



MEETING THE DIGITAL CHALLENGE

Recommendations for Luxembourg shareholder meetings



DISCLAIMER

This document covers the state of Luxembourg legislation as at 1 January 2021.

It does not constitute legal advice, and is intended only as a general discussion of shareholder meetings in Luxembourg.

CONTRIBUTORS

ILA's Think Tank

ILA is a leader in training and sharing of best practices related to governance. In 2020 the ILA Think Tank was launched to further consolidate ILA as a thought leader.

The ILA Think Tank not only reflects ILA's history as an Institute, but aims to position ILA well for the future by enhancing its activities as a catalyser and stimulator for research and innovation, its involvement in commentary on policy positions, and its leadership in good governance.

Leveraging ILA's strength in the Director experience of its member community, the Think Tank also aims to also add real value to research and innovation in the field of corporate governance by linking the academic and Director communities, through collaboration and partnerships.

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Special thanks to the ILA Digital Committee

FOREWORD

The objective of this guide “Meeting the digital challenge: Recommendations for Luxembourg shareholder meetings” (the “Guide”) is to discuss practices in Luxembourg related to the holding of shareholder meetings.

Holding meetings – for both Boards and shareholders – over the last year has been challenging due to the restrictions imposed by the pandemic. This has, however spurred innovation and allowed for testing of new formats along the lines of the “minimum viable product” concept used by start-ups. However, were all of these formats really viable? Or were they below the minimum expectations of a reasonable shareholder? What does all this mean for future and re-thinking meeting formats in a manner that are fit for the future – and fit for not only the convenience of the Board, but for achieving in good faith the underlying objectives of shareholder meetings.

As we set out in the meeting, the digital journey seems inevitable, and welcomed. It does however involve trade-offs, and whilst digital solutions are certainly part of the solution, they are not the entire story. As focus on ESG and sustainable governance issues increase, the recent updates to the EU’s Shareholders’ Rights Directive are embedded, the role of the shareholder and of wider stakeholders is again in the spotlight.

We would like to thank the contributors for the work done on the first edition of this Guide.

It is not the purpose of this Guide to fully deal with all items and issues regarding shareholder meetings, and it should not be considered as exhaustive, not relied on exclusively. Whilst reasonable care has been taken, ILA and the individual contributors do not accept any responsibility for the completeness or accuracy of its contents. Readers must take their own professional advice to clarify which laws, regulations and practices apply to their individual circumstances.

We welcome any suggestions and comments on this Guide from all interested parties as we expect this dynamic area will evolve greatly over the next years. Feedback on experiences and practices, as well as useful tools are also welcome. This Guide will be available online, and may be updated from time to time.



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INTRODUCTION

Seeing the trees but not the forest?

With the explosion of data in modern economies, managing data properly has become a core focus inside companies and across economies. The age-old issue of how to ensure transparency towards shareholders and other stakeholders may be aided by new technologies which enable data to be processed and shared in novel and more immediate formats. It may also allow for new data metrics to be efficiently captured, such as various ESG metrics which previously relied on expensive and slow manual processing. Technology can dramatically change how companies engage, communicate, and interact with their stakeholders.

Corporate governance systems aim to address the inherent imbalance of power resulting from inequalities in access to the wide range of information that underpins the activities of an entity.

Shareholder and member meetings remain the essential democratic mechanism for shareholders. It is only by being able to voice their concerns, to ask questions, and to cast votes such as re-election of the Board and auditors that they can and are able to exercise their fundamental rights, and to hold management to account.

The crisis has forced re-thinking of old practices

Whilst the legal and regulatory environment has been moving with the technology times, albeit somewhat slowly, the COVID-19 pandemic has forced the rethinking of governance practices, where shareholder meetings were often the repeating of the same tired formulas for engaging with shareholders year after year. Not only were companies forced to put in place new ways to engage with shareholders due to the inability to travel and meet physically, but they were also given the opportunity to experiment and rethink how they would like this to be done. Whilst the 2020 AGM season did not allow a lot of time for reflection on best practices, it did allow many different formulas to be tried out. As a result of this flurry of innovation we have been able to study the different efforts – both the good and the bad – and use these to assess what worked well and what didn't.

Efficiency should not come at the expense of meaningful communication and debate

An analysis of the 2020 AGM season flagged multiple issues - ranging from challenges around access to the meeting platform, quality of audio and video feeds, formats which did not allow for shareholder engagement or for questions to be raised, mistrust about votes being correctly counted, and concerns around voter privacy.

