



## Transforming General Meetings: Covid and other “viruses”

### The Requirement to Hold an Annual General Meeting under Cyprus Law

According to section 125 of the Cyprus Companies Law, Cap. 113 (as amended) (the “**Law**”), each company must hold a general meeting of the shareholders every year, defining it as its annual meeting in the relevant notices calling for the convening of the same and no more than fifteen (15) months must pass between an annual general meeting and the next one. Provided that a company holds its first annual meeting within eighteen (18) months from its incorporation, it is not rendered necessary to convene an annual meeting during its year of incorporation or during the next year. The last provision specifically sets a deadline for the holding of a company’s first annual general meeting which must take place no more than eighteen (18) months from its incorporation date. As per the provisions of Table A of the Law, which provide guidance for the adoption of standard regulations in the Articles of Association of a company, all general meetings of the shareholders of the company, with the exception of the annual general meetings, are designated as extraordinary general meetings.

The *traditional* annual general meeting takes place in a chosen location at a set date and time, all specified in the notice convening the same, which also includes the nature of the business to be transacted therein; a conference room or event hall accommodates the meeting which is physically attended by the registered shareholders of the company who are entitled to attend and vote either in person or by their proxyholders. Before the meeting commences, the identity of the attendees is verified.

### Covid-19

A significant consideration for Cyprus companies, in light of the challenges imposed by social distancing and other measures introduced due to the outbreak of the COVID-19 pandemic, has been the need to uphold the obligations of companies with regards to general meetings. The introduction of partial lockdowns, restrictions on travel, public gatherings, social interactions and other limitations

imposed on human social conduct all over the world, are serious obstacles for companies aiming to facilitate the running of corporate business as usual and to find the new normal in a changing climate. Upcoming general meetings may, to the extent possible, be adjourned or postponed if they absolutely need to be conducted in the traditional sense; avant-garde companies may choose to examine the possibility of facilitating their general meetings as scheduled through the use of technological means.

### **The Amendment with Regards to Participation**

Law N. 89(I)/2015, which introduced amendments to the Law in 2015, injected the possibility for participation in general meetings of companies by electronic means. According to the introduced section 128D, “subject to the provisions of section 128B, unless expressly provided otherwise in the articles of association, a general meeting of a company including a company not listed in a regulated market may be carried out by telephone or by any other means with which the persons participating thereat may in parallel hear and be heard by all other persons participating thereat and the persons participating thereat in this manner shall be counted for the purpose of ascertaining whether there is a quorum and for every other purpose as being present at the general meeting.” In such circumstances, the general meeting is considered to have been carried out at the place where the person who kept the minutes of the said general meeting is situated.

### **Legal Considerations**

What is suggested by the above amendment, is that a company may legally accommodate for participation in its general meetings not only through physical presence but also through other means. As per the Law, the articles of association of a Cyprus company need *not* contain a specific provision allowing participation in general meetings by electronic means; this absolves the company from having its articles of association amended to make room for such a provision. The articles of association however must *not* contain an expressly stated prohibition to such participation; if this is the case, an amendment of the articles will be necessary to remove the prohibition.

The phrase “any other means” included in section 128D of the Law, is wide enough to unlock the door to a plethora of variations for the participation into a general meeting. Thus, a general meeting can transform either into a *hybrid* meeting, whereby the meeting is primarily physically held with the possibility of facilitating the participation of some if not all of its members by the use of means such as the telephone or a videoconference or even into a completely *virtual* meeting, whereby the conducting of a general meeting can be made solely through the use of appropriate technology in place, for example an online portal, software, application, live-streaming through the company’s website, etc. The only proviso of the said section is that persons participating in such general meeting

must *hear and be heard* and need to be counted for the purposes of ascertaining the existence of a quorum.

### **The fruits of a poisonous tree?**

The flexibility afforded by the possibility of holding a hybrid or virtual general meeting unfortunately carries risks to the security and integrity of the meeting and raises privacy and data protection issues.

