

COVID-19 Luxembourg Update: Exceptional Measures Applicable to Companies Ends

In the context of COVID-19 and in order to comply with the applicable travel and social distancing restrictions, the Luxembourg law of 23 September 2020 allowed the holding of general and management bodies meetings of companies without the need for a physical presence in the Grand Duchy of Luxembourg, notwithstanding any provision to the contrary in the articles of association or where the articles of association did not provide for this possibility.

The period of application of the exceptional measures provided for by the law was extended several times during COVID-19 and finally ended on 31 December 2022 in view of the improvement in the overall health situation.

Since 1 January 2023, and the return of the normally applicable Luxembourg regulations, it is therefore strongly recommended to revert to pre-COVID-19 standards and to hold adequate physical meetings in Luxembourg to not adversely affect companies' substance and trigger any undesirable legal and tax implications.

From a corporate law perspective, although the law of 10 August 1915 concerning commercial companies as amended does not require the physical holding of meetings in Luxembourg and even provides rules for meetings held by electronic means of communication (e.g. videoconferencing), the notion of central administration located in

the Grand Duchy of Luxembourg that determines whether Luxembourg laws apply to a company requires that a company be able to establish that it is effectively managed from the Grand Duchy of Luxembourg and not outside of it. As such, consideration should always be given to making important decisions in physical meetings rather than by way of written consent (or in the absence of major decisions or activity over the course of a financial year to hold at least one physical meeting annually to approve the annual accounts).

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