

HOLDING OF GENERAL ASSEMBLY DURING ANTI-COVID-19 MEASURES

Companies usually hold their general assemblies at the end of first quarter of a given year, among other in order to inform the stockholders /shareholders about financial aspects of company's operations by way of presentation of annual financial statements. However, given the current global COVID-19 pandemic and strict national measures introduced with the aim of combating the further spread of virus¹, holding of (mostly already convened) general assemblies has been severely hindered, and their postponement is being increasingly considered. As a result of postponement of general assembly, the stockholders will temporarily be prevented from passing resolutions concerning the use of company's profit and payment of dividends. Failure to hold a shareholders' meeting in limited liability companies leads to potential inability of such companies to comply with their obligations laid down in accounting laws and regulations.

POSTPONEMENT OF GENERAL ASSEMBLY / SHAREHOLDERS' MEETING

The Croatian Accounting Act (**Accounting Act**) lays down that financial statements are to be delivered no later than by 30 April (profit and loss account) and by 30 June (resolution on adoption of financial statements) respectively. Should a company fail to comply with its obligations laid down in the Accounting Act, it may be imposed a fine ranging from HRK 10,000.00 to HRK 100,000.00, whereas the company's responsible person may also be imposed a fine ranging from HRK 5,000.00 to HRK 20,000.00.

At its session held on 2 April 2020, the Government of the Republic of Croatia decided, among other, to initiate the procedure for amendment of the Accounting Act, allowing for extension of time limits for submission of financial statements to the Croatian Financial Agency until 30 June 2020². In accordance with the proposed amendments to the Accounting Act, companies shall provide the Financial Agency with the following:

- **balance sheet, profit and loss account, along with statement of other comprehensive income and additional data** – until 30 June,
- **resolution on adoption of annual financial statements** – until 30 June, for the purpose of their publication,
- **consolidated annual financial statements** – until 30 September³, for the purpose of their publication.

However, the Croatian Companies Act⁴ (**Companies Act**) lays down that general assembly is to be held within the first eight months of a fiscal year. This is especially relevant for compliance with accounting laws by those companies in which management and supervisory boards, i.e. executive directors and board of directors leave it to the general assembly to adopt annual financial statements or in cases where supervisory board and board of directors have not approved the annual financial statements submitted to them by the management board or executive directors. However, the Companies Act does not set out any sanctions in case the general assembly has not been held within the above time limit. Furthermore, in case of limited liability companies, their shareholders' meeting must also be held within the first eight months of a fiscal year. However, shareholders' meeting must be held prior to the prescribed time limit for the publication of financial statements since, pursuant to the Companies Act, resolution on approval of financial statements is passed at such shareholders' meeting.

¹ Measures range from prohibition of gathering of more than 5 persons in one place indoors to the prohibition of leaving place of residence.

² It has also been proposed to release undertakings from their obligation to pay a fee to the Financial Agency for the publication of financial statements.

³ This time limit has remained unchanged.

⁴ Obligations of companies described in this text relate to the obligations laid down by the Croatian Companies Act (*Official Gazette* No 111/1993, 34/1999, 121/1999, 52/2000, 118/2003, 107/2007, 146/2008, 137/2009, 111/2012, 125/2011, 68/2013, 110/2015, 40/2019). In case it has been otherwise prescribed in general assembly statute or rules of procedure, provisions contained therein prevail over the provisions of the Companies Act.

Therefore, when it comes to holding of general assemblies in joint stock companies where such general assembly approves financial statements, as well as when it comes to holding of shareholders' meeting, the following applies:

➤ **HOLDING OF GENERAL ASSEMBLY / SHAREHOLDERS' MEETING CAN BE POSTPONED UNTIL THE END OF JUNE!**

HOLDING OF GENERAL ASSEMBLY / SHAREHOLDERS' MEETING DURING ANTI-PANDEMIC MEASURES

Should a company decide to hold general assembly / shareholders' meeting during the anti-pandemic measures (or in case anti-pandemic measures will not be discontinued until the end of June 2020 and in case the statutory time limits will not be further extended), stockholders/shareholders must be fully informed in advance and in a timely manner about all the aspects of holding of general assembly / shareholders' meeting during the extraordinary pandemic circumstances. In this respect, management board may take the following actions:

- open a special topic on the company website relating to the holding of general assembly / shareholders' meeting in these extraordinary circumstances and post all the new information on general assembly / shareholders' meeting on the company website in a timely manner;
- ensure that all the documents to be discussed at the general assembly (such as annual financial statements) are provided in a timely manner, for the stockholders to be able to review them prior to holding of general assembly, not only by means of their official publication on the company website or official journal, but also by means of asking the stockholders whether they would like the documents to also be e-mailed to them. In case the stockholders will agree to such delivery of documents, they must be asked to provide the company with their e-mail addresses;
- encourage the stockholders/shareholders to send their questions for discussion during general assembly / shareholders meeting in advance electronically and, if necessary, set up special application for such purpose on the company website;
- prior preparation and informing the stockholders/shareholders about the altered procedure for participation and voting at the general assembly / shareholders' meeting due to extraordinary circumstances (e.g. in case of joint stock companies, the seating rules at general assembly attended by participants in person, if it is possible to ensure participation of stockholders at all, given the prohibition of gathering of more than 5 persons in one place and the obligation that the general assembly of a joint stock company is also to be attended by notary public, assembly president, members of management and supervisory boards (if the statute provides the possibility for members of management and supervisory boards to participate at general assembly by means of video and audio transmission, it is recommended that they participate in this manner during the extraordinary circumstances; alternatively, the members of management board or executive directors may grant power of attorney to one person amongst themselves who would represent them at general assembly; or stockholders can be encouraged to ensure that they are represented by their proxies, as described below; the possibility of casting votes electronically, etc.);

Furthermore, when it comes to the manner of holding the general assembly, management board may organize its holding in the following ways:

1) If the participants are to attend general assembly/shareholders' meeting in person

- holding of general assembly / shareholders' meeting at the company's seat or some other location, with strict adherence to the decisions passed by the Civil Protection Headquarters of the Republic of Croatia (**Civil Protection Headquarters**):
 - a) no more than 5 persons may be present in the room during general assembly / shareholders' meeting (for this purpose, management board should encourage representation of stockholders/shareholder by their proxies in order to reduce the number of participants who

attend the general assembly / shareholders' meeting in person; in order to reduce the number of persons in one place, company should encourage that as many stockholders/shareholders as possible grant authorization for their representation to the same financial institution, with its representative voting at general assembly / shareholders' meeting according to their instructions, or to designate 2 or 3 proxies who would represent more stockholders/shareholders and vote according to their instructions;

- b) setting a pre-defined time period within which the general assembly /shareholders' meeting is to be completed;
- c) the room where general assembly / shareholders' meeting will be held must be of appropriate size in order to ensure that all the participants are positioned at least two meters away from each other; in order to limit contact, votes can be cast by raising hands instead of in writing;
- d) high hygienic conditions must be ensured, as determined by the Civil Protection Headquarters, the Ministry of Health and the Croatian Institute of Public Health (available at: <https://www.hzjz.hr/sluzba-epidemiologija-zarazne-bolesti/koronavirus-najnovije-preporuke/>).

2) In case of holding general assembly/shareholders' meeting via electronic communication

- holding of general assembly / shareholders meeting by means of electronic communication, if this is provided in memorandum / articles of association or in case they provide that management board is authorized to enable all or some of the rights to be fully or partially exercised by means of electronic communication when the participants neither attend the meeting in person nor via proxy at the place of its holding;
- ensuring technical conditions for real-time communication during general assembly / shareholders' meeting, two-way communication, voting during or prior to holding of general assembly / shareholders' meeting and identification of stockholders/shareholders, electronic communication security and impossibility to change the stated expression of will, if such exercise of stockholder/shareholder rights is provided in memorandum/articles of association or in case the management board is authorized to enable all or some of the rights to be fully or partially exercised by means of electronic communication when the participants neither attend the meeting in person nor via proxy at the place of its holding (this is deemed to be active exercise of all or some of the stockholder/shareholder rights during general assembly / shareholders' meeting);
- ensuring technical conditions enabling only video and audio transmission of general assembly / shareholders' meeting, if this is provided in memorandum/articles of association or rules of procedure of general assembly / articles of association or in case management board has appropriate authorizations for such transmission, as an option to those who exercise their stockholder/shareholder rights via proxies at general assembly / shareholders' meeting because they are unable to attend them in person, while on the other hand the company is unable to ensure conditions enabling the stockholders/shareholders to actively participate at general assembly / shareholders' meeting electronically in real-time; such video and audio transmission of general assembly / shareholders' meeting provides an option to stockholders/shareholders to give instructions in real-time to their proxies who attend general assembly / shareholders' meeting via phone or e-mail.

3) "Hybrid" method

- some stockholders/shareholders are present in person at general assembly / shareholders' meeting, while other participate electronically (if provided in statute or rules of procedure of general assembly / articles of association)
- respecting the above recommendations pertaining to attendance of participants in person and their attendance by means of electronic communication.