The lack of face-to-face meeting has raised concerns around Board accountability and the ability to avoid having to deal with unwanted and challenging questions – especially where communications are limited to audio only or to one-way communications. Issues also arose from some Boards “cherry-picking” which of the questions sent in advance they would answer. Moving online should not allow Boards to hide from accountability towards their shareholders, nor should these become another webinar or sales pitch.

Good examples exist to counter each of these - often linked to greater transparency and meaningful participation. From companies publishing the list of all shareholder questions that were sent in (to avoid suspicion of them cherry picking) and publishing on their websites responses to each of these questions,



to combining the meeting platform with use of social media and other interactive technologies to allow for more dynamic exchange, live chats, raising hands to ask questions, and online polling.

Covid forced dramatic shifts in practices – which are only the beginning

We would like to underline the challenges faced by most during 2020, and the need to mobilise quickly to dealing with last minute transformation of long-planned physical meetings to quickly substitute these with an alternative. As a result, we applaud all companies for the efforts made in those difficult circumstances. However, procedures implemented as part of crisis management should not be mistaken for longer-term practices which have benefitted from time to reflect and implement mature, robust, and inclusive practices. 2020 kick-started experimentation with new techniques and formats, but these are just the beginning.

Tech alone is not the solution

In many cases, the interests of the company to have a quick Fully Remote Meeting to vote and be done with it may be in direct conflict with the interests of the shareholders and wider stakeholders to discuss, question and engage with the Board and senior management. The tech lobby at times has fostered this gap by focusing on flow charts reducing corporate governance and engagement to the ability to vote or not. A focus on yes/no votes alone forgets the wider purpose and ambitions of stakeholder engagement more generally, and of shareholder meetings more particularly.

An opportunity for change

Fully Remote Meetings appear to offer an opportunity to enhance the efficiency of shareholder meetings – quicker, cheaper, and enabling a wider range of shareholders to attend. However, this efficiency needs to be balanced with the democratic purpose from which they stem, which is why we see hybrid shareholder meetings (where the shareholders themselves may choose whether to attend in person or online) as being best placed to balance efficiency and engagement.

This is just the beginning, and we look forward to seeing the new and innovative means of meaningful stakeholder engagement which will evolve over the next years. We hope Boards, management, shareholders, and wider stakeholders embrace this opportunity for change, and ensure it is addressed in a sustainable manner for the longer-term benefits of companies, shareholders, and society.



COVID-19: crisis measures allow Fully Remote Meetings

This paper does not focus on the extraordinary environment of COVID, but aims to provide longer term recommendations outside of the crisis. Some of these recommendations, such as for hybrid shareholder meetings which allow shareholders the choice between physical and online attendance may of course continue to be difficult until the crisis has ended. In the meantime, entities should act in good faith to enable shareholder rights to be respected in the best way possible

In the context of the Covid-19 pandemic, various temporary crisis measures were introduced regarding the holding of board and shareholder meetings in companies and other legal entities. The Grand-Ducal Regulation of 20 March 2020 (the “Regulation”) provided a response to certain problems faced by companies at the level of their governance due to the lockdowns and inability to travel or to meet in larger groups.

The Regulation, and its successors of 20 June, 23 September and 25 November 2020 allow (but do not require) the holding of corporate meetings with only remote participation - and without any physical presence - regardless of whether this is allowed by the entity’s articles or the usual laws, and this irrespective of the intended number of participants. The 25 November 2020 law is in effect until 30 June 2021. See Appendix 1 for more detail.

TERMINOLOGY AND LEGAL SOURCES

Meeting Types: “Physical”, “Hybrid”, “Fully Remote”, “Written”?

Physical Meetings	are shareholder meetings where participants are attending physically. Shareholders not attending in person may vote by proxy by returning the provided proxy voting form.
Fully Remote Meetings	are shareholder meetings where all participation is remote, by means of communication technologies. Fully Remote Meetings can be held by making use of technologies such as telephone conferencing, video conferencing, digital platforms, or a combination of these.
Hybrid Meetings	are shareholder meetings which combine both of the above – offering shareholders a choice. The same meeting will have some participants attending physically and others attending remotely.
Written Resolutions	some forms of entity, such as certain SARLs may allow written resolutions to be made in lieu of holding a shareholder meeting

Main meeting methods referred to

Teleconference	the connection of participants using telephone lines (voice only).
Videoconference	the connection of participants using combined visual and voice support.
Data Portal	digital platforms (often via the cloud) allowing access to all data relevant to a meeting
Voting Platform	digital platforms allowing participants to vote electronically.
Social Platform or Social Media	digital platforms allowing participants to exchange electronically – with the Board and management, and possibly with each other.
Combined Platform	digital platforms allowing a combination of data, voting and/or participant exchange.

