

COVID-19 not only disrupted the economy and financial markets but also the administration of companies around the world. As the financial year 2019 has ended for almost everyone by now, the question arises how the annual general assembly of the shareholders of international and multi-national companies can be conducted in light of the travel restrictions around the world.

I. Legal Framework in the UAE

Company related matters are being governed by Federal Law No. 2 of 2015 (Commercial Companies Law; “CCL”) and by the constitutional documents of the company (i.e. Memorandum and Articles of Association; “MoA”).

Art. 92 of the CCL states that every LLC shall convene an annual general assembly within 4 months of the end of each financial year. However, the CCL does not stipulate whether a meeting can only be held physically or also by modern means of telecommunication. Therefore, a respective clarification should be contained in the company’s MoA which further details the provisions of the CCL.

This means that if a company’s MoA allows the shareholders to participate by phone or video conference, a virtual general assembly can be held.

But what if the MoA does not provide for any means other than a physical general assembly meeting?

II. Possible Solutions

If the MoA does not explicitly state that shareholders may participate in a general assembly by means of telecommunication (e.g. by phone or video conference), the shareholders have two options: a) amending the company’s MoA to include modern means of telecommunication or b) pass a written

resolution allowing participation by phone or video-conference.

a) Amendment of MoA

In order to include a participation of shareholders by modern means of telecommunication, the shareholders could amend the respective provisions of the MoA. However, an amendment of the MoA requires the unanimous consent of all shareholders as well as an attested amendment signed by all shareholders. The attestation of the amendment to the MoA could be challenging if not all shareholders are present in the UAE and/or do not have a representative with the required power of attorney in the UAE.

Although the amendment of the MoA would be the easiest solution, it may fail due to the travel restrictions. Moreover, the issuance of a power of attorney for representatives may take time and would postpone the general assembly by weeks.

b) Written Resolution

Another solution may be the passing of a circular written resolution. The possibility to pass a circular written resolution can usually be found in any MoA. If such a provision is present in the company’s MoA, the shareholders may pass such a resolution amending the way a general assembly can be held with immediate effect.

After the circular written resolution has been passed, the shareholders may hold the general assembly either over the phone or via video-conference.

If the MoA does not provide the possibility to pass a resolution in writing rather than in a physical meeting, the shareholders will have to amend the MoA.

III. Requirements for Virtual Meetings

The UAE's Security and Commodities Authority issued a circular for publicly listed joint stock companies by end of April 2020 with requirements for holding a virtual general assembly. Although this circular only applies to publicly listed joint stock companies, certain general requirements can be conveyed to an LLC.

For example, the chairman has to make the link for the virtual meeting available for all shareholders and have to ensure that the virtual meeting room is set up properly and is functioning without technical problems. Furthermore, all requirements of a normal general assembly (i.e. quorum and majority) has to be observed by the chairman. The virtual general assembly meeting has to be recorded and the resolutions passed as well as the minutes of meeting have to be distributed to each shareholder after the general assembly meeting.

IV. Legal Framework in Free Zones

Free zone companies are facing the same problems as LLCs in the mainland of the UAE.

This means that the aforementioned also applies to free zone companies.

However, free zones are constantly updating their companies' regulations and some of them already allow shareholders to participate in a general assembly by phone or video-conference (e.g. DMCC, DDA/Tecom, ADGM, DIFC, JAFZA).

V. Summary

Every company facing the problem of conducting its annual general assembly should review its MoA (and the free zone's company regulations where applicable) in order to verify whether the general assembly can be held virtually without any further administrative steps. If the MoA and/or the applicable rules and regulations do not provide for a participation by modern means of telecommunication, the shareholders have to decide which aforementioned alternative is the most suitable for them.

Taking into account that the "new (business/corporate) normal" may require more flexibility from the shareholders and the management, an amendment of the MoA is highly recommended in order to be able to react faster to unforeseen circumstances.

For a review of your MoA, any required amendments and/or any further information in this regard please contact yulia.kasiyanova@schlueter-graf.com.

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