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Covid-19: The AMF informs shareholders and listed companies of the exceptional measures taken for the organisation of shareholders' meetings

Update of the news release of 25 March 2020

The Autorité des Marchés Financiers draws the attention of retail investors to the special procedures adopted for participating in 2020 shareholders' meetings during this exceptional health crisis period. It recommends that listed companies follow certain best practices, whenever this is possible.

Pursuant to the emergency law of 23 March 2020 to address the Covid-19 epidemic, the French government issued orders (on 25 March) containing several provisions to simplify and adapt the rules for convening, informing, holding and deliberating at shareholders' meetings. Their aim is to *"address the consequences of the spread of Covid-19 and the measures taken to control this spread"*.

As stated in the Report to the French President on the above-mentioned order, *"this exceptional system must be applied only on one condition: the shareholders' meeting must be convened in a place which, on the date of the invitation (in the broadest sense, which includes the notice of meeting, for listed companies) or on the date of the meeting, is affected by an administrative measure that limits or prohibits group meetings for health reasons."*

These temporary exemptions are applicable to meetings held between 12 March 2020 and 31 July 2020, unless this period is extended to a date set by decree by the Council of State and at the latest to 30 November 2020, and were set out in a communication from the Ministry for the Economy and Finances (see link below). The aim is to enable the management bodies of the entities concerned to continue to carry out their duties despite the lockdown measures and also to ensure the continuity of operations of these entities.

In line with its previous recommendations, the AMF strongly encourages shareholders to exercise their voting rights, a fundamental shareholder prerogative that is essential to the smooth operation and sound governance of issuers.

Any votes must be exclusively by remote voting in the event of an in camera shareholders' meeting and, except in special cases, must be carried out prior to the Shareholders' Meeting

As part of its fundamental missions, consisting in ensuring retail investor protection and information, the AMF draws the attention of retail investors to the fact that, with the current health context, general meetings will be held in camera, without shareholders being present. This is because, under this order, companies are exceptionally authorised to hold their shareholders' meeting without their shareholders - and any other persons who are entitled to attend these meetings, such as statutory auditors and personnel representative bodies - being physically present.

Consequently, shareholders may exercise their voting right only remotely, before the shareholders' meeting, namely by:

- voting by correspondence using a voting form. It is recommended to submit the form electronically under the current circumstances where the postal delivery times are uncertain.
- giving a proxy to a person of their choice or to the issuer without naming the proxy (blank proxy). On this point, Decree n°2020-418 of 10 April 2020 provides, on the one hand, that the proxies indicating the name of the person must reach the company no later than on the 4th day before the general meeting and, on the other, that the instructions of the proxy must also be transmitted by the same deadline to the company or to its accredited representative by e-mail, using a correspondence voting form. The AMF draws the attention of shareholders to the difficulties that may arise, as a result of an in camera shareholders meeting, from the use of a proxy given to a person of their choice (other than a "blank proxy"). If they have any questions, the AMF invites shareholders who would like to use this voting procedure to contact the issuer concerned beforehand to find out more about the treatment reserved for these proxies.

It is reminded in this respect that *“for every proxy given without an indicated designated proxy, the chairman of the shareholders’ general meeting shall vote in favour of adopting the draft resolutions submitted or approved by the board of directors or the management, as the case may be, and against the adoption of all other draft resolutions.”*⁽¹⁾.

- Voting online via a secure voting platform, if the listed company has provided for this voting procedure. In practice, this vote is exercised before the shareholders’ general meeting.

Decree n°2020-418 of 10 April 2020 also states that, by way of derogation from the ordinary legal provisions, a shareholder who has already voted remotely, sent a proxy or requested an admission card or participation certificate, is entitled to choose another form of participation in the general meeting, provided that their instructions are received within the deadlines set out in the regulations.

Given that these voting procedures all have to be implemented by shareholders before the shareholders’ general meeting, the AMF is inviting you to contact companies as soon as possible for information about the procedures for participating in the meeting in this context. Shareholders must take into account the deadlines for exercising their voting rights before the meeting. To do this, they can consult the website of listed companies and their press releases.

Lastly, it is noted that the order has made it more flexible for issuers to organise their general meetings in the form of conference calls or videoconferencing, provided more particularly that the technical resources used enable the shareholders to be identified.

Good practices for issuers

According to the order, when an issuer decides to adopt provisions allowing it to hold a general meeting in camera, and all or part of the formalities for convening the meeting have been completed prior to the date of this decision, shareholders shall be informed of this as soon as possible through a press release that is effectively and fully disseminated by the company. If the formalities for convening the meeting have not been completed on this date, shareholders are informed of this decision via the convening documents. Nevertheless, the publication of a press release that is effectively and fully disseminated by the company is also encouraged in this case.