#### *Privacy & Communication*

As per Article 15 of the Cyprus Constitution, every person has the right to respect for his private and family life; any interference with the enjoyment of this right is unconstitutional, save for when it is necessary to safeguard the interests of the security of the Cyprus Republic, the constitutional order, the public safety, the public order, the public health, the public morals or for the protection of the rights and liberties guaranteed by the Constitution to any person. Additionally, Article 17 states that individuals enjoy the right to respect for, and to the secrecy of her or his correspondence and other communication if such other communication is made through means not prohibited by law. Any deviation from the aforesaid is only justified by application of the law and only in cases of convicted or non-convicted prisoners and business correspondence and communication of bankrupts during the bankruptcy administration. The business transacted, matters discussed, issues put to a vote and generally all shareholder contact during a general meeting falls under the protective umbrella of these Constitutional rights. Company meetings represent, inter alia, the medium of shareholders to conduct business, to discuss and take vital decisions concerning their company, to be informed of the past and future activities of the same. The Law also provides that certain matters require to be decided upon only by the shareholders of the company, stirring these matters away from the discretion of the board of directors.

A physical general meeting may offer a more controlled environment which respects the confidentiality and sanctity of the shareholder meeting; a hybrid or virtual meeting nevertheless may be vulnerable to Trojan horses infiltrating the technological means used to facilitate the participation thereto, should adequate safeguards not be put in place. Communication during a general meeting may be used by disgruntled shareholders during shareholder disputes for the purposes of forthcoming litigation. It should be borne in mind that according to Cyprus case law, illegally obtained recordings of a private conversation, obtained without the consent of the parties involved, in violation of Constitutional rights, are not generally admissible as evidence in legal proceedings.

## *Data Protection*

The General Data Protection Regulation (GDPR) is the European Union's main data protection legislation and has introduced increased harmonisation of data protection laws across EU member states. The GDPR defines 'personal data' as:

*Any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.*

The GDPR applies to businesses that process personal data as data controllers or data processors, regardless of whether the processing takes place in the European Union. Companies that disclose contracts, agreements or other documents that contain personal data during a general meeting must be aware of the dangers of violating data protection provisions and implement the appropriate safeguards for the dissemination of such information, especially when the general meeting is held with hybrid or virtual participation.

## *Duties of Directors*

It is well established that several duties are imposed on Cyprus directors with regards to safeguarding the interests of their companies. A director owes a fiduciary duty to the company to act in good faith and in the best interests of the company, a duty to exercise skill and care, as well as several statutory duties imposed by the Law and other legislation. Since the directors of the company are the usual convening authority for general meetings, it is important to stress that they are additionally burdened with ensuring the protection of the general meeting; caution must be exercised to avoid potential liability of the director for potential breaches of duties in light of the aforementioned issues.

## **Legal First-Aid**

Companies planning the use of hybrid or virtual general meetings due to Covid-19 social distancing implications, in order to accommodate the company's running business flow, should consider the below non-exhaustive list of suggested measures to be adopted as best practices. The below should be considered in order to safeguard the integrity of the general meeting and before concluding if the alternatives to the traditional general meeting make sense for the company:

- Reputable technology service providers and a dedicated IT team should be engaged to assist with this endeavor through the use of appropriate technical support resources with the direct involvement of the company directors.
- Clear and sufficient communication and testing of the chosen technology method must be implemented ahead of time, ensuring that all participants are technologically literate and able to make full use of the elected method; if not, then appropriate training should be offered.
- Detailed rules, principles and guidelines should be adopted and communicated for the hybrid or virtual participation before the meeting, always in line with Cyprus law, the articles of association of the company and best corporate practice.
- Establishing a procedure for the verification of identity of each participant either shareholder or proxyholder; this could be enhanced through the use of one-time access codes unique to each participant.
- Companies are responsible for and must be able to demonstrate compliance with applicable data protection principles. Personal data must always be processed lawfully, fairly and in a transparent manner in relation to the data subject and certain conditions must be fulfilled, including: the data subject must give their consent; the data processing must be necessary for the performance of a contract with the data subject; legal compliance obligations must be met; the data subject's vital interests must be protected; and the data must be processed to pursue legitimate interests and must not prejudice the data subject's interests or fundamental rights and freedoms.
- Avoiding to record the meeting, unless absolutely necessary and if so, only after the consent of the participants has been obtained and further to following all the measures to protect the privacy, confidentiality and security of these meetings, subject to proper consultation with IT specialists.

### **The Rainbow**

There is no doubt that the novel COVID-19 represents a new challenge in all sectors of the economy and public life, let alone the corporate world of Cyprus companies. Challenges can nonetheless be the feeding ground of new opportunities that can perhaps be directed to mend shortcomings revealed by the current crisis. Companies should embrace this opportunity to introduce an evolution into the way that general meetings are conducted, always taking the necessary measures for the protection of this vital corporate element.

**Elena Georgiou | Senior Associate**