

COVID-19 – New Wave of Legislation Reaches Corporate Law

Under the main rule, the majority of Hungarian companies will have to approve and publish their 2019 annual report before the end of May, but in the light of the restrictions introduced in response to the coronavirus epidemic, it was questionable how a company's owners or governing bodies (Board of Directors or Supervisory Board) could adopt any resolutions in the current situation. The government has recently published the key elements of its economic stimulus package, which states that the deadline for approving annual reports will be moved from 31 May to 30 September in view of the state of emergency. This modification took effect on 22 April.

Government Decree No. 102/2020 on derogations applicable to companies during the state of emergency (hereinafter: **Decree**) took effect on 11 April 2020 and includes derogations from the corporate law provisions of the Civil Code and will apply as long as the state of emergency introduced by the government is in effect. The following is a brief overview of the most important of these derogations.

In the current situation, the overriding objective is to minimise face-to-face meetings, and

therefore meetings held via electronic telecommunications devices and the adoption of corporate resolutions in writing have a more prominent role; in fact, these are clearly the preferred methods. The Decree facilitates the use of these methods by stating that the shareholders / governing bodies of a company may adopt resolutions with the use of the above methods even if the founding document / internal policies of the company state otherwise or do not include any provisions on such matters. The relevant provisions of the Civil Code remain applicable to the procedure of convening **shareholder meetings held via electronic telecommunications devices**, with the addition that the devices and applications used for this purpose must be defined, along with the method of how the participants will be identified, if necessary. It remains a requirement that the telecommunications device used must ensure that the identity of the participants can be determined beyond doubt and that the communication between the participants restriction-free. The auditor and members of the Supervisory Board can participate in such meetings in accordance with the rules that apply to shareholders. The proceedings of the meeting must be recorded in minutes. The nature and circumstances of the meeting will have to be noted in the minutes, but only the chair of the meeting will have to sign them. The management will have to ensure that all shareholders are informed about the relevant decisions, whether through elec-



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tronic devices or otherwise. Under the Decree, the rules of the meetings of a company's various governing bodies are determined by the chairperson of each body (provided that the internal policies of the company state otherwise or do not include such rules). Governing bodies may communicate and make decisions in writing via e-mail.

If the adoption of **resolutions in writing** is ordered in accordance with the applicable rules, the company's shareholders cannot request that a meeting should be convened, and at least 15 days rather than the statutory 8 must be allowed for shareholders to send in their votes. The shareholders and the votes cast by them must be clearly identifiable, but the rules of the Civil Code on the adoption of resolutions in writing will otherwise remain applicable as the background legislation.

In a significant change, the Decree states that if a company's shareholders are unable to adopt resolutions via an electronic telecommunications device or in writing, the **company's management can adopt resolutions on** the approval of the annual report, the apportionment of after-tax profits and **other matters in which normally the shareholders would have the power** to make decisions but that require immediate action with regard to the handling of the emergency situation

and with regard to prudent business management. This is such a general authorisation that it could cause problems down the road, but the Decree does provide a list that places certain limits on the management's new and sweeping powers. For example, the management may not modify the company's founding document (unless this is necessary on the basis of a statute adopted in connection with the state of emergency), may not resolve to dissolve the company with or without a successor, and may only adopt resolutions on additional capital contributions or capital decreases under specific circumstances. Additionally, the management's resolutions will only be valid if shareholders who hold the majority of the votes have not objected to the underlying proposal in advance and in writing. Naturally, the management will be liable for the resolutions so adopted. Therefore, it is formally possible that the resolution on the annual report and the after-tax profits is signed by the management in accordance with the above, and that such resolution is published. If a company has a Supervisory Board, it will obviously be required to adopt a decision on the annual report. It is important that the relevant decisions of the management will have to be put on the agenda of an extraordinary general meeting of shareholders that will have to be convened within 90 days after the end of the state of emergency. However, the shareholders' potential decision to modify or revoke a resolution will have no bearing on the rights and obligation created



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before such a decision (therefore the ability to remedy such resolutions will be limited).

Quorum requirements for corporate bodies have changed. If membership in a corporate body falls below the number stated in a statute or the founding document, or if a member is unable to participate in the work of the relevant body due to the epidemic, the rest of the members will have the power to adopt valid resolutions, and the existence of quorum will have to be determined on the basis of number of members who are able to participate. The general rule is that even a single member can adopt resolutions if necessary.

Resigning from corporate positions will not be easy during the emergency. If the position of a executive officer, corporate body member (e.g. Supervisory Board member) or the auditor were to terminate during the emergency because the appointment

would expire or the given person would resign, the appointment will remain in place and the related tasks will have to be performed for a period of 90 days after the end of the state of emergency, unless there is a corporate decision to the contrary. On the other hand, the management can prolong the auditor's appointment on the basis of the special powers discussed above.

The Decree also includes certain additional rules for publicly listed companies.

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