

BILL SENT TO PARLIAMENT ENABLING FULLY VIRTUAL SHAREHOLDERS MEETINGS DURING 2020

Unprecedented measures have been proposed by Dutch Government to allow for fully virtual General Meetings of Shareholders, in order to limit the spread of the Coronavirus. An emergency Bill and explanatory memorandum have been published on 8 April 2020 and are presented to the House of Representatives (*Tweede Kamer*) of the Dutch Parliament. In this briefing we provide an overview of the proposed measures and possibilities of the fully virtual AGM.

Introduction

Today, 8 April 2020, a Bill was sent to Parliament allowing companies (i) to hold general meetings of shareholders in 2020 of NVs and BVs fully virtual, (ii) to postpone the annual general meeting of shareholders with four months and (iii) (for non-listed companies) to extend the period for preparation of annual accounts with five months. We expect that the Bill will be approved by both houses of the Parliament in the coming weeks. The rules will be automatically repealed on 1 September 2020.

Fully virtual general meeting of shareholders

The Bill enables the (management) board of all NVs and BVs to decide that a general meeting of shareholders and (management) board and supervisory board meetings for the period until 1 September 2020 may be held solely via electronic means of communication, e.g. via a live stream (audio and video), even if the articles of association do not contain a provision to that effect or require supervisory board approval (if not given), or if they require that a physical meeting be held. The Bill introduces two specific requirements:

1. the shareholders will need to be able to follow the meeting via the electronic means put in place by the board; and
2. the shareholders have the right, in respect of the published agenda items, to ask questions in writing or by electronic means (e.g. via a chat function) up to 72 hours before the meeting (see for a shorter period below).

Answering of questions before or during the meeting

The questions mentioned above have to be answered by the (management) board at the latest during the meeting (but if reasonably possible, before the meeting). The Bill also requires that the answers be published on the company's website, so that, according to the explanatory memorandum, the

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shareholders can take these answers into account when casting their vote.

Further questions during the meeting

The Bill provides that the (management) board has to create that the opportunity for further questions to be asked during the meeting, unless this cannot reasonably be demanded in the light of the circumstances of that moment. It is the chairman of the meeting who ultimately decides on and is responsible for the order and for a due exercise of the right to ask questions.

As to the right to ask further questions during the meeting, the explanatory memorandum stipulates that it is conceivable that a company will give certain shareholders the right to do so, provided that these shareholders have also asked questions in writing before the meeting, and that it may be expected that the company will give this right to organisations representing shareholders, such as VEB, VBDO and Eumedion.

Non-compliance: no effect on validity of resolutions

The Bill provides that non-compliance with the rules regarding the right to ask questions will have no effect on the validity of the shareholder resolutions taken. The explanatory memorandum adds that the same applies to shortfalls in the electronic transmission of the meeting.

Announcement of fully virtual meeting in convening notice or later

If the board decides that the meeting will be fully virtual, this should, in principle, be mentioned in the convening notice. The board can also decide so up to 48 hours before the meeting, provided that this is announced in the same manner as the convening notice. If the board decides so less than five days before the meeting (but at the latest 48 hours before the meeting), the period within which shareholders can ask questions in writing, will be extended until 36 hours before the meeting.

Further electronic means before and in the fully virtual meeting

Dutch company law provides that the articles of association may further provide that shareholders or their representatives may participate in the meeting and vote before or during the meeting by electronic means. The Bill provides that also if the articles of association do not provide so, the board may decide that shareholders or their representatives may participate in the meeting and vote before or during the meeting by electronic means.

Transitional rules

The rules will have retroactive effect until 23 March 2020. If a shareholders meeting was held before the law (retroactively) entered into force and in relation to that meeting electronic means were used while the articles of

association did not allow so, the resolutions taken in that meeting are deemed valid to the extent they would be valid under the current Bill.

Postponing the annual general meeting of shareholders

The Bill enables the (management) board of NVs (and BVs, if the articles of association require an annual meeting) to postpone the annual general meeting of shareholders with four months, i.e. the annual meeting can be held until 31 October 2020.

Extending the period to prepare the annual accounts

The Bill enables the (management) board of non-listed NVs and BVs to extend the period for preparation of the annual accounts with five months.

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