

ALERT: Operation of a company during the epidemic

As social distancing, suspended transport connections, and lockdowns become the new normal, it is inevitable that some plans concerning general meetings of companies and similar events will also be disrupted – with all the adverse consequences this entails for smooth business operations in compliance with applicable laws. But one of many possible examples: where a limited liability company's articles of association require that its management board secures the permission of the shareholders and/or of the supervisory board for execution of a material agreement, delays in formal obtainment of such permission (caused by, for example, unexpected absence of a supervisory board member who had been quarantined) may prevent the execution of such an agreement, with all the negative consequences for the company's business.

Fortunately, Polish law provides for some mechanisms which may address the legitimate concerns of governing body members and enable the company to function relatively smoothly even if some key personnel find themselves sharing the fate of Camus' Bernard Rieux. Enforced absences of key individuals must not necessarily spell paralysis of business and corporate activity.

- **Shareholders may exercise their corporate rights with the support of professional proxies / powers of attorney holders who cast votes and perform corporate oversight duties on their instructions and on their behalf.**
- **Votes may also be held by circular letter (for shareholders meetings and supervisory boards) or by teleconference (for shareholders meetings, supervisory boards and – within reason – for general meetings).**
- **In line with Polish corporate law, meetings and sessions of corporate bodies may be held without physical presence of their members.**
- **... as long as such solutions are provided for in the given company's shareholders' agreement / articles of association.**

Powers of attorney

[Shareholders meeting, general meeting]

Shareholders in a corporate entity may grant powers of attorney whose holders will be authorised to attend shareholders meetings or general meetings in their stead; as much is expressly provided for in the Commercial Companies and Partnerships Code.

The partners in a company without discrete legal personality may likewise attorn others to substitute for them in discharge of their various duties as partners, also as regards execution of material contracts on the partnership's behalf.

Voting by proxy

[Management boards and supervisory boards of limited liability companies and joint stock companies]

When it comes to the members of a supervisory board, matters become slightly more complicated in that only other members of the supervisory board may be attorned to act on their behalf in the context of supervisory board business. Also, such a solution must be provided for by the articles of the company in question.

While no analogous statutory provision is in place for the management boards of companies, Polish legal doctrine generally comes down in favour of the view that similar rules (voting by proxy expressly provided for in the articles of association) should apply to management boards.

Teleconference

[Shareholder meetings, supervisory board sessions of limited liability companies and joint stock companies]

In late 2019, the Polish legislature amended the Commercial Companies and Partnerships Code so as to enable the holding of shareholders meetings via teleconference, a possibility which, from the purely legal level, even covers Skype calls. Again, such a possibility must be provided for in the founding documents of the given company.

The articles of association may also provide for use of long-distance communications technologies for purposes of supervisory board sessions.

Remote participation in a general meeting

[General meeting]

The all in all flexible approach adopted by Polish company law in this regard is qualified by the fact that the general meeting must be held in a specified place (the model venue being the registered seat of the company), as opposed to the possibility of x shareholders

logging onto some internet platform from x different locations provided for in the case of a limited liability company. The chair of the meeting and a notary public must be in attendance at this venue. As long as these requirements are fulfilled, the articles of association may provide that a general meeting can be held via ICT only.

Resolutions adopted by circular letter

[General meeting, supervisory boards of limited liability companies and joint stock companies]

The shareholders of a limited liability company adopting a material resolution may (a) execute a document in which they agree to hold a written vote or (b) execute a document in which they agree to the specific decision to be adopted by the shareholders. Please note, however, that such manner of going is not available for all resolutions. The overarching consideration, logically enough, is that voting by circular letter may prevent due maintenance of secrecy in cases where confidentiality is important, such as resolutions concerning specific individuals.

A written vote (sending the resolution to all the voting individuals in turn) may also be held in lieu of a supervisory board session or management board meeting (the Commercial Companies and Partnerships Code makes no express provision for such a procedure, so it must be provided for in the given company's articles of association).

Partnerships

In the case of partnerships without legal personality separate from that of their founders / owners, the lower level of overall statutory formalisation translates into less procedural requirements and, under the present circumstances, less disruption caused by Covid-19.

It might be noted that, absent provisions to the contrary in the specific partnership agreement, the general rule is that partners may represent a partnership on their own, sparing them the necessity of obtaining authorisation from other partners (and the logistic complications that this may involve).

We expect to present more details of the related issues in upcoming materials published by GESSEL.

Publicly listed companies

The general comments set out above are subject to the caveat that special rules apply, also in this unique set of market circumstances, to companies whose shares have been admitted to public trading. These will also be the subject of future alerts by our firm.

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