

Romania adopts measures to allow shareholders and management meetings during COVID-19

On 7 May 2020, the Romanian Government adopted Emergency Ordinance No. 62/2020 (“EO 62/2020”) which regulates certain measures on calling and holding general shareholders’ meetings (“GMS”) and management and supervisory board meetings during the COVID-19 pandemic.

EO 62/2020 applies to regular companies under Romanian Companies Law but does not apply to listed companies, for which specific regulations are in place.

The measures in EO 62/2020, which came into force on 8 May 2020, include the following provisions.

GMS may be also passed by correspondence or long-distance communication methods

The novelty of EO 62/2020 is that, during the state of emergency, which runs from 16 March to 14 May 2020 (the “State of Emergency Period”), a GMS: (i) can also be called by long-distance communication methods; and (ii) can take place by correspondence or direct long-distance communication methods, including if the company’s articles of association do not allow or prohibit this option.

The method of calling a GSM must ensure the transmission of the text, provided that each shareholder has the possibility to communicate in writing to the management its postal address or its email, fax number or other contact details where it can receive correspondence from the company. The addresses of shareholders provided in the shareholders’ registry can also be used for this purpose.

The management will decide the method or combination of methods to be used to call the GMS.

EO 62/2020 provides specific rules for calling and holding a GMS by correspondence or direct long-distance electronic communication methods, including:

- the content of the calling notice;
- the regulations regarding secret ballots pursuant to the Romanian Companies Law;
- technical conditions that the long-distance electronic communication methods must meet;
- the publication of information and documents regarding the matters on the agenda of the meeting;
- the minutes of the meeting; and
- signing the resolutions of the GMS.

Certain provisions of EO 62/2020 also apply to a GMS called before this emergency ordinance entered into force (before 8 May 2020), but for which the meeting was established for a date that is after the date the State of Emergency Period began (16 March 2020).

If the GMS was held after the State of Emergency Period began, but before EO 62/2020 came into force, the adopted resolutions cannot be annulled for failing to observe the holding and voting requirements, provided that the meeting took place with the consent of all shareholders in the ways provided by EO 62/2020 and the voting rights were expressed in one of the ways provided in EO 62/2020. The exercise of the voting rights is presumed to be consent for the meeting to be held.

The relevant provisions of EO 62/2020 applicable to GMSes also apply to meetings of bondholders.

In addition, the provisions of EO 62/2020 apply to GMSes and bondholders' meetings called during the State of Emergency Period, but which are planned to be held after the end of the State of Emergency Period, as well as GMSes and bondholders' meetings called and held in the first two months from the end of the State of Emergency Period, until 15 July 2020.

Management and supervisory boards can meet using long-distance communication methods

During the State of Emergency Period, the management and supervisory bodies of a company may also meet by ways of direct long-distance communication methods, irrespective of the subject of the decision.

These methods must meet the technical requirements for: (a) identifying the participants; (b) effective participation in the meeting; and (c) continuous retransmission of the discussions.

The corporate body having the competence to call the meeting must choose and communicate to the participants the methods of participation in the meeting and of exercising the voting rights.

These provisions also apply to meetings of management and supervisory boards which take place in the first 30 days from the end of the State of Emergency Period, until 15 June 2020.

Deadline for the annual GMS is extended until 31 July 2020

Given that the deadline for the submission of the financial statements has been extended until 31 July 2020, EO 62/2020 also extends the deadline for calling the annual GMS to approve the financial statements and related matters until 31 July 2020.

Finally, the management board's obligation to call the GMS in the event of undercapitalisation is postponed until 31 July 2020.

For more information, please contact your regular CMS advisor or local CMS experts: **Rodica Manea** and **Elena Andrei**.