

General Assembly and Board of Directors Meeting and Covid19 Pandemic - The Belgian Government takes measures offering non-profit organisations solutions

By Alix Degrez, Associate, and Antoine Druetz, Partner, at EY Law.

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Since a couple of weeks, due to the COVID19 pandemic and the containment measures imposed by governments across Europe and worldwide, many questions arise regarding the holding of meetings of the board of directors and the general assembly.

Indeed, the majority of Belgian (international) non-profit associations and foundations have scheduled meetings of their board of directors and general assembly before June 30, 2020 mainly for the following reasons:

- **The approval of their annual accounts and budget.** Indeed, according to the Belgian companies and associations Code of March 23, 2020 (hereafter: "Code"), all Belgian associations and foundations shall approve their annual accounts and budget within 6 months following the end of the last financial year (i.e. in many cases by June 30); and/or
- **The amendment of their articles of association in order to render them compliant with the Code.**

Aware of the difficulties encountered, the Belgian government has adopted measures via the issuance of the **royal decree # 4 containing various provisions concerning co-ownership and companies and associations law in the framework of fight against the pandemic Covid-19 dated April 9, 2020** (hereafter: "Royal Decree"). Please find below a summary of the Royal Decree regarding the holding of meetings of the board of directors and the general assembly.

A. Temporal scope of the Royal Decree

The provisions of the Royal Decree applicable to meetings of the general assembly and the board of directors are applicable **from March 1st, 2020 until May 3rd, 2020 (included)**. The latter date can be adapted by the King.

The Royal Decree explicitly states that a meeting of the general assembly or the board of directors convened before May 3rd, 2020 can be held in accordance with the provisions of the Royal Decree (see below) **although it is held after May 3rd, 2020**.

B. General assembly meetings

- **Upfront voting and proxies**

The board of directors of an association can impose, despite any provisions in the articles of association, to the members to exercise their (voting) rights exclusively:

- 1) **By voting remotely before the general assembly meeting by correspondence; and**
- 2) **By granting a proxy before the general assembly meeting to one person (appointed by the board of directors).**

The Royal Decree provides for specific and strict additional rules regarding the implementation of the upfront voting and the proxy. Amongst these rules, we point out:

- The possibility for an association to prohibit any physical meeting of the members or their proxy-holders;
- The possibility for an association to organise a virtual general assembly as a complementary mechanism of the upfront voting and the proxies. The virtual general assembly will gather the directors and as the case may be, the members of the bureau, the statutory auditor, and the proxy-holder. However, it is not mandatory for the association to allow the members to participate to such virtual general assembly; and
- The possibility for the members to ask written questions before the general assembly meeting.

- **Notary public**

For the general assembly meetings for which the decisions shall be recorded in a notarial deed (e.g. for international non-profit association in case of amendment of the articles of association), the following person shall appear physically in front of the notary public:

- **In case of use of the upfront voting mechanism:** one director duly empowered or any natural person appointed by the board of directors in a proxy;
- **In case of use of the proxies mechanism:** the proxy-holder.

- **Postponement of the ordinary general assembly**

The board of directors can decide to postpone the ordinary (i.e. annual) general assembly, or for foundations the approval of the annual accounts at a later date.

Moreover, if it is decided to postpone, the time period within which the annual accounts and the budget shall be approved (i.e. within 6 months after the end of the last financial year) is extended for a further 10 weeks (i.e. early September 2020).

C. Meetings of the board of directors

The Royal Decree offers the following possibilities:

- 1) Any decisions of the board of directors can, notwithstanding anything to the contrary in the articles of association, be taken via **unanimous written resolutions**; and
- 2) Any meeting of the board of directors can, even without any authorisation in the articles of association and notwithstanding anything to the contrary in the articles of association, **be held via any means of telecommunication** allowing a collective deliberation (i.e. conference call or video conference).

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Should you have any questions regarding the Royal Decree, how to validly hold a meeting of your board of directors or general assembly or any non-profit law questions, please do not hesitate to contact us.



Antoine DRUETZ

Antoine.druetz@be.ey.com



Alix DEGREZ

Alix.degrez@be.ey.com