Luxembourg's legal framework for different entity types

The main Luxembourg laws relevant to shareholder meetings and related disclosures are:

The 2002 Law the law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings (as amended) ([L. 2002](#)), which sets out various disclosure and publication requirements

for commercial companies:

The Company Law the law of 10 August 1915 on commercial companies (as amended)

for listed companies (and implementing the Shareholder Rights Directives)

the Shareholder Rights Law the law of 24 May 2011, as modified by the law of 1 August 2019 on the exercise of certain rights of shareholders in general meetings of listed companies (as amended),

the X Principles the X Principles of Corporate Governance of the Luxembourg Stock Exchange

for non-profits (ASBL and Foundations):

The Non-Profit Law the law of 21 April 1928 on non-profit associations and foundations

for "co-proprietés":

Co-Ownership Law the law of 16 May 1975 on the status of co-ownership of buildings

Note: Various other laws may apply to particular entities, in particular regarding disclosure requirements - such as laws of the financial sector, the Prospectus Law, Market Abuse Law, Transparency Law. These will not be focused on in this document.

It is also worth noting that to the extent the rules do not contradict, the Company Law is also often used as inspiration for practices applied to other legal forms such as ASBLs and foundations which have less detailed rules.

PURPOSE AND ROLE OF SHAREHOLDER MEETINGS

Beyond the obligation to comply with legal requirements and in the context of a good governance process, shareholder meetings are the pillar of shareholders' democracy, with several core functions:

- providing a forum for collective engagement and discussion between shareholders and the Board on one hand, and between shareholders on the other hand;
- providing a forum to hold Boards and management to account;
- being a decision-making event/process for the passing of resolutions and appointment of the supervisory bodies, and where applicable, the statutory auditors.

Luxembourg laws and regulations, in particular the Luxembourg Company law and Shareholders' Rights Law provide the framework for the shareholder meeting process. Approving annual accounts and management report, electing directors, appointing external auditors and other voting resolutions must be legally "processed" through a shareholder meeting.

Luxembourg Company Law provides for the equal treatment for all shareholders regarding participation and voting rights at shareholder meetings and encourage long-term engagement of shareholders.

The Shareholders' Rights Law grants various additional rights to shareholders of listed companies, such as to receive the remuneration report and to vote (albeit non-binding) on the remuneration policy, and subject to certain shareholding requirements to add items to the agenda or to ask questions in advance.

- Pillar of shareholding democracy

Shareholder meetings aim to ensure a forum where views of all shareholders can be voiced - including the minorities. These are often retail shareholders who do not have access to the Board and to management during the year.

Increased transparency is expected by shareholders regarding strategy and performance of the company. Boards and management should not be able to hide from criticism and questions, and must ensure shareholder matters are properly and fairly presented, and discussed with other shareholders.

- Shareholder meetings are a place where shareholders engage in the company strategy

If properly implemented, shareholder meetings can contribute to a sense of community within the company by informing shareholders on the affairs of the company.

"Effective and sustainable shareholder engagement is one of the cornerstones of the corporate governance model of listed companies, which depends on checks and balances between the different organs and different stakeholders. Greater involvement of shareholders in corporate governance is one of the levers that can help improve the financial and non-financial performance of companies."¹

- Shareholder meetings are a forum of discussion and can be a privileged moment of exchange between the Board and shareholders

Shareholder meetings allow for an in-depth exchange where shareholders may ask questions and hold Board and management accountable. A key right of shareholders, having the right to have their questions being answered, is exercised through the shareholder meeting.

¹ Recital 14 of the Directive 2017/828 on Shareholders Rights

- Shareholders can approve / disapprove management actions at shareholder meetings
They have a key power of decision by voting (or abstaining from voting) on crucial resolutions such as distribution of dividends, CEO remuneration policy, appointment, and discharge of directors.
The voting right can further protect shareholders' own interests, e.g. by avoiding squeeze-out or dilution.
- Shareholder meetings are the place where shareholders can exercise their legal rights

Shareholder rights in Luxembourg

In Luxembourg, the Board of Directors (or in two tier structures, the Supervisory board) is responsible for the management of the company.

Subject to any restrictions set out in the articles (statuts) and in any applicable shareholder agreement which may reserve specific matters to the general meeting of shareholders, it is the Board who is the main organ for setting the objectives, strategy, risk appetite and key policies of the company, and overseeing management to carry these out. In order to ensure a long-term outlook, the X Principles requires corporate social responsibility aspects to be incorporated into the business strategy.

