

Legal guidance to the New Normal - Experts provide insights into the Covid-19 situation. A corporate law perspective

19 May 2020



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MANAGEMENT BODY MEETINGS:	Public Limited Liability Company		Private Limited Liability Company	
	According to CCL	According to CCL and GD Regulation of March 20, 2020	According to CCL	According to CCL and GD Regulation of March 20, 2020
Participation means:				
<i>Attendance in person (physical meeting):</i>	Yes	Same as before, but: (a) not recommended; (b) subject to respect of social distancing	Yes	Same as before, but: (a) not recommended; (b) subject to respect of social distancing
<i>Attendance by proxyholder (physical meeting):</i>	Yes, subject to (a) potential limitations in the AoA; (b) the need of minimum 2 attendees	Same as before, plus respect of social distancing	Yes, subject to (a) potential limitations in the AoA; (b) the need of minimum 2 attendees	Same as before, plus respect of social distancing
<i>Attendance by videoconference:</i>	Yes, unless expressly prohibited in the AoA	Yes, notwithstanding any contrary provision in the AoA	Yes, unless expressly prohibited in the AoA	Yes, notwithstanding any contrary provision in the AoA
<i>Attendance by means of telecommunication:</i>	Yes, unless expressly prohibited in the AoA and provided that these means ensure: (a) identification of participants ; (b) effective participation; (c) continuous broadcasting	Yes, in any case, notwithstanding any contrary provision in the AoA, provided that identification of participants is possible	Yes, unless expressly prohibited in the AoA and provided that these means ensure: (a) identification of participants ; (b) effective participation; (c) continuous broadcasting	Yes, in any case, notwithstanding any contrary provision in the AoA, provided that identification of participants is possible
<i>Circular resolutions:</i>	Yes, but only if (a) expressly authorised by the AoA; (b) adopted by unanimous consent	Yes, in any case, notwithstanding the absence of provision in the AoA or any contrary provision in the AoA	Yes, but only if (a) expressly authorised by the AoA; (b) adopted by unanimous consent	Yes, in any case, notwithstanding the absence of provision in the AoA or any contrary provision in the AoA
Other aspects:	According to CCL	According to CCL and GD Regulation of March 20, 2020	According to CCL	According to CCL and GD Regulation of March 20, 2020
<i>Convening formalities:</i>	According to AoA / Reasonable period	Same as before	According to AoA / Reasonable period	Same as before
<i>Right to information:</i>	Right to (a) spontaneously receive relevant information from the chairman and (b) require, if need be and through the board only, any information necessary to perform duties	Same as before	Right to (a) spontaneously receive relevant information from the chairman and (b) require, if need be and through the board only, any information necessary to perform duties	Same as before
<i>Quorum and majority:</i>	Half of the directors present or represented and simple majority of the votes casted, save for (a) other provisions in the AoA; (b) circular resolutions which must be adopted by unanimous consent	Same as before, except for circular resolutions which might potentially be adopted by simple majority under the GD Regulation (debated). Distant participation is taken into account for the computation of quorum and majority	Half of the directors present or represented and simple majority of the votes casted, save for (a) other provisions in the AoA and (b) circular resolutions which must be adopted by unanimous consent	Same as before, except for circular resolutions which might potentially be adopted by simple majority under the GD Regulation (debated). Distant participation is taken into account for the computation of quorum and majority

Recommendations for holding Board meetings

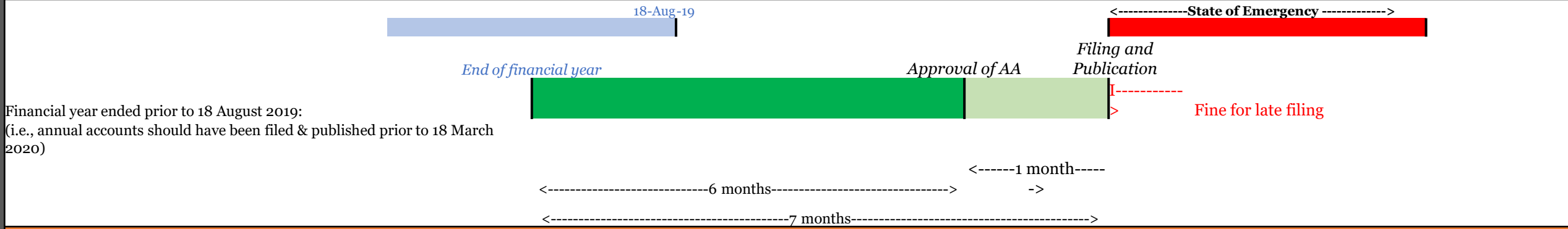
- **Physical meetings should be avoided**, unless there is no other reasonable manner to proceed;
- Potential **limitations** that might be included **in the AoA** concerning representation by proxy should be carefully scrutinized (e.g., a proxyholder can only represent one director/manager, a director from a given class may only represent a director from the same class...);
- **Videoconference should be initiated from Luxembourg** (for substance requirements), with as many directors/managers attending from the Grand-Duchy of Luxembourg. Distant meeting should be documented as any physical meeting. Minutes should be circulated asap for signature;
- **Telecommunication mean used should be initiated from Luxembourg** (for substance requirements), with as many directors/managers attending from the Grand-Duchy of Luxembourg. Distant meeting should be documented as any physical meeting. Minutes should be circulated asap for signature;
- **Circular resolutions adopted by unanimous** consent should be privileged to avoid legal uncertainty;
- **Convening notice should contain all relevant information** concerning the manner the meeting shall be technically held (e.g., chosen videoconference or other telecommunication mean, dial-in details or login details, password...);
- **Board package should be made available** (by mail, special courier, email and/or computer file transfer service) before the meeting or date of signature of the circular resolutions.