To ensure that shareholders are properly informed and provide the most effective support to listed companies in this exceptional and difficult context, the AMF is encouraging issuers to follow the best practices below:

- establish as early as possible, prior to the shareholder’s meeting, clear, precise and accessible information for all shareholders concerning:
 - the special procedures for holding the shareholders’ general meeting in the health crisis context (pointing out that the meeting will be held in camera, without the physical presence of shareholders),
 - the various procedures for informing shareholders (and in particular, the consultation of documents relating to the general meeting, including the list of shareholders),
 - the various possible procedures for participating, in particular stating:
 - the procedures for asking questions prior to the general meeting,
 - if applicable, the impossibility of asking questions during the general meeting,
 - if applicable, the impossibility of proposing “new resolutions”⁽²⁾ during the general meeting,
 - the various voting procedures available.
- highlight, on the homepage of the issuer’s website, a link to pages on the website dedicated to the general meeting in order to enable shareholders to find the relevant information about general meetings without any difficulty.
- mention, on the pages of the website dedicated to the general meeting, the appropriate information concerning the special procedure for holding the general meeting, and the participation of shareholders, in the health crisis context.
- in the press release that should be published by the issuer, pursuant to the above-mentioned order (“effective and full dissemination”), if it decides to hold its shareholders meeting in camera and if all or part of the formalities for convening the meeting have been completed prior to the date of this decision, remind shareholders of the voting procedures available to them in this context and insert a hypertext link to the various voting procedures available.
- enable shareholders to vote online on a secure voting platform, if the time available before the general meeting allows the issuer to set up such a voting system.
- directly inform holders of bearer shares by electronic means (email), when the issuer knows the shareholder’s email address, of the special procedures for voting and holding the general meeting. This information does not exempt the issuer from complying with its obligation to inform owners of bearer shares by post.

- given that, in the current context, shareholders cannot go to the issuer's head office to consult the documents concerning the issuer they are entitled to consult⁽³⁾, enable shareholders, whenever this is possible, to exercise their "right to communication" by sending a copy of documents that cannot be accessed from the issuers' web site upon request and by email.
- provide a live webcast of the general meeting, in audio or video format, by streaming or by any other broadcast procedure accessible to shareholders. This webcast must be easily accessible to all shareholders from the issuer's website.
- insofar as general meetings in camera do not allow shareholders to ask questions verbally during the general meeting, to accept to receive and process, when possible, questions in writing sent to the issuer after the deadline defined by the regulatory provisions and before the general meeting.
- at the end of the live webcast, maintain the video of the general meeting in unrestricted access for shareholders on the issuer's website.
- publish the minutes of the general meeting on the issuer's website as soon as possible.

In view of the disrupted operation of postal services, the AMF recommends more generally that shareholders and issuers make use of electronic means of communication whenever possible for their procedures and communication on general meetings. In this regard, the AMF invites issuers to create an email address dedicated to questions from shareholders about the general meeting and to inform shareholders widely of this email address, in particular on the website.

The AMF also recommends that custody account-keepers inform their clients as soon as possible of the special voting and meeting procedures in this exceptional context.

Possibility of postponing the general meetings

Some listed companies have announced that they have decided to postpone their general meeting of shareholders by several weeks.

If they deem it appropriate in this exceptional health crisis, issuers may postpone the date of their general meeting, in particular under the conditions set out in Order No. 2020-318 of 25 March 2020. Listed companies that wish to postpone their general shareholders'

meeting must inform their shareholders of this as soon as possible in a press release that is effectively and fully disseminated.

Lastly, companies that change their dividend pay-out proposal, the date of said pay-out or the payment procedure, must disclose this information as soon as the decision is made.

For further information :

Loi n° 2020-290 du 23 mars 2020 d'urgence pour faire face à l'épidémie de covid-19

Ordonnance n° 2020-321 du 25 mars 2020 portant adaptation des règles de réunion et de délibération des assemblées et organes dirigeants des personnes morales et entités dépourvues de personnalité morale de droit privé en raison de l'épidémie de covid-19

Ordonnance n° 2020-318 du 25 mars 2020 portant adaptation des règles relatives à l'établissement, l'arrêté, l'audit, la revue, l'approbation et la publication des comptes et des autres documents et informations que les personnes morales et entités dépourvues de personnalité morale de droit privé sont tenues de déposer ou publier dans le contexte de l'épidémie de covid-19

Décret n° 2020-418 du 10 avril 2020 portant adaptation des règles de réunion et de délibération des assemblées et organes dirigeants des personnes morales et entités dépourvues de personnalité morale de droit privé en raison de l'épidémie de covid-19

Communication du ministère de l'Economie et des Finances intitulé « Tenir son AG et respecter les délais comptables » du 15 avril 2020

Guide AMF de l'information permanente et de la gestion de l'information privilégiée (DOC-2016-08)

Keywords


PERIODIC & ONGOING DISCLOSURES

[1] Article L. 225-106 III, Para 5 of the Commercial code

[2] Article R. 225-78 3° of the Commercial code

[3] Articles L. 225-115, L. 255-116 and L. 225-117 of the Commercial code

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