The Company Law only provides shareholders with very limited rights, for example (non-exhaustive list) the right to:

- appoint and remove Directors (art. 441-2, 442-14), and set their remuneration
- for most entities, appoint the auditor(s) (art 69 of the 2002 Law)
- to annually be convened to a shareholder meeting
- if holding over a certain shareholding, may have additional rights e.g. if holding 10% of the capital, to convene a shareholder meeting or to add items to the agenda of a shareholder meeting (e.g. art. 450-8 or 1400-3 of the Companies law)
- grant discharge to the Directors on the basis of the annual accounts (art. 461-7)
- make various changes to the articles, share capital or objects of the company
- liquidate the company
- in listed companies, various additional rights such as to receive a remuneration report and to vote (albeit non-binding) on the remuneration policy

The Shareholders' Rights Law aims at enhancing the rights of shareholders, especially for minority shareholders with a view to strengthening corporate governance, with a strong emphasis on engagement and communication. For example, requiring a policy of active communication with shareholders and related practices to be defined and implemented.

In addition to the items required by the Company Law, the Shareholders' Rights Law requires additional information and explanation of rights.

The Shareholders' Rights Law also imposes obligations on certain shareholders, such as institutional investors and asset managers, regarding transparency as well as engagement policies and integration of shareholder engagement into their investment strategies.



Back to the Future: Is it time to reconsider shareholder communications and meetings?

The current pandemic has not just raised the question of whether virtual meetings can be efficient, and if so perpetuated. The question of how shareholder meetings can be held has also triggered a more profound reflection about what shareholder meetings should be about.

Although theoretically part of a healthy governance model, reality has shown that in many cases shareholder meetings do not achieve their primary role and have often evolved into empty shells that seem to rarely impact the way a company is steered. Initially conceived to represent the interests of the owner(s), shareholder meetings have struggled to remain part of the democratic dialogue that should be developed between each of the layers of the governance structure - from management, to the Board, to the Shareholders and wider stakeholders.

How can technology help resurrect shareholder meetings to become again the touchstone of shareholder engagement - and even open new possibilities? How has the pandemic affected this? Some corporate structures had already begun experimenting with innovative practices regarding internal and external transparency prior to the current crisis (for example tech companies such as Netflix).

To understand how shareholder meetings can change, consideration must be given to how Boards can - or should - respond effectively to their fiduciary duties. The past decade has put Boards of Directors in the spotlight, increasing their responsibilities and in particular their liabilities. As Boards learn how to ensure proper oversight and strategic orientation of an entity, closer interaction with management has gradually been put in place - albeit often grudgingly by management itself. Trust must be built and added value proven. As Boards have endeavoured to bridge the gap with management, so have shareholders sought more active engagement with Boards.

The need for a shift to re-balance management and shareholder interests and power seems ripe for debate. New technologies also provide new possibilities - making it timely to evaluate more closely current trends and new developments in and to (re-)consider how the quality, and even the very purpose, of shareholder meetings and communications could be enhanced in the interest of better and fairer governance.

TYPES OF LUXEMBOURG SHAREHOLDER MEETINGS

This Paper aims to be sufficiently broad to cover all kinds of legal entities (corporations including listed companies, associations, professional bodies, co-ownerships) that are governed through assemblies, ordinary or extraordinary, of shareholders/members/co-owners.

In this document when discussing companies, we have focused on the société anonyme or S.A. with a Board of Directors. Where we refer to companies and shareholders, in most cases this can be interchanged with non-profit and members.

The type of meeting and the extent of consultation as well as the types of meetings will also depend on the type and size of the entity, the number and diversity of its shareholders, and whether it is listed.

1. Types of shareholder meetings

There are two main types of meetings in the life of Luxembourg companies:

- Ordinary General meetings, including the **Annual General Meeting (AGMs)**
- **Extraordinary General Meetings (EGMs)** – with additional requirements, these are required for certain important actions such as to change the articles. A notary is required for EGMs.

The concepts and recommendations discussed in this paper generally apply to all meeting types, however this paper will focus on the AGM.

Shareholder meetings are generally convened by the Board of Directors.

2. How to hold shareholder meetings – Physical? Hybrid? Fully Remote? In Writing?

Subject to any specific requirements in the company's articles, there are relatively few rules to comply with.

Luxembourg Company Law is generally not prescriptive as to how shareholder meetings must be organised – largely leaving it to the companies to organise as they deem appropriate, subject to any additional requirements set out in the company's articles.

Regardless of the type of meeting that is organised, the rights of shareholders must be respected. It is the Board, as the main governance body organising the shareholder meetings, who must ensure these rights are respected.

Physical and Hybrid meetings are the usual formats

Taking a strict interpretation of the Company Law, it appears shareholders can often participate remotely to a physical shareholder meeting, if expressly specified in the articles of association.

