from the Authority for the Financial Markets (**AFM**) that it would show leniency if companies are unable to make their financial reports publicly available in time as a result of the corona crisis and to simultaneously file them with the AFM; for the announcement click here.

Retroactive effect

The Emergency Act has retroactive effect to 16 March 2020. This means that GMs that have been held since that date fall within the scope of the Emergency Act, regardless whether the convening notice is dated before 16 March 2020.

Emergency Act is temporary

The Emergency Act would originally expire on 1 September 2020, but this date has been extended to **1 February 2021**.

If the Minister doesn't revoke the Emergency Act before 1 December 2020, the Act is automatically extended to 1 April 2021. There will be a revolving extension with two months each time, unless the Minister revokes the Emergency Act at least two months before it expires.

[Click here for the text of the Temporary Act COVID-19 \(Dutch\)](#) and [click here for the Extension Decree \(Dutch\)](#).

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