

Corporate governance and decision-making capabilities of the governing authorities of the company during the COVID-19 emergency situation

On Friday, 20 March 2020, Saeima, the parliament of Republic of Latvia, adopted the Ministry of Justice's urgently-directed amendments to the Commercial Law, in order to provide the shareholders of limited liability companies and joint stock companies with the possibility to participate remotely in meetings of shareholders during the announced COVID-19 emergency circumstances in Latvia.

The amendments also aim to facilitate the signing of the meeting minutes of the management board and of the supervisory board, thereby providing the possibility for the meetings of management boards and supervisory boards to be held remotely with the use of electronic means.

The referred amendments entered into force on 22 March 2020.

(I) Remote organization and conduction of the shareholders' meeting

Pursuant to the adopted amendments:

- (A) in **the event of an emergency situation**, even if it is not provided by the articles of association of the company, the management board has right to call a shareholder meeting, thereby stating in the notice of convening of the meeting that **the shareholder has the right to join and participate in the meeting remotely** (i.e. the right to participate and vote in the meeting of shareholders with the use of electronic means);
- (B) if **specifically provided for in the company's articles of association, the meeting of shareholders may only take place electronically** (remotely) and shareholders have **an obligation** to participate and vote in it with the use of electronic means ('e-meeting').

The Commercial Law sets out the following requirements for the remote announcement and conduction of shareholders' meetings:

- The management board with its own initiative or with the request of 20% of the shareholders with voting rights (if the articles of association do not provide for a lower quorum of representation) shall provide the shareholders with the **right to participate or to vote in the meeting of shareholders with the use of electronic means (i.e., not physically attending the meeting)**. In such case, the management board shall prescribe the requirements for the identification of shareholders and the procedures by which the shareholders may exercise the rights in the notice on convening the meeting of shareholders.
- The management board **shall specify the procedures and time limits** within which the shareholders may exercise the right to vote prior the shareholders' meeting or to vote in a shareholders' meeting by electronic means **in the notice of convening a shareholders' meeting**.
- The shareholder shall **have the right to vote in writing (by electronic means) before** the meeting of shareholders (by sending the vote via e-mail or post), provided that such a vote is received by the company **at least on the day** prior the meeting.
- The shareholder voting before the shareholders' meeting or participating or voting in a shareholders' meeting with the use of electronic means **shall be deemed to be present at the meeting of shareholders**.
- If a shareholder votes before the shareholders' meeting, or participates or votes in a meeting remotely with the use of electronic means, **the list of shareholders who participate in the meeting, prepared by the management board, shall indicate the manner in which the respective shareholder participates or votes in the meeting**.
- The right of a shareholder to participate or vote in a shareholders' meeting with a use of electronic means does not **prejudice the right of the shareholder to participate and vote in the meeting of shareholders in presence**.

(II) Remote adoption of the supervisory board decisions

The Commercial Law provides for the **possibility for a member of the supervisory board, who does not participate in the meeting of supervisory board, to cast his or her vote in writing prior to the respective meeting** by submitting it to another member of the supervisory board.

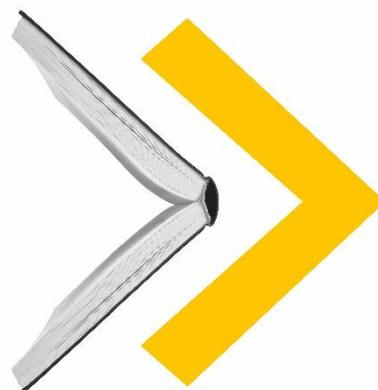
At the same time, in accordance with the provisions of the Commercial Law, **a member of the supervisory board may cast his or her vote by phone or by way of other means**, if the means used for voting simultaneously allow the member of the supervisory board to participate in the discussion of the matter and in the taking of the decision, and if such action is documented accordingly.

(!) In line with the amendments adopted to the Commercial Law, from now on **the minutes of the supervisory board meetings may be signed by the chairman of the meeting and at least another member** of the meeting (i.e., it is not necessary anymore for all members of the supervisory board, who have participated in the relevant meeting, to sign the minutes as previously specified by the Commercial Law). In addition, the member who signs the minutes should not necessarily be a member of the supervisory board, but it may also be, for example, the recorder of the minutes of the meeting.

(III) Remote adoption of management board decisions

In turn, the Commercial Law does not provide for special rules in respect to remote organisation of the management board meetings of the company. However, since the commercial laws, as such, are part of the private law which operates according to the principle that "everything that is not prohibited, is allowed", it is concluded that the Commercial Law does not preclude the use of modern technologies in the course of management board meetings, thereby including no restrictions for management board meetings to take place with the use of electronic means. Accordingly, **meetings of the management board may also be held electronically (by way of electronic means)**.

(!) In line with the amendments adopted to the Commercial Law, from now on **the minutes of the meetings of the management board may be signed by the chairman of the meeting and at least one other member** of the meeting (i.e., it is not necessary for the minutes to be signed by the chairman of the management board, recorder of the minutes of the meeting and all of the members of the management board present at the meeting, as previously required by the Commercial Law). In addition, the member who signs the minutes of the meeting should not necessarily be a member of the management board, but may also be, for example, the secretary of the meeting.



(IV) Deadline for submission of the annual reports

With a view to eliminate the consequences of COVID-19 to the economy, Saeima, the Parliament of the Republic of Latvia, **has adopted a new Law on the prevention of the State threat and management of the consequences related to Covid-19** that has entered into force on 22 March 2020 ("Covid-19 Act").

According to Article 18 of the Covid-19 Act, a company, which is subject to the Law on the Annual Financial Statements and Consolidated Financial Statements, is entitled to submit its annual financial statements and consolidated financial statements for 2019 within a period of three months over the current time limit, **thus allowing the companies to extend the time limit for the preparation and submission of annual financial statements up to 31 July.**

The experience and services provided by Eversheds Sutherland Bitāns Law Office

| Remote management board meetings:

Legal assistance in preparation of all **documents necessary for the remote decision-making of the management board**

| Remote supervisory board meetings:

Legal advice in preparation of all **documents necessary for the remote decision-making of the supervisory board**

| Remote shareholders' meetings:

Legal assistance in preparation of the **documents necessary for the announcement and conduction of a remote meeting of shareholders:**

- **Preparing for the meeting:** Drafting of the necessary documents for the announcement of the meeting, including agenda, etc.;
- **Announcement of the meeting:** drafting of the texts of invitations to the shareholders and the notices of convening of the meeting for publication in the newspapers;
- **Draft decisions:** Preparing the draft decisions of the meetings;
- **Meeting Agenda:** Execution of detailed arrangements (meeting scenario), anticipating potential problems and addressing possible solutions;
- **Registration of shareholders for the meeting and counting of votes:** in exceptional cases, the Law Office can also assist in organizing the registration of shareholders and the counting of votes at the meeting (applicable in respect to the meetings with a smaller number of shareholders);
- **Meeting advice:** The Law Office can provide with the assistance and legal advice throughout the conduction of the meeting and the issues to be examined;
- **Meeting minutes, corporate documents:** Recording of the meeting minutes, drafting legally binding and valid meeting minutes and other related corporate documents in accordance with the requirements of the applicable laws and regulations;
- **Notification of decisions taken:** Provision of legal advice in respect to provision of information to the shareholders and the respective institutions on the decisions adopted at the meeting;
- **Registration of decisions:** Registration of decisions adopted at the meeting in the Commercial Register of Latvia.