Current Luxembourg Company Law does appear, therefore, to allow for Hybrid Meetings.

The legality of Fully Remote Meetings, however, is not clear - clarification of the law would be required to avoid any legal risk.¹ See Section 4.3 below for a further discussion of the legal issues arising.

¹ Concerns include the need for the presence of at least one shareholder, and the physical presence of the "Bureau" (Chairman, Secretary and Scrutineers) of the assembly. Interestingly the recent update of the Belgian company law does require the Bureau to be present.

Administrative matters also require clarification - if all or part of the "Bureau" is not present, how should documents be signed, through an e-signature system or only circulated after the meeting for signature?

Company Type	Hybrid Meeting Possible?	Please also refer to the more detailed table in Appendix 2.
Sociétés Anonymes (SA) - Public limited companies Sociétés Europeas (SE) - European companies	Yes	Remote participation is allowed, but only if expressly provided for in the articles and certain technical requirements are met ² <ul style="list-style-type: none"> The Company Law expressly provides for the possibility for shareholders of SA and SE to participate remotely. Where the articles and tools provide, shareholders have the possibility to exercise all or part of their rights by videoconference or other means of telecommunication. The tools used must: <ul style="list-style-type: none"> ensure identification satisfy technical characteristics that guarantee effective participation in the meeting, of which the deliberations must be transmitted continuously
Sociétés à responsabilité limitée (SARL) - Private Limited liability companies	Yes	Remote participation is allowed, but only if expressly provided for in the articles and certain technical requirements are met ³ Written shareholder resolutions are also allowed in lieu of shareholder meetings. Holding general meetings is not always mandatory for SARL where written resolutions in lieu of a physical general meeting are often possible. By signing these, the shareholder casts its vote in writing.
ASBL and Foundations	Not clear	No mention in the law of 21 April 1928. Position unclear. Check articles.
Co-ownership of buildings	Not clear	No mention in the law of 16 May 1975. Position unclear. Check articles.

3. How to count presence vs. representation of remote attendees

In order for valid decisions to be taken at general meetings, the appropriate quorum and voting thresholds must be met.

- **Quorum** – the minimum number of shareholders present or represented for a meeting to be held
- **Voting majority** – the number of votes needed for a resolution to pass.

These thresholds depend on the type of general meeting convened in relation to the scope of decisions to be taken, with the minimums set out in the Company Law, subject to any higher thresholds as may be contained in the entity's articles.

² Company Law article 450-1, paragraph 3

³ Company Law article 710-21, paragraph 2:

Quorum

Traditionally, quorum has been met by a combination of:

- “presence” - participation in person, or
- “representation” meaning shareholders return (usually written) instructions or “proxy votes” where they appoint a representative such as the Chairman of the meeting to cast votes for them as set out on their proxy voting form or at the proxy’s discretion.
- A person acting as a proxy holder may hold a proxy from more than one shareholder (usually without limitation), which is why an official of the meeting is able to represent many shareholders by holding their proxies.

Voting

Votes may be also expressed:

- “in-person” i.e. by the shareholder itself, or
- “by proxy” i.e. by a representative the shareholder has appointed.

Luxembourg Company Law requires a proxy voting option to be offered to shareholders, with the form allowing For/Against/Abstain options for each item on the meeting agenda.

For proxy votes, a cut off to receive the votes prior to the meeting makes sense due to the need to count these in the quorum, and also have them ready to be counted with all the votes cast during the meeting.

Remote and digital participation and voting

Remote participation at meetings prompts the question as to what constitutes being “present” at a meeting. This has implications for quorum and for voting - whether these are via the proxy (i.e. via the representative appointed by the shareholder, and acting on their behalf) or whether these count as the shareholder acting on their own behalf.

With digital voting or other forms of voting via a platform, all shareholders can vote using the same voting platform - including those shareholders who participate remotely.

Those voting from a remote location (i.e. any location other than that of the physical place where the meeting was convened) are doing so themselves and therefore would not require a proxy.

As a result, the distinction between in-person and remote voting becomes less clear – and arguably less important.

Logically, shareholders participating and voting remotely should therefore be counted as “present”, rather than acting “via proxy”, as they are themselves acting rather than appointing a representative to attend and act on their behalf.

Legal certainty lacking – when is remote participation equivalent to “in-person” presence and voting?

As discussed above, shareholders who have accessed and input their votes using a digital platform (even if done prior to the meeting itself) should logically be counted as “present” for the purposes of a meeting rather than “represented” - unless it is clear they have appointed a representative to attend and (re-)cast these votes on their behalf.



