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The holding of general meetings of shareholders during coronavirus outbreaks

The current coronavirus pandemic makes the task of those responsible for organizing the general meetings of public limited companies, whether listed or not, particularly difficult.

On 16 March 2020, the Federal Council strengthened measures to protect the population by upgrading to the “extraordinary situation” level of the Epidemics Act. All shops, restaurants, bars and entertainment and leisure facilities are closed until 19 April 2020. This restriction does not apply to food shops and health care facilities. Some cantons have taken additional measures, such as the canton of Vaud, which has banned all gatherings of more than ten people.

However, incorporated companies through their Board of Directors are still required to convene an ordinary general meeting of shareholders within six months of the end of the financial year and extraordinary meetings as often as necessary (Art. 699 para. 2 CO). Although the six-month period is an orderly period, the violation of which does not as such carry any sanctions, public limited companies have every interest in ensuring that general meetings can be held within this period, especially when important decisions such as capital increases or amendments to the articles of association have to be taken. Moreover, general meetings of shareholders must be organized in accordance with the principle of immediacy, which requires that shareholders be physically present or represented in order to be able to debate freely and exercise voting rights. This excludes the possibility of voting by mail, by telephone or taking decisions by circulation.

In view of this extraordinary situation, the Federal Council amended Ordinance 2 on measures to combat COVID-19 (Ordinance 2 COVID-19)(https://www.newsd.admin.ch/newsd/message/attachments/60666.pdf) by providing for an exception to the principle of immediacy described above.

Thus, Art. 6a Ordinance 2 COVID-19 authorizes the organizers of company meetings, regardless of the expected number of participants and without observing the convocation deadline, to require shareholders to assert their rights (voting rights, right to put questions to the board of directors) in writing or in electronic form or through a representative designated by the organizer. However, the organizer must inform the shareholders no later than four days before the meeting. Art. 12 para. 6 of Ordinance 2 COVID-19 provides that these measures have effect until 19 April 2020.

If the Board of Directors intends to make use of this new art. 6a, we advise the Board of Directors to inform the shareholder in a clear manner in order to enable him/her to exercise his/her rights. To this end, the Board of Directors will be well advised to present in a transparent and complete manner the decisions to be taken at the General Meeting. It will invite the shareholder to take a position on these points. Likewise, the shareholder should be able to ask questions to the Board of Directors in connection with the items on the agenda. Answers to these questions may be recorded in the minutes of the General Meeting or addressed individually to the shareholder. Finally, in our view, the most effective way to deal with this situation is for the Board of Directors to appoint an independent representative – which is mandatory for listed companies (art. 8 NRSb). In this case, the Board of Directors will provide the shareholders in the notice of meeting with all relevant information on the person of the independent representative and the procedures for exercising the voting right.

The current pandemic situation requires everyone to adapt their daily life. This also applies to incorporated companies, which have to reconcile the imperatives of business continuity with their social responsibility to contain the spread of the virus. We believe that the Federal Council has found an intelligent way to reconcile these conflicting requirements.

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