



Briefing

COVID-19 Special corporate governance rules introduced during the pandemic again

26 November 2020

On 16 November 2020, a Government Decree was issued that prescribes the application of different company law rules and adds new opportunities for corporate decision-making to mitigate the economic impact of the coronavirus pandemic.

The most important rules affecting companies are as below.

Scope of the Government Decree

The Government Decree is to be applied in the decision-making of decision-making bodies (quotaholders' meeting, sole member, general meeting) and other bodies (supervisory board, executive board, etc.) of legal persons and non-legal person organizations, such as companies in case the members are restricted in decision-making due to curfew and protection measures.

The regulation is in force from 17 November 2020 until the end of the emergency and will also apply to ongoing proceedings.

Conduct of the quotaholders' meeting, general meeting

1. A quotaholders' or general meeting may not be held with the personal participation of a member, even if it has already been convened before the entry into force of the decree (i.e. 17 November 2020).
2. Instead, it is possible to hold a meeting by electronic means or make a decision without holding a meeting (in writing) even if this is not regulated or is regulated differently than the Government Decree in the company's instrument of association (Articles of Association or Deed of Foundation), unless law applicable for legal entities excludes decision-making without holding a meeting.
3. Such a meeting shall not be subject to any publicity requirement applicable by law.
4. If the instrument of association does not or differently regulates the use of electronic means of communication or (written) decision-making without holding a meeting, the rules shall be established and communicated to the members by the managing director (in case of several independently acting managing directors, the managing director exercising the employer's rights is entitled to do so).

However, it is mandatory to comply with certain provisions, thus among others the means of proving identity of the members or shareholders and identification of the decision affected by the vote cast must be to be determined.

5. Members of the supervisory board and the auditor may attend the meeting in the same way as members or shareholders.

Decision of the sole member

1. Natural person members are not obliged to electronically sign their legal declarations sent by e-mail but must be able to ensure the identifiability of it.

Adoption of decisions by the management instead of the decision-making body

1. Should reaching quorum be not possible in the above manner, then in cases of
 - a) maintaining lawful operation,
 - b) matters necessary to deal with the emergency,
 - c) urgent matters in the context of rational and responsible business management,
 - d) the acceptance of the annual accounts, and

e) the use of the after-tax profit

with certain restrictions, the management decides. In certain questions of special importance specified in the Government Decree, the management is not entitled to decide even during the emergency.

2. If the annual account is accepted by the management, conducting the audit is only an option, but adopting a decision is still possible only in the possession of the written report of the supervisory board (if the company has a supervisory board).
3. The liability of the decision-making management towards the company does not change compared to the general rules.
4. The decision adopted by the management shall be placed on the agenda of the meeting of the decision-making body to be convened within 90 days of the end of the emergency. Changing the decision does not affect the rights and obligations that have previously acquired or arisen.
5. The decisions of the management must be published and submitted to the court of registration in the same way as the decisions of the decision-making body.

Decision-making of other bodies, duration of their term

1. If there is no accepted procedure for other bodies or it deviates from the provisions of the Government Decree, the rules for meetings and decisions to avoid appearing in person shall be determined and communicated to stakeholders by the chairman or, in the event of impediment, his deputy or, failing that, by a member appointed by the management. The previous procedure rules of the 102/2020. (IV.10.) Government Decree on the different provisions for the operation of personal and property unifying organizations in the event of an emergency may also be applied to the meetings and the decision-making.
2. Written consultation and decision-making can also be done by e-mail.
3. The quorum shall be determined by the number of members who are able to vote, and also in this case a decision shall be taken by a majority, including where in the absence of the other members only one person is entitled to take a decision.
4. If the term of the mandate of the executive director, a member of a board (e.g. a member of the supervisory board) or the auditor expired or will expire during the emergency, their term is extended for 90 days after the end of the emergency.

Corporate governance and public limited companies

The special provisions set out in the Decree are applicable for public limited companies only with limitations.

The Government Decree prescribes for the decision-making of public limited companies several further rules in detail.

Please, thoroughly examine the relevant legal provisions before of adopting any decisions.

Contact

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