The Company Law and the entity's articles may require amendments for legal certainty to be achieved, pending which hybrid formats may be required, such as requiring a proxy form to be returned which is what is formally counted for the quorum and voting, while nonetheless allowing access and participation of the shareholder to the meeting itself.

Clarification of the law may be necessary to ensure legal certainty. All entities should review their articles and consider whether they allow for remote participation and whether they are sufficiently clear.

THE GOOD, THE BAD AND THE UGLY: LEARNING FROM 2020 AGMS

The experience to date has shown that shareholder meetings, whether Physical, Hybrid or Fully Remote Meetings have drawbacks. Feedback from investors regarding the AGMs of 2020 has been overwhelmingly in favour of hybrid solutions going forward where the shareholders themselves can decide on the trade-offs involved.

Once the constraints of the current COVID crisis have passed, some shareholders will still wish to attend some AGMs in person, such as those where a shareholder believes there are important questions to be raised and discussed. Companies should ensure shareholders are offered the choice.¹

It is each company – and in particular its Board as the body convening shareholder meetings – that needs to evaluate these matters and decide what format is best.

Myths, Advantages and Disadvantage of different meeting types

Discussion point	Observations from practice
Increased shareholder participation?	<p>Voting is only one element of shareholder participation.</p> <p>In fact, the widespread embrace of “proxy voting” often leads to results being decided even before the shareholder meetings take place. It is important to revive the element of meaningful debate that is central to meeting the purpose of shareholder meetings. This needs greater or at least improved shareholder engagement and tools to facilitate this.</p> <p>Shareholder Voting</p> <p>Voting at a distance has already been possible for many years, with the possibility to vote by proxy, ticking yes-no-abstain on each Agenda item and returning the signed form within the set deadlines.</p> <p>Despite this, retail investor voting rates have historically remained poor.</p> <p>Whilst they vary significantly between companies and regions, in 2020 statistics tended to show voting levels remained roughly the same as in previous years.</p> <p>Perhaps this was affected by COVID, and could improve as the methods used become easier to access. Once accessed, online voting via a platform was largely perceived as easier than voting at physical meetings which may increase use of digital voting even at physical meetings in future, with the added advantage of immediate availability of voting results.</p>

¹ For further reading, see for example this paper re. USA https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3681578



	<p>Shareholder Attendance and Engagement</p> <p>Historically, retail investor participation rates have been poor.</p> <p>Research also tends to show that many institutional investors tend to focus more on earnings calls and quarterly performance for trading purposes, and whilst they may return proxy votes they rarely participate in shareholder meetings.</p> <p>The latest update to the Shareholder’s Rights Directive is still new and should help, however engaging with underlying shareholders behind the nominees who show on the shareholder register has long been a challenge.</p> <p>Interestingly, despite online formats 2020 statistics tend to show this stayed roughly the same. Perhaps this was affected by COVID, and could improve as remote participation offers more interaction. Some investors have also complained of issues to enter meetings.</p>
Shareholder interactions with Boards and management	<p>Whilst more shareholders should be able to attend if a meeting is held online, the 2020 AGM experience showed that engagement and opportunities for interaction were limited for remote participants.</p> <p>Vertical engagement (both with Boards and senior management) was often limited, and at times subject to manipulation by blatantly ignoring or refusing to answer shareholder questions.</p> <p>Shareholders appreciated being able to send questions before the meeting in addition to asking them during the meeting, and for the lists of questions asked to be published. Where not all questions were addressed at the meeting, shareholders were satisfied if these were provided to all shareholders after the meeting, for example, via the same portal that had been used for the meeting.</p> <p>Horizontal engagement with fellow shareholders was rarely possible, with the platforms used for remote participation needing significant re-think to enable such interactions.</p>



