

Virtual general meetings introduced for Dutch companies in light of coronavirus crisis

April 9, 2020

This article was most recently updated on 24 April 2020.

The Dutch government's [emergency bill](#) on coronavirus-related matters includes temporary facilities to mitigate the impact of the coronavirus outbreak on various aspects of Dutch society. For Dutch companies, the bill contains measures aimed at helping organise and time general meetings amidst the coronavirus pandemic, including the option of holding virtual meetings.

The bill became law and took effect on 24 April and has retroactive effect, covering general meetings held on or after 16 March 2020. This article provides companies with guidance on the temporary rules for general meetings of listed companies.

Why an emergency act?

As part of its efforts to limit the spread of the coronavirus, the Dutch government has imposed several restrictions on public and private gatherings. As discussed in this recent [article](#), this raises the issue that Dutch law does not facilitate general meetings where any physical attendance is excluded. Another issue is that public limited liability companies have a statutory obligation to hold their annual general meeting within six months after the end of their financial year.

This tension between the need to minimise public and private gatherings and the legal requirements regarding annual general meetings, has put many Dutch companies in a difficult position. The fact that various listed companies have already postponed or cancelled their annual general meetings, reflects this dilemma.

Virtual general meetings made possible

The emergency bill allows companies to organise virtual general meetings. This means that anyone attending the meeting, including directors and shareholders, can only do so electronically. This includes providing shareholders the option to follow the general meeting by video or audio webcast. Shareholders are not entitled to participate in two-way discussions in real time but may submit written or electronic questions before the meeting and follow-up questions during the meeting. This setup will not require directors to assemble at an agreed location and participate in the virtual meeting as a group. They may attend from different locations.

Shareholders attending the virtual meeting electronically will, by default, be unable to vote during the meeting. Unless the company's board has facilitated electronic voting during the meeting, votes may only be submitted ahead of the meeting.

Although the initial bill was not fully clear on this point, this was clarified specifically by the government on April 10.

Virtual general meetings will be available to companies irrespective of what arrangements are set out in their articles of association. The bill enables companies' boards to determine whether a virtual meeting is to be held.

Requirements for holding virtual general meetings

For a company to hold a virtual general meeting, a number of requirements must be met:

- The notice to the meeting must state that the meeting will be held as a virtual meeting. If the meeting has already been convened, the company may still change the meeting into a virtual meeting, provided that notice of this change is given at least 48 hours before the meeting.
- The meeting must be broadcasted live, by video or audio cast, to shareholders.
- Ahead of the meeting, shareholders must be able to submit written or electronic questions to the company regarding items tabled for discussion or for a vote at the meeting.
- The deadline for shareholders to submit questions is 72 hours before the meeting. The deadline is 36 hours, however, if a general meeting was changed into a virtual meeting five days or less before the meeting.
- Questions submitted timely by shareholders must be answered at the latest during the meeting, but may also be answered before the meeting. Questions need not to be answered individually, but may be grouped based on the relevant theme. The answers must be posted on the company's website or made available electronically to shareholders.
- The board of a public limited liability company (NV) must enable shareholders to submit follow-up questions during the meeting, but the meeting's chairman will have discretion in this and may – in certain circumstances – decide on which questions will be answered and how, in order to safeguard the order of the meeting. According to the bill, shareholders may in principle pose follow-up questions only if they have also submitted written or electronic questions prior to the meeting. In the case of a private limited liability company (BV), the board must make efforts to provide for the option to ask questions.

Companies opting to hold their general meeting as a virtual meeting will have to determine the practical implications of this, including how to organise the manner in which shareholders can submit questions before and during the meeting. Such questions may for example be raised through a chat box or via email. Companies should consider how they can most efficiently structure this process, for example by using a moderator or by pooling questions, and, where needed, by pausing the meeting while preparing collated answers. In addition, companies should consider how they can check the identity of shareholders who are submitting questions.

The emergency bill specifies that where shareholders are unable to raise questions during the meeting, or where questions

submitted by shareholders prior to the meeting are not answered at the latest during the meeting, this will not affect the validity of any resolutions adopted at the meeting.

Additional time to prepare financials and hold the annual general meeting

The coronavirus pandemic may affect a company's ability to timely prepare its annual accounts. Companies without a listing on an EU stock exchange are currently required to prepare their annual accounts within five months from the end of their financial year. To provide these companies with more time, the emergency bill allows them to extend this deadline by up to five months.

Companies with a listing on an EU stock exchange, which are required to prepare their annual accounts within four months from the end of their financial year, will not be permitted to extend the deadline. Their publication obligations under the Dutch Financial Supervision act in respect of their annual and six-monthly results will also continue to apply and cannot be extended.

The bill allows all public limited liability companies to postpone their annual general meeting, which under current legislation they must hold within six months after the end of their financial year. This postponement option is for up to four months.

Temporary and retroactive effect

The bill and the explanatory comments make clear that, depending on the development of the coronavirus pandemic, the duration of the act, or of specific provisions, could be shortened or extended. It is therefore important to continue to carefully monitor developments.

Many of the measures under the emergency bill have retroactive effect as of 16 March 2020. One of the results of this retroactive effect is that certain potential defects of general meetings held on or after 16 March, including a change of meeting venue after the date a meeting was convened but notified at least 48 hours before the meeting, are remedied.

What does this mean for your company?

The emergency bill aims to put companies in a better position to organise their general meeting at such a time, and in such manner, that best strikes the appropriate balance between potential health and safety concerns and any legal and practical considerations. Which meeting form is most appropriate, will be determined by the company's board.

First, companies can continue to hold "physical" meetings, as the bill does not result in virtual meetings becoming the mandatory meeting form.

In addition, companies can elect to hold "hybrid" meetings, which do not exclude the possibility of physical attendance but facilitate electronic participation by shareholders that do not wish to physically attend.

In our previous [article](#), we discussed relevant coronavirus-related considerations in respect of both physical and hybrid meeting forms. For such meetings, companies will welcome two important

changes introduced by the bill. Companies will be permitted to change the meeting venue up to 48 hours before the meeting, which better equips them to deal with unforeseen circumstances. In addition, while hybrid meetings are currently available only to companies whose articles of associations permit such meetings, the bill opens up this possibility to all companies.

Finally, the bill enables companies to hold entirely virtual general meetings, avoiding any requirement for shareholders to physically meet at a meeting venue. Companies can elect to hold their meeting as a virtual meeting by giving notice to shareholders accordingly when they convene the meeting, or by giving such notice at least 48 hours before the meeting. Companies may prefer to retain flexibility, by convening a physical or hybrid meeting, while also mentioning that the company's board may give further notice that the meeting is to be held as a virtual meeting.

Further developments and questions

We will continue updating you on trends that we identify in how shareholder meetings are being organised during the coronavirus pandemic. Please do not hesitate to reach out to your De Brauw client team, or to one of our corporate advisory experts, to discuss any questions you may have.