

Amendment to the meeting and deliberation rules for meetings and councils

Ordinance No. 2020-321 of 25 March 2020 published in Official Journal of the French Republic (*JORF*) No. 74 of 26 March 2020 (the “**Ordinance**”) taken on the basis of Article 11 of the emergency Act No. 2020-290 of 23 March 2020 to deal with the covid-19 epidemic, temporarily adapts the rules for meetings and deliberation of shareholders’ meetings and governing bodies of legal persons and private law governed entities. This order may be clarified by regulatory provisions, expected in the coming days.

1. Scope of application

- **Persons concerned.** The scope of the Ordinance is very wide: it covers all legal persons and private law entities without a legal personality.
- **Decisions concerned.** All decisions falling within the competence of shareholders’ meeting and governing bodies are affected, including those relating to the approval of accounts.
- **Limited duration.** The Ordinance is applicable to shareholders’ meetings and meetings of governance bodies held between 12 March 2020 and 31 July 2020 (unless this deadline is extended until a date fixed by decree but no later than 30 November 2020).

2. Amendment of the rules relating to shareholders’ meetings

2.1 Convocation

- **Notice by post.** In listed companies in which shareholders’ holding registered shares must be notified by post, meeting will not be null simply because a notice could not be made by post due to circumstances external to the company, assuming in practice that the company still attempted to convene by this means.
- **Electronic communication.** Requests for the communication of a document or information from a shareholder prior to the holding of a meeting may be answered electronically. Obviously, the shareholder must have indicated his email address in his request.

2.2 Participation in meetings and deliberations

- **Closed session meetings.** The convening body or the legal representative of the entity concerned may decide that the meeting will be held without the shareholders or their proxies being physically present. In this case, the members can participate or vote at the meeting according to the other provisions set out in the articles which govern it, adjusted if necessary by the Ordinance (for example, powers to the president, remote voting, written consultation, as the case may be).
 - » For a closed session to be possible, the containment measures must affect the shareholders' meeting location at the date of the notice or the date of the meeting. A closed session therefore remains possible, even if these measures ceased on the date of the meeting, as long as they were in force at the date of the notice (or of the meeting notice published by listed companies).
 - » This possibility must allow issuers to continue to operate normally by voting on significant decisions regarding financial delegations, dividends or executive compensation, while avoiding the postponement of the meeting, which is favoured by certain proxy advisors.
- **Generalisation of alternative means of participation.** Without the need for a statutory or contractual clause, and notwithstanding any clause to the contrary, shareholders may be invited (and thus counted for the calculation of quorum and majority):
 - » to participate by conference call or audio-visual allowing for their identification (even if, in practice, the verification in real time of the quality of shareholder of the attendees seems difficult for the issuers);
 - » to be consulted in the form of a written request provided that the law permits it for the type of companies concerned.
- **Subsequent adjustment of notices.** If it is decided to apply the methods permitted by the Ordinance after the dispatch of notices, the recipients are informed by any means at least three working days prior to the date of the meeting, without it being necessary to send a new notice. As an exception, for a listed company, this information is provided by regulatory information services.

3. Adaptation of the rules relating to the executive, administrative or supervisory governing bodies

Notwithstanding the absence of a provision in the articles of association or the internal regulations (*réglement intérieur*), and any clause to the contrary:

- Members of the governing bodies who participate by means of a telephone or audio-visual conference enabling their identification and guaranteeing their effective participation are deemed to be present at the meetings. These means must (i) at the very least transmit the voice of the participants and (ii) ensure the continuous and simultaneous retransmission of the deliberations.
- The decisions of the administrative, supervisory or executive governing bodies can be taken by written consultation of their members under conditions ensuring the collegiality of the deliberation.

These provisions are applicable regardless of the subject matter to be decided by the said body.

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