

LAKATOS, KÖVES ÉS TÁRSAI
ÜGYVÉDI IRODA

LKT NEWS
CORPORATE
10 APRIL 2020

UPDATE: CORPORATE GOVERNANCE - PHYSICAL MEETINGS ARE BANNED, NEW MEASURES ARE INTRODUCED TO FACILITATE THE CONTINUATION OF CORPORATE DECISION MAKING PROCEDURES

On 10 April 2020 the Hungarian Government issued new temporary legislation (Government Decree no. 102/2020) which changes the modus operandi of holding shareholder and board meetings.

WHEN DO THE NEW RULES APPLY, AND WHO IS COVERED BY THE NEW MEASURES?

The new measures, which refer to the COVID-19 related state of emergency (as declared in Hungary by the Government on 11 March), are binding from 11 April 2020, and cover all meetings, including those for which invitations were posted before that date. All legal persons are affected, regardless of their forms of operations, (i.e. not only companies, but also foundations, associations etc.).

The term during which the newly introduced rules apply is not fixed; their end date will be determined by further governmental or parliamentary decision.

WHAT MEETINGS ARE AFFECTED AND HOW SHALL MEETINGS NOW BE HELD?

Meetings of all decision making bodies are generally covered by the new rules, which includes general meetings, members meetings, meetings of boards of directors or supervisory boards etc.

With very narrow exceptions, physical meetings are forbidden. Decision-making bodies which are able to hold meetings without infringing the current restrictions on leaving residences may continue to hold meetings.

Electronic devices or a written voting procedure shall be used. Managing directors and boards are authorized to use the foregoing means even if the Company's articles of association do not allow using them, and they are also authorized to establish within their organization, including in relation to shareholders' meetings, the procedural rules for using such means. The decree sets out certain minimum requirements, including identification requirements at shareholder meetings held via electronic devices and procedural requirements for written voting procedures.

As a further temporary procedural rule, boards of directors and supervisory boards are allowed to continue operating and to have a quorum even if the number of members decreases or a member cannot be present as a result of the emergency situation, and in extreme circumstances this may mean one single person passing a valid board resolution.

WHAT AGM COMPETENCIES MAY BE TAKEN OVER BY MANAGING DIRECTORS AND BOARDS?

The new rules include a degree of ambiguity and will require careful reading in all companies to establish which set or rule applies to them. The following lines provide a broad summary for information purposes.

Subject to 'Major Shareholder Consent' (see below), unless (i) a company has a very small shareholder base (up to 5), or (ii) the shareholders holding the majority of votes in companies having between 5 and 10 shareholders initiate holding a shareholder meeting (i.e. one held via electronic devices or in writing), or (iii) a company has more than 10 shareholders and the managing directors or board of directors (or the representative of the State, if the State is a majority shareholder) initiate holding a shareholder meeting (via electronic devices or in writing), AGM decisions may be passed by the managing directors or board of directors, instead of shareholders.

These include the following powers:

- Approval of the annual reports;
- Decision on the payment of dividends;
- Any decision falling in the competency of shareholders, provided that passing a decision is needed to maintain lawful operations, to manage the emergency situation or to address an economic decision that cannot be delayed.

The following decisions are not included:

- Liquidation;
- Amending the articles (with some exceptions);
- Mergers, demergers etc.;



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CONSENT RIGHTS RESERVED TO MAJOR SHAREHOLDERS

Written declarations of no objections (practically consents) of single shareholders holding more than 50% of the votes is required for the management use of any of the AGM competencies described above. If there are shareholders holding more than 25%, as a precondition to use of these AGM powers, the management is required to obtain declarations of no objection from such shareholders and other shareholders so that the combined level of shareholders not objecting to the management use of AGM competencies reach at least 51% of the votes.

WHAT SUBSEQUENT CONTROL AND APPROVAL RIGHTS SHAREHOLDERS ARE HAVING?

EGMs must be convened within 90 days of the end of the COVID-19 emergency (as such date may be defined by the Government or the Parliament), which EGM may then resolve to change or repeal the decisions previously passed, with the proviso that such resolutions "do not impact rights and obligations arising before the date of such EGM". The latter provision will require management and shareholders to carefully consider the consequences of their decisions.

ARE THERE SPECIAL RULES FOR LISTED COMPANIES?

Yes. Listed companies must apply the newly introduced measures subject to a number of required deviations, which include that (i) major shareholder consent rights do not apply (ii) the board of directors can add further items to any previously published AGM agenda; (iii) the board of directors has the power to pass decisions on any items on the AGM agenda. Subsequent EGM approval is required only if shareholders representing more than 1% of the votes request that in writing within 30 days of the end of the state of emergency (which date will be set in a Government or Parliament decision).

Specific deadlines are also set in the Government Decree for listed companies, including that in any event the annual reports must be approved (by the board of directors!) by 30 April 2020. A subsequent shareholder approval of such board decision in an EGM is required only if so requested in writing by 30 May 2020 by shareholders representing more than 1% of the votes, in which case dividends cannot be paid before such EGM.

WHO TO CONTACT?

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