



Deloitte Legal Newsflash

Corporate compliance and corporate secretarial services

Will the approval of financial year 2019 annual accounts be postponed for all Belgian legal entities?

A Royal decree is expected to be approved regarding measures to combat the spread of COVID-19 and, in particular, regarding the approval of annual accounts.

Background

Each year, the annual general meeting of shareholders is held, on the date and at the location specified in the articles of association, to approve the annual accounts. This general meeting must be held within six months after the financial year closes. If applicable, the general meeting will also take the following resolutions:

- take note of the corporate management body's annual report;
- take note of the statutory auditor's report;
- grant discharge to directors and the statutory auditor;
- renew the mandate of directors and the statutory auditor.

In Belgium, unless otherwise provided in the articles of association, shareholders of non-listed companies may also

approve the annual accounts through a unanimous written consent, *in lieu* of a physical general meeting.

Minister Koen Geens published the following:

"As a result of the COVID-19 pandemic, all legal entities, for which preparations for ordinary general meetings had often only just begun, faced insurmountable practical difficulties in effectively maintaining such meetings according to the usual rules, without infringing the mandatory rules imposed to combat the virus. This is why, following the example of similar initiatives taken by other countries, a number of tolerances and options are being introduced on a temporary basis, giving legal persons the necessary flexibility, without losing sight of shareholders' rights. Legal persons will be able to choose between three options:

- 1) The first option: allowing the meeting to be held, but in circumstances consistent with the measures taken in the wake of the COVID-19 crisis, while allowing shareholders and members to exercise their voting rights and ask questions. In concrete terms, the administrative body will have the power to decide that shareholders or members may only exercise their voting rights at a distance, whether or not in combination with proxy voting, where only a person appointed by the administrative body may act as proxy holder.*
- 2) The second option is to postpone the general meeting until the situation returns to normal. This is also allowed if the meeting has already been convened, provided shareholders and members are properly informed.*
- 3) Finally, it is specified that the corporate management body may, in all circumstances, decide unanimously in writing. The corporate management body may also deliberate and decide (if necessary by a majority) by means of electronic communication that allows for discussion. For decisions that should be taken before a notary - especially for authorised capital - it is again sufficient for a member of the corporate management body or a person appointed by the former to meet the notary in person; the other members can participate by electronic communication."*

The Royal Decree, if adopted, will therefore provide a legal basis and a solution for the holding of annual general meetings and meetings of corporate management bodies (board of directors or supervisory board and management board).

Decisions taken by corporate management bodies and (e-)signatures

In Belgium, it is generally accepted that boards of directors of SA/NV and SRL/BV companies may be held by conference call.

If the articles of association allow them (which is not yet the case for most companies that have yet to adapt their articles of association according to the new Companies and Associations Code), the corporate management body may draw up the annual report and annual accounts through a unanimous written consent. In this context, the Royal Decree, if adopted, will allow the board to draw up the annual accounts unanimously and in writing, even if the articles of association do not provide for this.

Regarding the proof/signature of minutes, the following solutions generally exist:

- either the minutes are signed in accordance with the company's articles of association; or
- an excerpt of the minutes will be signed in accordance with the articles of association; or
- if it is not urgent, the minutes will be signed as soon as the lockdown is lifted or when the next meeting takes place.

As for the signature of the annual/management report to be sent to the statutory auditor, one of the directors could be empowered at the meeting to sign it in the name and on behalf of the corporate management body.

Regarding signatures, it should be remembered that an e-signature is valid under Belgian law.

Entity management in the framework of the approval of the annual accounts

The formalities relating to the approval of the annual accounts and other corporate events are often seen as an administrative burden. Putting appropriate tools in place may substantially reduce the time and effort in order to meet the legal formalities and keep corporate data up to date at all times. In this context, Deloitte Legal's [myInsight Entity Management](#) solution may help legal departments to achieve their compliance targets in a more integrated and time efficient way.

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