contrast



Is your general meeting ready for the digital era?

Imagine…

You work as an in-house lawyer for an international company with registered office in Belgium whose annual general meeting is quickly approaching.

You are just finishing your preparations for the meeting when out of the blue you get a phone call from the chairman of the board of directors. Several foreign shareholders have been asking whether the general meeting could be held digitally this year, e.g. via Teams or Zoom.

You review the company's articles of association but do not find any provision covering this particular point. Can the general meeting in fact be held digitally? If so, how do you go about organising it? And what does it mean for the documentation that you had already so carefully prepared?

A brief clarification.

Since the end of last year, a Belgian law dated 20 December 2020 makes it possible to organise general meetings of companies and associations digitally. Explicit authorisation to do so in the articles of association is no longer required.

The governing body can decide to organise the general meeting remotely. In that case, shareholders or members must be able to participate via an electronic means of communication that is made available by the company or association.

A number of conditions are attached to a digital general meeting:

- The electronic means of communication must make it possible to verify the capacity and identity of the participating shareholders or members. It must enable them to follow the meeting and cast their votes in real time and without interruption. The means of communication must also make interaction possible, meaning that the shareholders or members have to be able to participate in the deliberation and must be able to ask questions. For the moment – until 30 June 2021 – the governing body can depart from this last requirement, subject to justification, if the company or association does not possess such means of communication.
- A company or association may use one of the popular electronic means of communication such as Teams, Zoom or Skype. In companies or associations with a limited number of shareholders or members, where everyone knows everybody else and can easily identify one another, a simple telephone meeting is also possible.
- The meeting convocation notice must clearly and precisely describe the procedures for remote participation. If the company or the association makes use of an official website, this procedural information must be consultable via the website.
- Any technical problems or incidents that impeded or disrupted such remote participation(s) must be described in the minutes of the general meeting.
- Along with the shareholders or members, the directors and the statutory auditor can also participate remotely. However, the members of the bureau of the general meeting still have to be physically present, given that they are responsible for verifying that the meeting is validly constituted and for assuring that it proceeds properly and that the minutes are taken.

In contrast to general meetings, digital meetings of the governing body are not expressly regulated by law. It is generally assumed that the governing body can also meet digitally, provided that the articles of association do not expressly exclude this way of meeting and provided that actual deliberations are possible.

Digitalisation of company law is on its way in other areas as well. For example, on 25 March 2021 the Belgian Council of Ministers approved a draft bill for the transposition of the European Directive 2019/1151 of 20 June 2019. That directive relates to the use of digital tools and processes in company law.

One of the most important changes would be that, as of 1 August 2021, a company could be incorporated digitally. In that case, the authentic deed would be executed with the notary public by means of an electronic signing during the course of a video meeting.

Concretely

- General meetings of companies and associations can henceforth be organised digitally, without authorisation for this being required in the articles of association.
- The electronic means of communication with which the general meeting is organised must allow the capacity and identity of the participants to be verified.
- These means must also guarantee active participation, including the possibility of posing questions and voting. The convocation notice to the general meeting must contain a clear description of the procedure. In the case of technical problems or incidents, these must be recorded in the minutes.
- Other initiatives to digitalise company law are also on their way. For example, as of 1 August 2021 it may be possible to incorporate a company digitally.

Want to know more?

- The Law of 20 December 2020 can be found via: http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&table_name=wet&cn=2020122002.
- The Directive 2019/1151/EU amending Directive (EU) 2017/1132 as regards the use of digital tools and processes in company law can be found via: https://eur-lex.europa.eu/legal-content/NL/TXT/HTML/?uri=CELEX:32019L1151&from=NL
- The press release of the Council of Ministers of 25 March 2021 can be found via: https://news.belgium.be/nl/justitie-wijzigingen-het-wetboek-van-vennootschappen

Authors

Ine Schockaert