SHAREHOLDERS AND BONDHOLDERS MEETINGS:	Public Limited Liability Company		Private Limited Liability Company	
	According to CCL	According to CCL and GD Regulation of March 20, 2020	According to CCL	According to CCL and GD Regulation of March 20, 2020
Participation means:				
<i>Attendance in person (physical meeting):</i>	Yes	Same as before but: (a) not recommended; (b) subject to respect of social distancing	Yes, but not mandatory as long as there are less than 60 shareholders or when the AoA needs to be amended	Same as before but: (a) not recommended; (b) subject to respect of social distancing
<i>Attendance by proxyholder (physical meeting):</i>	Yes, subject to potential limitations in the AoA	Same as before, plus respect of social distancing	Yes, subject to potential limitations in the AoA	Same as before, plus (a) respect of social distancing; (b) possibility for the company to designate a mandatory single proxyholder
<i>Attendance by videoconference:</i>	Yes, save for contrary provision in the AoA	Yes, in any case, notwithstanding any contrary provision in the AoA	Yes, save for contrary provision in the AoA	Yes, in any case, notwithstanding any contrary provision in the AoA
<i>Attendance by means of telecommunication:</i>	Yes, unless expressly prohibited in the AoA and provided that these means ensure: (a) identification of participants ; (b) effective participation; (c) continuous broadcasting	Yes, in any case, notwithstanding any contrary provision, provided that identification of participants is possible	Yes, unless expressly prohibited in the AoA and provided that these means ensure: (a) identification of participants ; (b) effective participation; (c) continuous broadcasting	Yes, in any case, notwithstanding any contrary provision, provided that identification of participants is possible
<i>Written resolutions / voting in writing or electronic form:</i>	No	Yes, provided that the full text of the resolutions to be adopted is published or made available to the shareholders/bondholders prior to the meeting	Yes, when the company has less than 60 shareholders, except for amending the AoA	Yes, in any case, provided that the full text of the resolutions to be adopted is published or made available to the shareholders/bondholders prior to the meeting
<i>Vote by correspondance:</i>	Yes, if organised by the AoA	Same as before	Yes, if organised by the AoA	Same as before
Other aspects:	According to CCL	According to CCL and GD Regulation of March 20, 2020	According to CCL	According to CCL and GD Regulation of March 20, 2020
<i>Convening formalities:</i>	Articles 450-2 (2) and 450-8 of CCL	Same as before	According to the AoA / Reasonable period	Same as before
<i>Right to information:</i>	Article 461-6 of CCL	Same as before, subject to respect of social distancing	Article 710-24 of CCL	Same as before, subject to respect of social distancing
<i>Quorum and majority:</i>	Save for stronger requirements in AoA: OGM: one share present or represented and simple majority of the votes cast; EGM: half of the share capital present or represented (first meeting) and 2/3 of the votes cast	Same as before, with distant participation taken into account for the computation of quorum and majority	Save for stronger requirements in AoA: OGM: shareholders representing more than 1/2 of the share capital (in first meeting) / majority of the votes cast irrespective quorum (in second meeting) EGM: shareholders representing more than 3/4 of the share capital	Same as before, with distant participation taken into account for the computation of quorum and majority
<i>Right to ask questions to the management body:</i>	Yes, during the meeting	Same as before, but difficult to organise in case of GM held by a single proxy holder or by vote in writing or electronic form	Yes during the meeting (i.e. consequently only in Sàrl with more than 60 shareholders)	Same as before, but difficult to organise in case of meeting held by a single proxy holder or by vote in writing or electronic form

