



Covid-19: new clarifications regarding the rules for meetings and deliberations of general meetings

Wednesday 21 April 2020

A Decree n°2020-418 dated 10 April 2020 published in the *Journal Officiel* dated 11 April 2020 clarifies some of the provisions enacted by the Ordinance n°2020-321 of 25 March 2020 adapting the rules of meeting and deliberation of shareholders' meetings and collegial management bodies of private law entities with or without legal personality in times of health crisis. Focus on the main provisions.

Provisions common to private law entities with or without legal personality

Formalism of the delegation of the competence to convene the meeting

- The Ordinance n°2020-321 of 25 March 2020 relaxed the conditions for holding general shareholders' meetings by authorising the holding of meetings remotely. The possibility of using this option belongs to the body competent to convene the meeting or the legal representative acting on behalf of this body. The new Decree specifies, mainly for probative purposes, that in the event of delegation of the authority to convene the meeting, this delegation must be established in writing (paper or electronic) and specify the duration for which it is granted, as well as the identity and capacity of the delegate.

Use of electronic messaging for shareholders communication

- The Decree provides that in case of postal voting, the voting instructions may be sent by e-mail to the e-mail address indicated in the notice of meeting.
- When a shareholder is represented, the Decree allows the communication of the representation mandate by e-mail to the e-mail address indicated in the notice of meeting.

Formalism of the minutes of the meeting

- When the general meeting is held remotely, by teleconference, videoconference or by written consultation pursuant to the provisions of the Ordinance 2020-321, the minutes of the meeting must expressly mention it. In addition, if the general meeting held remotely had been convened in a place affected on the date of the convening by administrative measures restricting or prohibiting collective gatherings for health reasons, the minutes must mention the nature of these administrative measures.

Provisions applicable to limited liability companies and certain joint stock companies

Use of electronic voting in the absence of a statutory clause

- In joint stock companies, excluding simplified joint stock companies, and limited liability companies, in order to facilitate the holding of meetings, the body competent to convene the meeting or its delegate may authorise the shareholders to vote by electronic means, without a clause in the articles of association being necessary for this purpose. This provision also applies to meetings of bondholders, holders of equity securities and holders of securities giving access to the share capital.

Formalities of the representation mandate

- If a shareholder of a joint-stock company (excluding simplified joint stock companies) is represented at a meeting held remotely, the representation mandate, including that given by electronic means, may be sent to the company up to the fourth day prior to the date of the general meeting. In addition, the proxy must send their instructions for the exercise of the mandate they hold by electronic means to the company no later than the fourth day before the date of the meeting.

Change in the method of shareholders' participation at meetings

- The Decree provides for a derogation from the ordinary law on public limited companies concerning the possibility for a shareholder to change their method of participation at a meeting. A shareholder who has already cast a postal vote, sent a power or requested an admission card or a certificate of participation may now choose another way to participate to the meeting provided that their instructions to this effect reach the company within a period of time compatible with the provisions of the French Commercial Code as amended by the Decree. The previous instructions are therefore revoked.

Composition of the bureau of the meeting held remotely

- In joint stock companies excluding simplified joint stock companies, the decree provides that if the meeting held remotely cannot be chaired by the chairman of the board of directors or the supervisory board or, failing that, by the person provided for in the articles of association, it may be chaired by the person appointed by the board of directors or the supervisory board from among its members or, in the event of unavailability, from among the corporate officers. This includes the chief executive officers and deputy chief executive officers. The text also provides that the body competent to convene the meeting or its delegate must appoint two scrutineers whom it will endeavour to choose from among the shareholders. Failing this, the scrutineers may be chosen from outside the shareholders. However, the decree does not contain any specific provision concerning the appointment of the secretary of the meeting, who may therefore continue to be appointed from outside the shareholders.

Entry into force

Most of the provisions of the decree apply retroactively from 12 March 2020 to general meetings and collegial management bodies held until 31 July 2020. However, the provisions relating to the delegation of the competence to convene the meeting and the formalities of the representation mandate only apply as from the entry into force of the Decree, i.e. the day after its publication in the *Journal Officiel*, i.e. 12 April 2020. In the same sense, those relating to the method of appointing scrutineers apply to meetings convened after the entry into force of the Decree, i.e. 12 April 2020.

More information

If you wish to receive more information about the Corona virus emergency measures and how these measures can help your company, please contact us.



Stéphane Bénézant

**Attorney at Law - Partner
Corporate/M&A**

T +33 (0)1 41 16 27 30
M +33 (0) 6 80 94 71 04
E sbenezant@avocats-gt.com



Marc Huynh

**Attorney at Law
Corporate/M&A**

T +33 (0)1 41 16 27 36
M +33 (0)6 80 42 97 45
E mhuyh@avocats-gt.com