

Corporate Client Alert

Corporate governance during the state of emergency in Hungary – measures adopted due to the COVID-19 pandemic

April 17, 2020

In order to maintain good corporate governance and ensure that management and shareholders can continue to make key decisions during the state of emergency, the Hungarian Government issued Government Decree No. 102/2020 (IV.10.), which introduces extraordinary and temporary measures with respect to the decision-making process and general meetings of the corporate bodies of Hungarian companies. These measures took effect as of April 11, 2020.

Decision-making by general meetings and shareholders

As a general rule, under the Government Decree, general meetings cannot be held with the personal attendance of shareholders, even if the meeting has already been convened, provided the state of emergency in Hungary prevents the shareholders from pursuing the ordinary course of operation. General meetings may only be held with shareholders attending remotely, using electronic means. Resolutions may also be adopted in writing unless the applicable statutory provisions rule out this possibility. These new rules are applicable even if the corporate documents of the company provide otherwise or are silent about e-general meetings or decision making in writing.

If a company has no more than five shareholders and can achieve quorum, decisions shall be adopted in general meetings with shareholders attending electronically or in writing. The same rule is applicable to companies with six to ten shareholders, if so requested by shareholders holding a majority of votes. In companies with more than ten shareholders, the management must initiate the relevant decision-making. In state majority owned companies, the person exercising ownership rights initiates the relevant decision-making.

During decision-making, the directors of the company must ensure that all shareholders are provided with the opportunity to participate in the decision making process. For example, the company must provide the detailed agenda and draft resolutions to the shareholders, it must specify the electronic communication devices and IT applications, which can be used for the purposes of the meeting, and it must specify the method of shareholder identification. In the case of adopting resolutions in writing, shareholders must have at least 15 days to submit votes, and the outcome of the voting must be determined within three days of the voting deadline. The supervisory board and the statutory auditor shall be informed of and participate in the general meeting in the same way as the shareholders.



The director chairs the meeting and prepares the minutes of the meeting. The circumstances of the meeting shall be recorded in the minutes. While it is not necessary to prepare an attendance list, the minutes must contain the list of the shareholders participating by electronic communication. The director chairing the meeting shall sign the minutes and circulate them to the shareholders.

The management can send the shareholders the written declarations, including documents related to the operation of the general meeting, by e-mail. It must affix qualified e-signatures or advanced e-signatures based on a qualified certificate or electronic seal or, failing this, Identification Based Document Authentication (AVDH) to such declarations and documents.

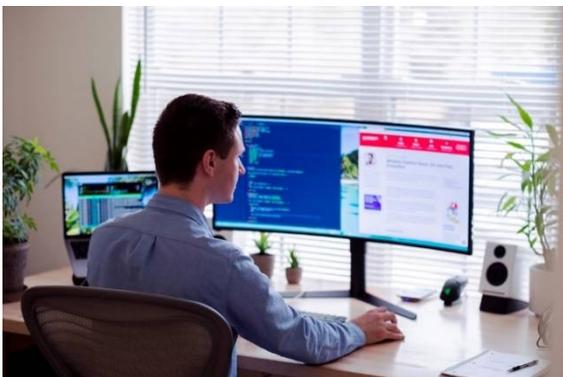
Shareholders may deliver written declaration(s) to the company via e-mail. If the shareholder is a legal entity, such declaration(s) must be signed by qualified e-signatures or advanced e-signatures based on a qualified certificate or, failing this, Identification Based Document Authentication (AVDH). Natural person shareholders can also make declarations without authenticating their signatures, but in such a case, the attached document(s) must contain personal identification data.

Broader competence of the management

If the requirements for holding a general meeting by electronic means or voting in writing are not met, the management of the company is entitled to decide on matters otherwise falling within the competence of the general meeting.

In this respect, the management is entitled to:

- Decide on the approval of the annual financial report (subject to prior review by the supervisory board, if the company has one),
- Adopt decisions on paying dividends
- Take any other decision necessary to maintain the lawful operation of the company, to handle a situation arising from the emergency, or other urgent matters within the scope of sound and responsible management.



However, management's decision-making competence is not unlimited, and the Government Decree sets out the list of matters that the management is not entitled to decide on. For example, management cannot amend the articles of association of the company (unless such amendment is required under any law entering into force during the state of emergency), take decisions on dissolution of the company without succession, or take decisions on transformation, merger, or division of the company. Furthermore, the management is not entitled to resolve on reduction of the registered capital of the company. As a further restriction, the management may only adopt the above decisions if shareholders holding at least

25% of the votes do not object to the proposed resolution in their written opinion prior to the decision by at least 51% of the votes, or, if the company has a shareholder with a majority or a qualified majority, such shareholder does not object to the proposal in its written opinion prior to the decision.

The above management decisions shall be put on the agenda of the general meeting convened for a date not later than 90 days following the end of the state of emergency. If such decisions are withdrawn or amended, such changes would not affect any rights obtained or obligations incurred before the general meeting (i.e. they would affect only rights and obligations arising after the amendment or withdrawal of the management decision).

Internal decision-making process of corporate bodies

The Government Decree allows meetings of the management, the supervisory board and any other corporate bodies of the company to be held electronically or to adopt decisions in writing. Written consultation and decision-making can also take place via email.

If, during the state of emergency, the number of members of a corporate body falls below the number prescribed by law, or if a member is unable to act due to the pandemic, the other members, not similarly affected, are entitled to participate in decision-making. The quorum and the required majority shall be determined on the basis of the members who are able to make decisions.

Corporate bodies may deliver written declarations to the shareholders via e-mail. Such declarations must be signed by qualified e-signatures or advanced e-signatures based on a qualified certificate or electronic seal or, failing this, Identification Based Document Authentication (AVDH).



Mandates of executive officers

With certain exceptions (e.g. recall, death, incompatibility, incapacity, ground for incompatibility or refusal), the mandates of the executive officers, supervisory board members, statutory auditor and members of other corporate bodies do not expire during the state of emergency. In the case of expiration of a mandate (including resignation of a person in such a position), the relevant person shall stay in his/her position for 90 days following the end of the state of emergency or until the relevant decision making body of the company resolves on the matter (whichever occurs earlier).

Different rules concerning public limited companies

With respect to public limited companies, the Government Decree provides certain different and special provisions with respect to decision-making, approval of the financial report and corporate governance.

Should you have any questions regarding the new corporate governance rules, please get in touch with the contacts listed with this article or your usual Dentons relationship manager.

If you are looking for more information about the legal implications of the current pandemic, you can benefit from our **'COVID-19 (Coronavirus) Hub'**, which has a range of articles and other information from Dentons offices all over the world. Find the Hub [here](#).

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