

Royal Decree No. 4 regarding the organisation of shareholders' meetings in the context of the COVID-19 pandemic



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A Royal Decree N°4 has been adopted and published in the Belgian Official State Gazette on 9 April 2020 (the **Royal Decree**) with the aim to address the various questions which arise regarding the organisation and the holding of the annual shareholders meetings in these times of prohibition of public gatherings and social distancing rules.

The Royal Decree offers flexibility to companies in the organisation of their annual and extraordinary shareholders' meetings and allow the postponement of their annual shareholders meeting when needed.

The new measures concern:

- ✦ all meetings convened between **1st March 2020 and 3 May 2020** even if the meeting will only be held after May 3, 2020. It is specified that for meetings already convened, the company may still apply the new regime provided by the Royal Decree but must appropriately inform the shareholders of such application;
- ✦ all meetings which should have been held between **1st March 2020 and 9 April 2020** according to legal or statutory provisions, but which have not been held;
- ✦ all meetings which must be held between **9 April 2020 and 3 May 2020**.

The measures are however not applicable retroactively, i.e. they do not apply to meetings held between 1st March 2020 and 9 April 2020.

We provide hereunder an overview of the means available to companies for the organisation of their shareholders' meeting based on the Royal Decree:

Option 1: Organisation of the shareholders' meeting by way of alternative means

Companies may decide to organise shareholders' meetings by using the following **alternative means**:

- ✦ The board of directors may impose to the shareholders the exercise of their voting rights exclusively through (i) **remote voting** prior to the meeting and (ii) **special proxy** given prior to the meeting, even though such alternative mode of participation is not expressly provided for in the articles of association.

With respect to the remote voting prior to the meeting, the board of directors must make the voting form available to the shareholders or publish it on its website in accordance with the provisions of article 7:146 of the Belgian Code of Companies and Associations (the **BCCA**). The Royal Decree specifies that such possibility applies not only to SA/NV but also to other forms of companies.

Regarding the proxy, the board of directors may impose a single proxy holder designated by the board itself, provided that the proxy form contains specific voting instructions for each item on the agenda of the meeting.

The voting form and the proxy form must be sent to the company at the address indicated in the notice. The forms may also be sent by email. A scan or a photo of the executed form shall be considered as valid. For listed companies, those documents must reach the company at the latest four days prior to the meeting. Other companies may request the same.

- ❖ Companies may even **forbid any physical attendance at the shareholders' meeting**, save for the (single) proxy holder, the members of the bureau, the members of the board and the statutory auditor. The (single) proxy holder, the members of the bureau, the members of the board and the statutory auditor may also be allowed to participate to the meeting by video conference or conference call.
- ❖ Companies can also organise their shareholders' meetings **remotely through an electronic means of communication**, even though such alternative mode of participation is not expressly provided for in its articles of association. In such case, the company will have to comply with the modalities provided for under the BCCA.

Note that prior to the adoption of the Royal Decree, the FSMA has indicated, in a press release dated 26 March 2020, that should listed companies decide to hold annual shareholders meeting remotely, such companies will have to be particularly attentive to communicating clear information about the organisation of the meeting and the way in which shareholders are able to exercise such rights.

- ❖ The Royal Decree also regulates the **right of the shareholders to ask questions**, by providing that companies may limit such right to written questions and may impose that such written questions be submitted at the latest four days prior to the meeting. The board of directors answers to those questions in writing at the latest the day of the meeting but prior to the vote or orally during the meeting if the meeting is held remotely through an electronic means of communication or if the company organises a live session or recorded broadcast of the meeting accessible to all shareholders.
- ❖ For **extraordinary shareholders' meeting to be held before a notary**, the physical attendance before the notary must be limited to (i) one member of the board of directors duly authorised (or the person to whom a proxy has been granted by the latter) and/or (ii) the (single) proxy holder designated by the shareholders.

Option 2: Postponement of the meeting

The Royal Decree offers the possibility to **postpone the shareholders meeting**. The following rules apply:

- ❖ The annual shareholders' meeting may be postponed, even if the meeting has already been convened. The annual shareholders' meeting may be postponed **up to ten (10) weeks** after the end of the six months period provided for by the BCCA for the approval of the annual accounts following the end of the fiscal year. This means that for a company whose fiscal year terminated on 31 December 2019, the legal deadline for the holding of the annual shareholders' meeting may exceptionally be extended up to September 2020.
- ❖ The board of directors may postpone at a later date any shareholders' meeting already convened.
- ❖ The postponement is however not permitted for shareholders' meeting convened in the framework of the alarm bell procedure or convened by the statutory auditor or at the request of shareholders representing at least one-tenth of the shares.
- ❖ For listed companies, the postponement is announced through a press released and on the website of the company. For other companies, the postponement must, as far as possible, be communicated to the shareholders through the most appropriate means.
- ❖ The Royal Decree also allows the postponement up to ten weeks after the legal deadlines of (i) the filing of the annual accounts with the Belgian National Bank and (ii) for listed companies, the publication of their financial reports.

Option 3: Organisation of shareholders' meetings in accordance with the provisions of the BCCA

Regardless of the temporary measures provided by the Royal Decree, companies may of course decide to organise their (annual or extraordinary) shareholders' meeting in accordance with the rules provided for by the BCCA.

In particular, the BCCA expressly authorises the adoption of decisions in writing. In order to be validly adopted, these decisions must be taken unanimously by all shareholders. This written procedure may be used for the approval of the annual accounts but not for decisions to be adopted by notarial deed.

Insofar as unanimity is required, this written procedure will be more widely used by SMEs.

Listed companies or companies with a large number of shareholders will most likely have no choice but to implement effective alternative modes of participation and ensure the safe participation of their shareholders or to postpone their annual meetings.

If you are confronted with difficulties related to the COVID-19 epidemic and you require legal assistance, feel free to contact us.

Strelia has set up a dedicated team to help its clients deal with the various legal challenges related to the COVID-19 situation.