

## The aftermath of COVID-19 outbreak – Practicing social distancing during the annual general meetings of the shareholders of listed companies



**As the negative consequences of COVID-19 continue to expand, companies are facing various demanding challenges, one of them being related to the organisation of the Annual General Meetings of the Shareholders (“AGMS”).**

Considering that the following two months overlap with the season of the AGMS, companies should reconsider the arrangements for the 2020 AGMS due to the (i) existing (large) gatherings ban; (ii) existing travel bans; (iii) obligation to maintain social distance; (iv) (possible) closure of most of the venues that had/could have been selected for hosting the AGMS.

The (re)arrangements should satisfy all the general legal requirements provided for the convening and conducting of the shareholders meeting in case of joint-stock companies and, also if the case, the special ones applicable to listed companies.

The particularity of the AGMS is that on one hand, it obliges the shareholders to discuss essential matters (such as the presentation of the annual management report; the approval of the annual financial statements; the business plan for the respective financial year), and, on the other hand, it traditionally implies that the shareholders engage directly with the management.

### **Which are the current possibilities for holding the AGMS?**

In case of **joint-stock companies**, shareholders may hold the general meetings by correspondence, provided that this possibility had already been included in the Bylaws of the company.

In case of **listed companies**, shareholders may participate and exercise their voting rights not only by correspondence, but also via electronic means, subject to certain legal conditions.

Along with the transposition of the EU Shareholders Rights Directive in the Romanian legal framework, listed companies may offer to their shareholders any form of participation in the general meeting by electronic means, especially one or all of the following forms of participation: (i) real time transmission of the general meeting; (ii) real time two-way communication enabling shareholders to address the general meeting from a remote location; (iii) a mechanism for casting votes, whether before or during the general meeting, without the need to appoint a proxy holder who would be physically present at the meeting.

Hence, listed companies may permit shareholders to participate in the general meeting by electronic means as long

as the companies' management: (i) **had previously approved the procedures** to be followed for the use of such electronic means and (ii) **determined that the technical requirements mentioned above are met** and electronic means can be used.

### **Can companies hold a *wholly virtual* AGMS?**

As previously mentioned above, while non listed joint-stock companies may permit shareholders to exercise their voting rights only by correspondence (although, in practice, a virtual meeting is often held before signing by correspondence), listed companies may permit their shareholders to use electronic means for attending the AGMS, which at the first sight may suggest that wholly virtual AGMS are permitted.

However, even if all the legal conditions are observed and all the practical challenges (ie. technical, security challenges) are surpassed, **not even listed companies are permitted to organise wholly virtual AGMS** due to the following impediments: (i) the convening notice must include **the place** of the GMS and a clear description of the GSM rules (ie. voting procedure); (ii) the **members of the board** should be **present** at the place of the GMS; (iii) at the beginning of the GMS, **shareholders should appoint one meeting secretary among the present shareholders** (at the place of the GMS); (iv) the minute of the GMS shall be signed by both the president of the board and the meeting secretary (appointed from among the present shareholders).

### **How about a hybrid AGMS?**

A hybrid meeting implies a physical location for the meeting, but also the possibility of the shareholders to participate/exercise their voting rights via electronic means.

Given that a wholly virtual AGMS would not satisfy all the current legal requirements, a hybrid AGMS appears to be the most appropriate solution, being thus possible to limit the attending persons to very few persons (ie. the members of the board, the technical secretary and the meeting secretary chosen among the shareholders).

### **Practical considerations & best practices for holding the 2020 AGMS**

Since a company should ensure an equal treatment for all shareholders with regard to the participation and the exercise of their voting rights in the general meetings, while also aiming to protect the shareholders' best interests, the following practical points could be considered by listed companies:

- **Ensure effective communication with the shareholders**<sup>[1]</sup> – Companies should provide sufficient information to the shareholders on: (i) how the AGMS will be held; (ii) what are the possibilities for exercising their voting rights; (iii) how to address questions to the management regarding the AGMS agenda. In case of changes, companies should announce their shareholders as soon as possible via the AGMS section of their website, market announcement, news alert in relevant newspapers etc. Also, it is recommendable for companies to encourage their shareholders to vote by correspondence or by electronic means, while discouraging the physical attendance.
- **Stay-up-to date with the legislative changes** – Considering that Romania is under a state of emergency, various legal changes are implemented almost daily by the Government. Companies should closely follow the legislative changes.
- **Create and implement formal rules of conduct** – In case of hybrid AGMS, companies should create and implement encompassing rules for the shareholders participating in the AGMS via electronic means, but also for those participating in person. In case of physical attendance, companies should ensure the safety of those attending by engaging the sanitisation of the venues; and by establishing the premises for implementing social distance.
- **Ask for questions in advance** – Companies should encourage shareholders to submit questions to the board prior to the AGMS, while also accepting shareholders to ask questions during the meeting. In this way, the board

may deal with the questions in a more practical way. Also, it is recommendable for the companies to post the complete questions and answers in the Q&A website section.

→ **Provide technological support** – Companies should ensure that they meet all the technical requirements, especially those related to the determination of the quorum and the casting of the votes.

→ **Consider webcasting the AGMS** – Although it is not a common feature in Romania, companies should take into consideration webcasting the AGMS, as it permits shareholders to watch the meeting and hear the discussions. In this way, shareholders would feel more engaged in the AGMS.

→ **Consider the reduction of the employee attendance** – In case of hybrid AGMS, companies should try to reduce as much as possible the effective attendance of their employees or other related personnel at the place of the AGMS.

→ **Avoid catering arrangements** – Companies should set aside any catering arrangements due to healthy concerns.

→ **Consider establishing a support line** – Companies may take into consideration implementing a support line for shareholders before, during and short after the AGMS. This line may consist in a telephone line and/or an e-mail address where shareholders may ask questions (and be answered in real/short time) related to the organisation of the AGMS.

### **Possible legislation amendments**

In light of the emergency state set up due to the COVID-19 outbreak, the Romanian Investors Relations Association (“**ARIR**”) requested public authorities to provide flexible provisions regarding the organisation of the annual general meetings of the shareholders, such as<sup>[2]</sup>:

“1. eliminating the obligation to publish the convening notice in the Official Gazette and in a wide-ranging newspaper from the location where the company headquarters or from the nearest region, which requires physical travel, allowing online publication alternatives (companies’ website, BVB and FSA platforms, etc.);

2. the organization of the GMS exclusively by voting by correspondence or means of distance participation, respectively allowing vote by correspondence for the public tutelary authority, in the case of state companies;

3. the possibility to change the location of the meeting and add new voting methods for the meetings already convened;

4. organising GMS without a meeting secretary chosen from among the shareholders (in case it is held exclusively by means of distance communication, or no shareholder is physically present at the GMS);

5. eliminating the obligation of the participation of all the members of the board of directors / directorate / of the supervisory board in the GMS;

6. additional measures to prevent the spread of the virus on the spot (distance between people, masks, gloves, etc.), in order to avoid discriminatory situations in case of attending shareholders in the GMS;

7. the possibility to delay the performance of the GMS, depending on the evolution of the crisis situation;

8. the applicability of the regulations for both ordinary and extraordinary general meetings (eg. it may be necessary to approve a vital transaction for the company).”

### **Conclusions**

In light of the increasing concerns on the risk of COVID-19 exposure, companies should reconsider as soon as

possible their arrangements for the 2020 AGMS.

Based on the above, a hybrid meeting appears to be the most appropriate option since shareholders may choose whether to participate in person or via electronic means to the AGMS.

However, as one-measure-fits-all approach is not recommendable, specific analysis is required on each particular situation in order to assess all applicable regulations; the specific provisions of the company's Bylaws/GMS procedures; and also the potential impact of changing the perspective of a traditional AGMS.

Notwithstanding the uncertainty surroundings created by COVID-19, we remain available to all clients and interested persons who need legal advice in the process of organising the AGMS.

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[1] See also the press release of the Romanian Financial Supervisory Authority issued on March 12, 2020 –

<https://asfromania.ro/informatii-publice/media/arhiva/7019-comunicat-cu-privire-la-evaluarea-impactului-asupra-activitatii-emitentilor-in-contextul-covid-19>

[2] <https://www.ir-romania.ro/listed-companies-need-urgent-regulatory-measures-for-the-organization-of-general-meetings/?lang=en>