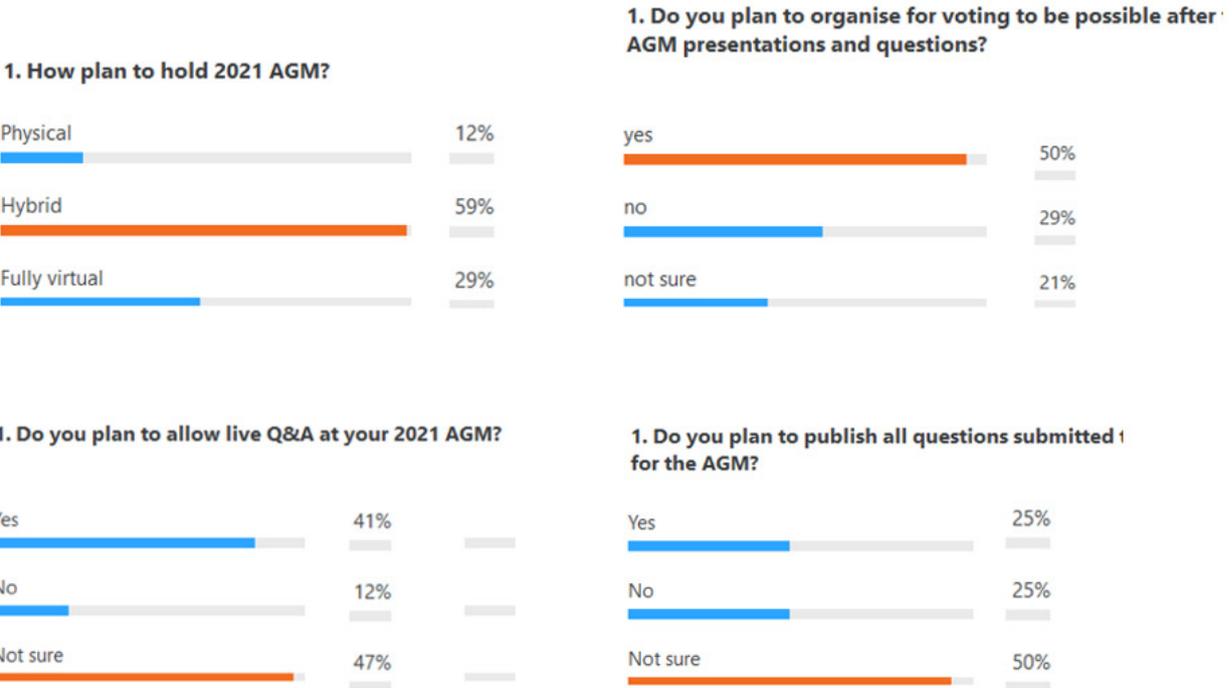
Shareholder experience	<p>Various frustrations have been reported which negatively affected remote participation – including complexity of accessing meetings, having to vote well before the meeting and hearing the presentations and discussion, and lack of opportunities to interact. Experience will depend a lot on the choices made by the company when organising the shareholder meeting. Approach to transparency and interactivity will be significant drivers in choice of methods and platforms used.</p> <p>Audio-only meetings were seen the most negatively, with video and proper two-way interactions preferred.</p> <p>Online voting via a platform was largely perceived as easier than voting at physical meetings.</p> <p>Question submission boxes on-screen were also appreciated by shareholders.</p> <p>Companies should also give some thought to time zones and how choice of meeting time can maximise meeting participation. If an entity has the date and time of the AGM entrenched in their articles, they may need to first change their articles.</p> <p>Currently, physical meetings continue to provide a more interactive and engaging user experience, however, as remote options diversify and become sophisticated this may change.</p>
Lower costs	<p>For the company, technology including security and third-party solutions can end up surprisingly expensive and can sometimes be challenging to integrate into internal systems and shareholder registers.</p> <p>If external venues have previously been used for shareholder meetings, these external venue costs should fall away.</p> <p>For the shareholders, it will depend on location, however choice should be a benefit.</p>
Lower carbon footprints	<p>The energy used has not been assessed, however lack of travel should be positive</p> <p>Regardless of the chosen meeting method, reduction in paper across the entire process should have a positive carbon impact – for example, moving away from physical mailing of meeting notices and related documentation such as paper reports and accounts and paper proxies..</p>
Convenience / Time commitment	<p>For companies, it may take longer to organise a well-structured and interactive Fully Remote or Hybrid Meeting. However, it may be offset by saving travel and other time required of staff and the full Board.</p> <p>For shareholders, it will clearly be a time saving to attend remotely. Several shareholders reported appreciating being able to attend multiple meetings in the same week despite the companies being based in vastly different locations.</p>





<p>Privacy concerns</p>	<p>Companies have voiced cybersecurity concerns including related topics such as the privacy of online meetings, and also ensure no tampering of votes.</p> <p>Shareholders have long expressed concerns about whether their votes have in fact been taken into account – an issue that can arise in all types of meeting whether physical, hybrid or remote. New technologies such as blockchain may assist with tracking votes in future, provided voter privacy is maintained.</p> <p>Privacy may also be impacted by unauthorised recording of remote meetings, especially if used for non-personal reasons.</p>
<p>Protests and Protesters</p>	<p>Shareholder meetings have been used in the past for protests – usually outside the meeting itself - to ensure Boards and management hear loud and clear concerns of the issues being addressed by the protesters.</p> <p>Remote and dispersed participation makes this type of action more difficult, although it may open new avenues for cyber-protests around or during the shareholder meeting.</p> <p>Cyberattacks or new forms of protests – even from actors who would not have had access to the physical shareholder meeting – should be considered and contingency planning put in place as companies must ensure the privacy and security of the meeting regardless of the chosen format, as well as ensuring only shareholders are in attendance.</p>

