



## COVID-19: Assembly of companies

**In connection with the coronavirus (COVID-19) and the associated circumstances, new legal questions arise, the answering of which currently presents the experts with difficult tasks. In view of the highly complex situation, we try to provide information on the legal topics as simply as possible. This special issue of krfacts provides information about the current regulations on assembly of companies (Chapter I.) and condominium owners' assembly (Chapter II.).**

### **I. Assembly of companies**

#### **1. Initial Situation**

In connection with the extraordinary situation currently prevailing, the Federal Council has issued several emergency ordinances. Since 13 March 2020, Ordinance 2 on measures to combat coronavirus (hereinafter COVID-19 Ordinance 2) has been in force. This ordinance contains a ban on public or private events and association activities. It also includes meetings of companies, namely joint-stock companies, limited liability companies, cooperatives and associations, at which shareholders or members may exercise their rights.

Art. 6b COVID-19 Regulation 2 therefore provides for the possibility of exercising these rights exclusively in writing, in electronic form or through an independent proxy appointed by the organiser on the organiser's instructions. In order for this possibility to be exercised, the organiser's order must be notified in writing or published electronically at least four days before the event. The application of this standard raises some practical questions. Therefore, the most important practical instructions for dealing with this standard are summarized below. First, the wording of Art. 6b COVID-19-Regulation 2:

*Art. 6b Assembly of companies*

<sup>1</sup>*In the case of meetings of companies, the organiser may, irrespective of the expected number of participants and without observing the invitation deadline, order that the participants may exercise their rights exclusively:*

- a. a. in writing or in electronic form; or*
- b. b. by an independent voting representative appointed by the organiser.*

<sup>2</sup>*The broadcaster shall take decisions during the period in accordance with Article 12 paragraph 8\*. The order must be communicated in writing or published electronically at least four days before the event.*

\* The period currently ends on 30 June 2020 (amendment of 29 April 2020)

## **2. Important information on the application of Art. 6b COVID-19-Regulation 2**

### **2.1. Announcement of the implementation of the AGM**

It is important to note, first of all, that the legal or statutory provisions on the convening of the meeting and the announcement of the agenda items have not been repealed by the application of Art. 6b COVID-19 Regulation 2. Therefore, the statutory and, if applicable, legal deadlines and formalities for convening the meeting and announcing the agenda items are still valid. Only the organiser's order that rights may be exercised at the meeting in the forms provided for in Art. 6b al. 1 let. a und b of the Regulation must be notified in writing or published electronically at least four days before the meeting.

Written notification is deemed to be information given by letter. The date of the postmark on which the instructions to the shareholders were notified is decisive. For example, prominent, conspicuous information on the organiser's website is considered to be published electronically. We recommend that the notification be made both in writing and electronically.

The organiser's order must be issued by 30 June 2020 (the deadline was extended to this date by the Federal Council on 29 April 2020). The meeting itself may also be held after 30 June 2020.

## **2.2. Exercising and maintaining membership rights**

### *a. Exercise in writing*

Written exercise means exercise by letter post. Voting by e-mail message is excluded.

### *b. Exercise in electronic form*

The exercise in electronic form qualifies as a meeting by telephone or video conference. It must be possible to establish the identity of the participants without any doubt at any time.

### *c. Exercise by an independent voting representative*

The exercise of the rights may, if necessary, be ordered by an independent voting representative appointed by the organiser.

Note: In the case of associations and also condominium owners' associations, a representation of the member or condominium owner is only possible in principle if the statutes provide for this. It is therefore controversial whether associations or condominium owners' associations without a statutory basis can order representation by an independent proxy. To be on the safe side, it is therefore recommended to use written or electronic form for such meetings.

### *d. Safeguarding the participation rights*

Shareholders, partners or members have in principle the right to ask questions, present their arguments and make motions on the agenda during the meeting. In order to fully protect the rights of shareholders, etc., it would be possible to hold the meeting via video or telephone conference. Where this is not possible, shareholders etc. should be provided with the relevant information in full so that they can exercise their rights in accordance with the law. In particular, if controversial items are on the agenda, a period of time could also be granted to ask questions in writing and to make suggestions.

## **2.3. Conduct of the meeting**

Although the meeting cannot be physically held with all shareholders, partners or members, a physical "remainder meeting" must nevertheless take place, at which at least a chairman (e.g. a member of the board of directors or executive committee) and a keeper of the minutes or vote counter must be present. In addition, an independent proxy, a representative of the auditors and a notary public must be present for resolutions requiring certification.

Minutes must also be taken at a meeting as defined in Art. 6b COVID-19 Regulation 2. In particular, the resolutions passed must be recorded in accordance with the law.

## 2.4. Voting results and resolutions

Votes and resolutions passed at the meeting must be brought to the attention of each individual shareholder, partner or member in accordance with the law so that they have the opportunity to contest the resolution.

## II. Condominium owner's assembly

Although condominium owners' associations are not regarded as companies in the legal sense, Art. 712m para. 2 of the Swiss Civil Code refers to the provisions of the law on associations for the assembly of condominium owners. Accordingly, Art. 6b COVID-19 Regulation 2 also applies to this assembly.

The management of the condominium owners' association can therefore order that the condominium owners exercise their voting rights as described above (section I., item 2.2); as explained in item 2.2 lit. c., due to legal uncertainty, no proxy should be appointed if the regulations or the articles of association do not provide for the condominium owner to be represented.

A written vote by circular based on Art. 6b COVID-19 Regulation 2 does not per se require unanimity, but follows the regulatory and statutory quorums regarding the transaction to be voted on.

For further information on condominium ownership, please refer to our krfacts special edition "Real Estate" of 9 April 2020, which is available [here](#) for you to download.

## III. Further questions

Due to the developing situation and the different circumstances of each individual case, we recommend that you contact us with any legal questions.

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