

Extension of COVID-19 Regulation 3 until 31st December 2021

By decision of the Federal Council of 18th September 2020, COVID-19 Regulation 3 was extended until 31st December 2021. This means that meetings of companies (e.g. general meetings) can continue to be held in writing, in electronic form or by an independent proxy until the end of 2021 (Art. 27 COVID-19 Regulation 3).

Shareholders' meetings and general meetings without a physical venue

COVID-19 Regulation 3 enables the shareholders by name to hold social meetings not as face-to-face meetings but in another form, so that the participants can exercise their rights while observing the FOPH's requirements regarding hygiene and social distance.

Contrary to the provisions of company law, companies may in particular order that the exercise of rights may only be carried out as follows (Art. 27 Para. 1 COVID-19 Regulation 3)

- in writing or in electronic form; or
- through an independent proxy appointed by the organiser of the meeting.

Information obligation

If the meeting is to be held in a form that differs from the face-to-face meeting in the sense of COVID-19 Regulation 3, the organiser must inform the participants in writing at least four days before the meeting is held (Art. 27 Para. 2 COVID-19 Regulation 3). The participants should be properly informed about the formalities of the meeting and be able to make appropriate preparations to safeguard their rights.

Instead of written information, participants can also be made aware of the measures via electronic publication (e.g. by posting them on the company's website). However, it should also be noted here that this information must be provided at least 4 days before the meeting.

Conclusion and recommendations

The current special situation resulting from the COVID-19 pandemic remains unstable and unpredictable. Constantly changing travel restrictions remain on the agenda, and renewed stricter bans on meetings cannot be ruled out, even at short notice.

The extension of COVID-19 Regulation 3 until the end of 2021 creates valuable planning security here - possibly even longer-term, since the revised company law should come into force by 1st January 2022 at the latest, which provides for the possibilities of electronic and virtual general meetings on a permanent basis. Companies should therefore ideally be able to introduce the general conduct of meetings by electronic or virtual means before or with the expiry of COVID 19 Regulation 3.

SMEs with a larger number of shareholders or a geographically dispersed shareholder base (especially if the shareholders are located abroad) would do well to keep in mind the possibilities of written and electronic general meetings.

(Status: September 2020)

Contact persons at GHR Rechtsanwälte AG:

Bruno Hunziker, brunohunziker@ghr.ch

Markus Brühlhart, markusbruelhart@ghr.ch

Stephan Hofer, stephanhofer@ghr.ch

T + 41 (0)58 356 5000

Bern Muri: Tavelweg 2, CH-3074 Bern Muri

Zurich: Seidengasse 13, CH-8021 Zurich