



COVID-19: Temporary Legislation

To slow down the rapid spreading of the Coronavirus (COVID-19), the Dutch government has restricted the possibility to hold physical meetings for a certain period of time. However, in the current period many companies hold their (annual) general meeting mostly physically and are now, by government measures, not allowed to hold such physical general meeting. To prevent uncertainty on the validity of resolutions taken outside of a physical meeting and to prevent that postponement of a general meeting shall lead to not complying to the legal deadlines, a bill containing temporary legislation was passed by the Dutch Senate. The legislation allows for temporary deviation from certain articles in the Dutch Civil Code and the articles of association of a company.

1**Corporate – The Netherlands – temporary COVID-19 act**

The Dutch government introduced temporary emergency legislation to cope with certain practical issues relating to the COVID-19 pandemic (the Temporary Legislation). The Temporary Legislation aims to provide rapid guidance and flexibility to companies with regard to, inter alia, general meetings and annual reporting.

In principle, the Temporary Legislation enables legal entities to hold virtual annual general meetings. In addition, it will be possible to amend and extend the period in which legal entities have to prepare their annual accounts. The Temporary Legislation shall apply to all Dutch legal entity forms (private companies, public companies, associations, cooperatives and foundations) and is essentially the same for almost all legal entity forms.

The consequences of the Temporary Legislation for the Dutch private limited liability company (the BV) - as the most popular legal entity form in the Netherlands - shall be set out first, followed by specifying certain differences that apply to public companies, cooperatives, associations and/or foundations.

2**Dutch private limited liability company (the BV)**General Meeting: regular situation

Participation in a general meeting of a BV in an electronic manner is without the Temporary Legislation only partially possible and only when the articles of association facilitate this. It is required that a physical general meeting is convened, meaning that shareholders must have the possibility to physically attend such meeting at a certain location. Also, the board of directors must physically be present. Besides the option to make decisions in a (partially physical) general meeting, shareholders can resolve on decisions through a written shareholders' resolution outside of a physical general meeting. In general, decisions of the shareholders are often resolved upon by written resolution – also outside of the COVID-19 pandemic - and this remains a practical solution during the COVID-19 pandemic but will depend on the number of shareholders of the BV and the willingness

of the shareholders to agree to a written resolution instead of a (partially physical) general meeting.

General Meeting: new emergency situation

The Temporary Legislation allows the board of directors to prohibit any person with meeting rights to physically attend a general meeting. In addition thereto, the Temporary Legislation allows BVs to organize fully virtual general meetings for anyone with meeting rights, including directors and shareholders. Such virtual general meetings are possible irrespective of what is included in the BVs articles of association. The Temporary Legislation stipulates that the virtual general meeting can take place through an audio(/video) stream, a conference call, a videocall or the use of meeting software.

In order for the BV to organize a virtual general meeting, the Temporary Legislation stipulates certain requirements. Shareholders can attend the general meeting via electronic means and may submit written or electronic questions (up to 72 hours or 36 hours when the resolution to hold a virtual general meeting was adopted within five days prior to the general meeting) prior to the general meeting. The board of directors must answer questions (raised prior to the general meeting) the latest during the general meeting and make such answers available electronically to the shareholders. In addition, the board of directors should try to enable and allow shareholders to raise questions during the general meeting (for example via chat box and/or e-mail). The Temporary Legislation stipulates that, among others, not addressing shareholders' questions during the general meeting, the inability for shareholders to raise questions during the general meeting or even a malfunctioning connection to the general meeting, does not affect the validity of any resolutions adopted at the general meeting.

According to the Temporary Legislation the board of directors may allow voting through electronic means even though this is not included in its articles of association. The board of directors may make voting during the general meeting via electronic means possible, but could also only allow voting via electronic means ahead of the general meeting.

Annual Reporting: regular situation

As part of the BV's annual reporting obligations, the annual accounts have to be prepared (by the board of directors) within five months after the end of the

financial year. Subsequently, the annual accounts are adopted by the general meeting and subsequently filed with the trade register of the Dutch Chamber of Commerce (within eight days after adoption by the general meeting). Under certain circumstances, the period of five months to prepare the annual accounts can be extended by the general meeting by up to five months.

Annual Reporting: new emergency situation

The Temporary Legislation enables an extension to prepare the annual accounts of up to five months by the board of directors instead of the general meeting. If the board of directors makes use of this possibility, the general meeting cannot grant any additional extension on top of the five months extension decided upon by the board of directors.

The annual accounts must be filed within twelve months after the end of the financial year of the BV, regardless of whether the annual accounts have been actually adopted. The Temporary Legislation does not extend this term. Not meeting this filing deadline could lead to directors liability but the Temporary Legislation does stipulate that the board of directors will not be held liable solely on the basis of not meeting the ultimate annual accounts filing deadline if this is due to a consequence of the COVID-19 pandemic.

3 Dutch public limited liability company (NV), cooperatives, associations and foundations

In essence the above indicated provisions of the Temporary Legislation regarding general meetings and the extension of the term for preparing annual accounts are the same for all legal entity forms, but there are a few stipulations that are applicable on a specific legal entity form.

A NV is obliged to hold a general meeting within six months after its financial year has commenced. The Temporary Legislation does provide for an extension of this term by the board of directors up to four months. At a general meeting of a NV, the board of directors must ensure (instead of 'making an effort' as is stipulated for the BV, the cooperative and the association) that shareholders can submit questions during the course of the general meeting. A NV listed on an EU stock exchange is currently required to prepare the annual

accounts within four months after the end of its financial year. The Temporary Legislation does not include any provision that allows such NV to extend its term to prepare its annual accounts.

Cooperatives, associations and foundations have to prepare the annual accounts within six months after the end of their financial year. The Temporary Legislation allows cooperatives, associations and foundations to extend this term by up to four months (instead of five months for a BV and NV). The annual accounts must be filed by no later than ten months after the financial year.

For the avoidance of doubt, the arrangements in relation to the possibility to hold a fully virtual general meeting under the Temporary Legislation is for NV's, cooperatives and associations the same as set out under 2 (the BV) above, unless explicitly indicated otherwise in this paragraph 3.

4 Time line

The Temporary Legislation was passed by the Dutch Senate on April 21, 2020 and has retroactive effect to March 16, 2020. The Temporary Legislation shall be effective until September 1, 2020. In principle, the Dutch government may decide to extend the term of the Temporary Legislation. We will monitor this development closely. Please do not hesitate to contact HVG Law to answer any questions you may have.

What HVG Law can do for you:

- ▶ Advice on the options on holding or postponing a general meeting or extending the term for preparing the annual accounts
- ▶ Advice on how to hold a general meeting by electronic means
- ▶ Arrange meetings by electronic means of communication
- ▶ Act as secretary during board and/or general meetings

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