

IMPACT OF COVID19 ON CORPORATE GOVERNANCE

Further information to follow

FAQ: CORPORATE GOVERNANCE AND COVID-19

In light of the current COVID-19 outbreak, all companies and institutions are taking precautionary measures to minimise the potential impacts the COVID19 and to safeguard the health and safety of everyone involved. This, however, may also impact the company's ability to hold its annual general meeting or other extraordinary meeting of the shareholders or other managing and/or supervisory bodies. Please note that the below reflects the situation as of the date of this newsletter. It is expected that the Hungarian legislator will amend the applicable legal background entitling the companies to move to a remote operation both in terms of day-to-day management and conducting general meetings in the time of the state of emergency. We at Lakatos, Köves and Partners are monitoring the situation and will update this newsletter imminently once the new law is adopted. The update will be posted on our website.

MY SHAREHOLDERS DO NOT WANT TO HAVE A PHYSICAL GENERAL MEETING. WHAT CAN WE DO?

First everyone needs to check the constitutional documents of the company to see whether it entitles the shareholders to hold the general meeting in any other way than with an in-person meeting. It is common practice that constitutional documents allow the shareholders to hold the meeting electronically or conduct the voting in writing. If the constitutional documents of your company do not allow this, it can be either changed or the requirement for an in-person meeting can be waived by the shareholders (in case of the latter, each shareholder must approve the deviation from the constitutional documents, otherwise the meeting will not be lawful and will be subject to a challenge by the non-consenting shareholder).

HOW CAN WE CONDUCT A GENERAL MEETING ELECTRONICALLY?

The procedure is more simple than it sounds! If the constitutional documents of the company allows it, the management may opt for an electronically held general meeting. In such case the invitation to the general meeting must indicate the details of the videoconference and all the technological details of the electronically held general meeting. The videoconference must be recorded and each shareholder must be given the opportunity to exercise his/her statutory rights (e.g. right to information, right to speak up, right to make proposals, etc.). Once the videoconference is finished, the recording must be stored and the management is obliged to prepare the minutes of the meeting.

HOW CAN WE CONDUCT A GENERAL MEETING IN WRITING?

If the constitutional documents of the company allows it, the management may decide that instead of holding personal general meeting, the shareholders pass resolutions in writing without holding any meeting. In such case the management must send the draft resolutions (and the information enabling the shareholders to make an informed decision) to the shareholders, who, in turn, must send back their votes on each resolution within the prescribed deadline. Once all votes arrive (or once the deadline expired) the management will be obliged to count the votes and inform the shareholders in writing about the resolutions.

HOW CAN WE REGISTER THE CHANGES DECIDED DURING THE GENERAL MEETING?

The management is obliged to prepare the minutes of the meeting of the general meeting held electronically or issue a minutes summarizing the results of the voting in writing. In each case the minutes will need to be signed by the managing director of the company and countersigned by a lawyer who will then be obliged to submit that to the court of registration requesting the registration of changes (together with certain other corporate documents). The minutes may be signed by the managing director electronically if his/her electronic signature is already registered with the court of registration and can be sent to the lawyer for countersignature (in such case the lawyer will also need to record the videoconference / signing process of the minutes and conduct additional identification proceedings in accordance with the professional requirements that entitles the lawyer to countersign a document which was signed in his physical absence). This means that no in-person meeting is needed with the lawyer either. See our note on the use of E-signatures.

CAN WE CONDUCT THE MEETING OF THE BOARD ELECTRONICALLY? CAN WE VOTE IN WRITING?

The answer is a firm yes. Unless the by-laws specifically restrict this, the management may decide to have meetings through videoconferences and pass resolutions during the videoconference. The same applies to written resolutions: unless specifically restricted in the by-laws, the management may pass any decisions in writing. If the by-laws are currently silent about the specific rules of videoconferences and written resolutions, it is considered to be best practice to seek the assistance of a lawyer to prepare these rules of proceedings as soon as possible (please note, the absence of these do not restrict the management to proceed with the meetings through videoconferences or to pass resolutions in writing, however, a clear and unambiguous rules of proceedings in this respect will help to minimise the risk of any challenge in the future by a non consenting board member).

CAN WE CONDUCT THE MEETING OF THE SUPERVISORY BOARD ELECTRONICALLY? CAN WE VOTE IN WRITING?

Please see above, the same considerations apply to the meetings of the supervisory board as well.

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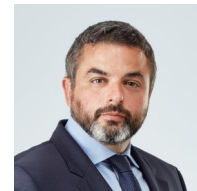
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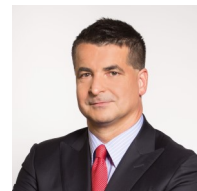
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