

Luxembourg adopts new measures on the holding of meetings of corporate bodies

**Dirk Leermakers**Partner
dirk.leermakers@strelia.com**Natalia Zuvak-Menon**Associate
natalia.zuvak@strelia.com

Acting under its emergency powers, the Luxembourg Government had adopted a decree on March 20, 2020 to introduce more flexibility in the holding of shareholders', Board and other corporate meetings in order to cope with the CoVid-related lockdown measures imposed in our country and across the world. The new rules depart from traditional corporate law and are stated to override any more restrictive provisions in a company's articles of association.

As regards shareholders' meetings, a company may henceforth organize general meetings without any physical attendance by enabling shareholders to exercise their rights:

- (a) by way of a vote in writing or in electronic form;
- (b) through the intermediary of an attorney-in-fact designated by the company, or
- (c) by way of videoconference or any other means of telecommunication that permits the identification of participants.

Shareholders taking part in a meeting in one of these manners will be counted as present for purposes of the quorum and majorities.

The same rules apply to meetings of bondholders.

As regards meetings of a company's Board of Directors or any other corporate body, and notwithstanding any more restrictive provisions in a company's articles of association, meetings can be held without any physical attendance by way of circular resolutions adopted in writing or meetings held by videoconference or any other means of telecommunication that permits the identification of participants. Again, members of the corporate body concerned that take part in the decision-making in such manner will be counted as present for quorum and majority purposes.

Finally, companies are allowed to convene their annual general meeting of shareholders (the date of which is usually set forth in the articles of association) for a date falling in the period of six months from the close of the company's business year, or June 30, 2020, whichever is later. This also applies to any shareholders' meetings that have already been called for a date up to June 30, 2020.

To some extent, these emergency measures are a confirmation of practices that had been developing over a number of years already.

In the longer term, and looking at the post-CoVid era, companies should however remain mindful of the "substance" requirements to which they may be subject, and which require a showing that a Luxembourg company is indeed effectively managed in and from Luxembourg. Substance is of relevance in the context of international group structures and is more a foreign than Luxembourg law issue. While it is reasonable to assume that the holding of a single physical meeting in Luxembourg may be excused, also by a foreign administration or court, on force majeure grounds as long as the current lock-down measures are in place, it may be advisable for many companies, in light of their individual situation, to resume their practice of holding of regular physical meetings in Luxembourg once the situation has returned to normal.