

COVID-19 and the holding of the ordinary general meeting

As a result of the extraordinary situation that Denmark and the rest of the world are currently facing because of the coronavirus pandemic (COVID-19), the Danish Parliament (Folketing) is now passing a series of emergency acts in an attempt to minimise the spread of the virus in Denmark. On 12 March 2020, bill L133 was adopted temporarily amending the Act on Measures against Infectious and Other Communicable Diseases. Subsequently, at a press conference on 17 March 2020, the Danish Prime Minister announced a ban on the organisation of and participation in events involving more than 10 people.

The amendment to the Act and the subsequent ban on gatherings of more than 10 people have obviously been adopted to limit the risk of the infection spreading. However, these measures come at a time when many Danish companies (with calendar year accounting) are facing their annual general meetings. Therefore, the question is what impact the new rules have on the companies' upcoming general meetings?

The timing

Generally, if the company has already convened an ordinary general meeting, it will have to cancel it if the expected attendance will exceed 10 persons, thus violating the ban. Cancellation may occur right up to the day before the annual general meeting and must be notified in the same manner as the convening was announced, e.g. as a company announcement, on the website and by e-mail/letter to the shareholders who have requested it.

If the annual general meeting is cancelled, it will be necessary to convene a new annual general meeting. As a rule, the new general meeting must be held in time for the approved annual report to be submitted to the Danish Business Authority before the expiry of the deadline laid down in the Danish Financial Statements Act, which is by the end of May (end of April for listed companies).

However, in the wake of the Prime Minister's announcement, the Danish Business Authority has just announced new interim rules on extending the deadlines for submitting annual reports. The extension of the deadline means that companies with more than 10 owners may wait until no later than 8 weeks after the end of the ban on the gatherings of more than 10 persons.

It is important to emphasise that only the companies with more than 10 owners are covered by the new temporary deadline. Companies that, in their statutes, have the option of holding an electronic general meeting, are not covered by the new deadline. Companies that are not covered by the new temporary deadline must, therefore, continue to hold an ordinary general meeting and submit annual reports before the general deadlines described above.

It is important for companies that are subject to the new temporary deadline to pay attention to the rules of the Companies Act and the articles of association of the company regarding the convening of general meetings.

Request from the Danish Business Authority

The Danish Business Authority has requested that companies that have the possibility to hold a general meeting without violating the ban carry out planned general meetings. Such general meetings may, for instance, be held in part electronically to reduce the number of attendances and by permitting attendance by proxy or by absentee voting.

If the general meeting is held as planned, we recommend that all necessary measures be taken when holding a general meeting, while following the authorities' recent statements and taking action accordingly.

The possibility of holding a general meeting

Based on the Danish Business Authority's request, we have a number of recommendations on how the total attendance can be brought below the limit of 10 people.

First and foremost, it is a question of encouraging the shareholders to minimal attendance, which is, among other things, achieved by using proxies and absentee voting as described above. At the same time, it is possible to broadcast the annual general meeting over webcast so that the shareholders can follow the proceedings live. Questions can also be asked over the web or by phone. Such a partially electronic general meeting may be carried out if the Board of Directors so decides, but this does require that the procedure is described in the notification, including information on the systems the company will use.

To limit the number of attendees it may be appropriate to limit, for example, the number of participating directors as much as possible, as well as to avoid catering and, thus, minimise the number of service personnel on the site of the annual general meeting.

NJORD Law Firm strongly recommends, of course, that the authorities' recommendations be always followed and that care and respect for the current difficult situation are shown.