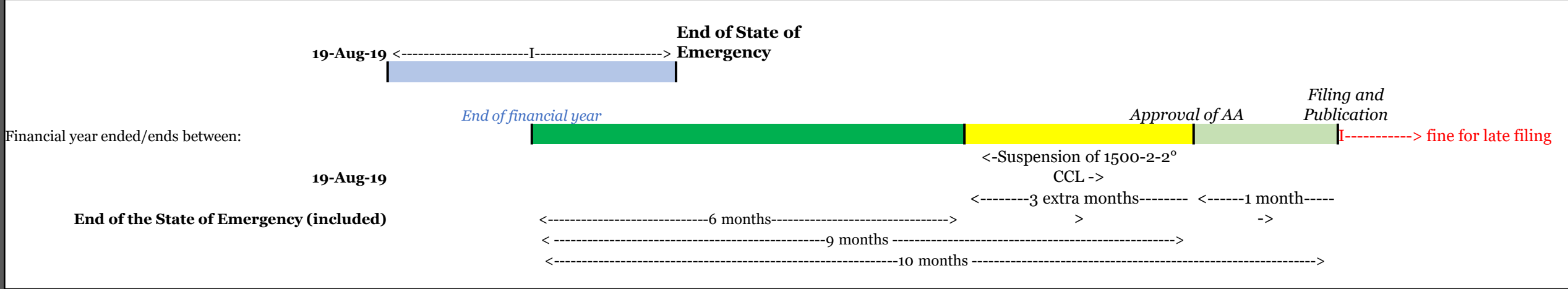
Recommendations for holding GMS

- **Physical meetings should be avoided**, unless there is no other reasonable manner to proceed
- Be careful to respect the **limitations** that might be included in the **AoA** (e.g., a shareholder can only be represented by another shareholder). In case of EGM contact the notary to see if any of its clerk accept to be a proxyholder and to assume the liabilities of the members of the "bureau";
- **Initiate videoconference from Luxembourg**. Respect the constitutive phase of the general meeting (setting-up of the bureau, verification of the attendance list...). Anticipate the process. Reluctance of some notaries to accept holding EGM by video conference call (for (a) lack of appropriate hardware/software system and (b) identification of the participants issues)
- **Reluctance of many (if not all) notaries to accept holding EGM by conference call**, as according to them conference calls does not permit to identify participants
- **Full text** of the resolutions to be adopted should be **attached to the convening notice**. Deadline for returning the executed resolutions should be clearly stated in the convening notice. Reluctance of many (if not all) notaries to accept holding EGM based on votes in writing.
- **Respect convening formalities** for physical GM in case of GM to be held by votes in writing or electronic form
- The management body should contemplate **sending copies** of the documents usually made available to the registered office of the company as an attachment to the convening notice or make them available remotely
- In SA and Sàrl with more than 60 shareholders, shareholders should be offered the possibility **to send their questions (if any) in writing or electronic form** to the board before the meeting, so that the board can answer them in writing before such meeting

SCENARIO 1:



SCENARIO 2:



SCENARIO 3:



Two cumulative conditions to benefit from the extension:

- 1 Financial year ended/ends prior to (or on) the date of the end of the State of Emergency
- 2 Customary legal deadline for filing and publishing the (consolidated) annual accounts (and related reports) had not yet expired on 18 March 2020



Jean-Philippe is a Partner and Head of M&A of PwC Legal. He specializes in mergers and acquisitions, private equity and mainstream corporate law (including under Belgian law).

For more than 15 years, Jean-Philippe advises national and international clients from LOI to Closing in domestic and cross-border mergers and acquisitions transactions. He also developed a considerable expertise in mainstream corporate law, private equity and commercial law, including litigation aspects, with particular emphasis on post-acquisition and shareholders' disputes.

Jean-Philippe has been involved (sell side or buy side) in various domestic or cross-border transactions involving the drafting and negotiation of letters of intent, process letters, term sheets and binding offers, the performance and coordination of legal due diligences, the drafting and negotiation of share purchase agreements, asset purchase agreements and customary ancillary documents, the drafting of shareholders' and joint venture agreements, the drafting and negotiation of management and services agreements... His activities focuses on all types of business (industry, commerce, bank, insurance and financial sector, transport...).

Jean-Philippe Smeets

Partner

+352 26 48 42 35 63

Email: jean-philippe.smeets@pwclegal.lu



Nastasia is a Senior Associate in the Corporate team of PwC Legal. With 10 years of international experience, Nastasia's primary area of expertise is Corporate/M&A, with a particular focus on merger and acquisition transactions, spin-offs and restructuring processes.

She is involved in very complex projects, comprising responsibilities such as (i) drafting and negotiating preliminary documents, such as non-disclosure agreements, letters of intent and other non-binding documents, (ii) coordinating due diligence exercises; (iii) drafting and negotiation of the transaction documents, including sale-purchase agreements and shareholders' agreements both in share and assets deals; (iv) assisting the clients throughout the negotiation, signing and completion of M&A transactions, etc. Beyond the M&A transactional work, Nastasia is regularly advising clients on a daily basis on a wide range of day-to-day corporate matters (such as appointment of directors, opening of branches and business units, mergers, spin-off, financings, etc.) and also with drafting and negotiating a wide range of contracts, such as management agreements, service supply agreements, non-compete and non-solicitation agreements, loan agreements, financing documents, lease agreements, etc.

Nastasia is typically advising both international and domestic clients and has extended her expertise in various regulated sectors, such as agribusiness, financial services, medical services or IT/IP.

Nastasia Dumitru

Senior Associate

+352 26 48 42 35 55

Email: nastasia.dumitru@pwclegal.lu

Thank you !

www.pwclegal.lu

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