

Practical Considerations: the impact of COVID-19 and the public movement restrictions on the holding of General Meetings of Listed Companies

1. Introduction

The Annual General Meeting season is approaching for Greek limited companies with December 31 as their financial year-end date, while some of them may have to hold Extraordinary General Meetings in the meantime to address certain issues such as harmonization of their articles of association with the recent limited companies law, share buyback programs, share capital increases etc. However, the outbreak of the coronavirus (COVID-19) and the current strict public movement restrictions imposed by the Greek Government since March 23, leading to a broad lockdown, the exact timing of expiry of which is uncertain at the time, may affect the holding of general meetings, especially those of listed companies with a broad list of shareholders.

While the recent Greek limited companies Law No 4548/2018 includes a number of alternatives for a remote meeting, most Greek listed issuers, even the most sophisticated ones, so far typically follow the traditional type of general meeting, i.e. an 'in person' meeting held at a specific place and time because they are not familiar with the technical, cultural and organizational aspects of remote manners of holding a general meeting.

However, they are now facing the challenge of having to convene a general meeting, in which the physical presence of shareholders is prevented by the prohibition of movement within Greek territory and the absence of any specific exemptions which would allow shareholders to move to the place where the general meeting is held, not to mention the legal risks associated with potential challenges of the effectiveness of the general meeting by any shareholder that was not present at that meeting.

In this context, Greek issuers should examine the alternative types of holding a general meeting where physical presence of shareholders is either prevented or deemed risky by such issuers. These alternative types will be briefly discussed below.

2. Alternative types of holding a general meeting under Greek law

The traditional type of a general meeting is the in-person meeting of shareholders taking place at a specific place and time. In other words, the traditional general meeting includes three necessary elements, namely (i) physical presence of shareholders or their representatives, (ii) in a specific place and (iii) at a specific time. In addition to the traditional type, the Greek companies Law has now set out alternative types of general meetings, in which some or all of these elements are missing.

These are:

- i. An 'in person' meeting with the possibility of remote participation to those shareholders who select so, also called 'hybrid general meeting' (Article 125 L. 4548/2018). This is an 'in person' meeting with the deviation that shareholders who cannot or do not wish to attend the meeting in person, are able to participate remotely, via audiovisual or other electronic means.

ii. An exclusively virtual general meeting (Article 120 par. 3 L. 4548/2018). In this type the general meeting is held exclusively on a virtual manner. This type is only available to non-listed entities, however, see analysis below regarding the possible repercussions of the recent anti-coronavirus decree to this restriction.

iii. A 'postal vote' meeting (Article 126 L. 4548/2018), in which shareholders are permitted to vote remotely by correspondence, provided that the articles of association of such company permit so.

3. The emergency anti-coronavirus measures vis-à-vis the holding a general meeting via remote means of communication

Pursuant to Article 33 par. 2 of Legislative Act dated 20-3-2020 (Government Gazette A/68/20-3-2020), *"The General Meeting of shareholders or partners of any legal person or legal entity can be held through teleconference for some or all its members. The invitation to the members of the General Meetings contains all necessary information and technical guidelines for their participation to the meeting. The provision is in force until 30-6-2020"*.

This provision, as an extraordinary measure for the prevention of the risk of spread of the coronavirus COVID-19, sets out a possibility for all legal entities, to conduct their general meetings via a teleconference.

It is clear that this provision does not impose any obligation to Greek companies to hold the general meetings via a teleconference, but it rather seeks to facilitate the convocation of such meetings during the closedown, by addressing the difficulties a traditional general meeting would have at a time where movement is restricted. The purpose of this provision is to extend this possibility to companies that were not prudent enough to include such a possibility in their articles of association, as the Greek limited companies Law requires, before the coronavirus crisis. It is also clear that by the term 'teleconference' the said provision purports to cover both the virtual and the hybrid general meeting types discussed above but on the other hand, it does not appear that it could also cover the 'postal vote' possibility, in the absence of a specific provision in the articles of association of a particular issuer.

"Teleconference" is a virtual manner of holding a meeting, under the condition of actual and simultaneous communication of all its members (shareholders), who participate via electronic means of communication and voting. Therefore, aside from auto-visual communication (i.e. videoconference), telephone communications should also be accepted if the identity of the person on the other end of the line can be confirmed.

Furthermore, it could be reasonably supported that Article 33 par. 2 of the Legislative Act dated 20-3-2020 purports to set forth an exemption to the provision of article 120 par. 3 of Law 4548/2018 which, in principle, prohibits listed companies from holding a totally virtual general meeting and as a result, for as long as the emergency anti-coronavirus measures are in effect, listed companies are able to convene their general meetings exclusively virtually via a teleconference.

4. Perspectives of alternative general meeting types during the lockdown era and the relevant challenges and expectations

Despite the window that the emergency anti-coronavirus decree opened with its Article 33 for the performance of a general meeting via remote means of communication and also despite the risks (legal and public health related) associated with the performance of the traditional general meeting in the lockdown era, it is in our experience doubtful whether

Greek issuers will select to follow this path, at least at a large scale. Obstacles to this would involve: (i) the cultural aspect, as neither issuers nor shareholders are familiar with the idea of performing a general meeting without physical presence of the latter; (ii) network problems, as often the IT capacity of issuers may not be able to support teleconferences with hundreds of participants, especially in the manner prescribed in Greek law, requiring from issuers to ensure the security of the network connection; and (iii) organizational and technical issues, as it is not always feasible to take a decision so soon and more importantly to promptly put in place the necessary measures for checking the identity of the participants in the teleconference, as Greek law requires, without a long prior preparation, especially at a time when the personal handing of documentation/passwords connected with the use of a teleconference application is not possible due to the lockdown. The use of certified e-signatures could be a solution to that problem, but it is unlikely that a significant part of shareholders have been so prepared.

As a result, while many Greek issuers will seriously consider this option, we nevertheless believe that most of them will probably give a second thought and select to wait for the lapse of the anti-coronavirus restrictions in order to perform their general meetings. It should be noted that annual general meetings for the financial year that ended on 31.12.2019 are permitted to be performed by mid-September.

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