Focus on Luxembourg: Polling during ILA Coffee Chat, February 2021





Focus on a best in class example: Marks & Spencer

Financial Times – July 2020

“M&S puts shareholders to the digital test”

- Held its first digital shareholder meeting in 2020
- Much higher participation than usual (10x previous year),
- Participation was more representative of the shareholder base (1500 vs previous year 561)
- Voting live or in advance using an app or website
- Questions live and/or in advance
- 3x number of questions to the Board
- Live discussions
- Was reported to be easily accessible and highly interactive
- M&S stated the AGM reflected the company’s determination to become a digital-first business and drive transformation



RECOMMENDATIONS FOR SHAREHOLDER MEETINGS

Set out below are some recommendations for shareholder meetings, and how to aim for these to be well received by shareholders and lead to a fruitful and interactive experience for all.

These are just recommendations, and should of course be considered in the light of the type of entity, the number of shareholders and other relevant factors.

Wholly-owned subsidiaries and SPVs, for example, having a single or very small number of shareholders, may decide to continue to use written resolutions. They can still use the recommendations to guide the spirit of their communications with their shareholder(s).

1. Deciding on shareholder meeting approach and strategy

Prior to convening a shareholder meeting, the company should consider its approach and strategy for the meeting.

1. Optimising shareholder engagement

Directors and management may be tempted to provide only information, and organise meetings in a manner, that suits them best, for example in a manner that allows them to avoid uncomfortable questions. Such behaviour is perhaps a normal human defence mechanism, but clearly undermines the purpose of shareholder meetings. Shareholder meetings are intended to be a means to inform shareholders and focus attention on corporate performance and the monitoring and accountability function to act as a check on the powers of Boards and management. If Boards and management are using their positions to stifle this, this raises serious questions about good governance and abuse of power.

Investors report that historically the in-person annual shareholder meeting was once a meaningful forum to present shareholder opinion and influence managerial action.¹

There is often a wide gap between the perceived notions around the purpose of shareholder meetings, and how they operate in practice, including how they can influence the governance of an organisation. Some activists may also focus on their own short-term self-interest, and cannot always be assumed to act in the long-term interest of shareholders. Despite much press around the rise of activist investors, the reality remains that this is the exception, with the reality more often passive apathy and a restriction of shareholder rights to formal actions of rights to vote on the agenda items as presented to them - or to sell.

Companies that embrace engagement and transparency with shareholders and their wider stakeholder communities often find it rewarding once in place and have also found it has opened new avenues for exchanging ideas regarding contemporary non-financial themes such as sustainability, CSR and diversity, which are an increasingly important part of stakeholder engagement.

¹ Virtual Annual Meetings: A Path Toward Shareholder Democracy and Stakeholder Engagement https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3681578

2. Boards should consider what type of AGM is best for their shareholders

When deciding on the practicalities of a shareholder meeting, including which medium and technologies to be used, organizers should consider the context, such as the types of participants. The decision taken should optimize participation and engagement of the participants.

Examples of questions to consider may include:

- Is the contemplated format of the meeting in compliance with applicable law, regulations and the company's articles?
- Is the choice in line with the agenda to be debated and vote on? The medium chosen may be different if routine and non-controversial compared to a meeting addressing potentially more controversial and complicated points, such as going concern or merger discussions.
- How to reach a maximum of participants? What is the right format and technologies?
- How to make the meeting interesting and interactive?
- Are the access possibilities fair and equal for all participants? In case of a Hybrid meeting are physical and remote participants equally treated?
- How do you increase participation?
- How to ensure participants can engage meaningfully with the governance body? Whether Physical, Hybrid or Fully Remote, the meeting format should make sure engagement is possible through Q&A.
- How will organizers justify their choice and make sure the participants understood their motivations for those choices?
- Could a hybrid meeting balance many of these different considerations?

Boards should consider what type of communications are best for the shareholders

Shareholders have limited information rights under Luxembourg Company Law – but this is only a minimum.

The Company Law sets out, for example, that various documents must be made available at the registered office in advance of a general meeting for shareholders to be able to inspect, including the annual accounts and reports². Given the numerous methods of easily sharing information quickly, securely and via digital means, these limited modes of access to company information set out in the Company Law are clearly outdated and do not consider the best interests of shareholders.

Shareholders may also obtain these free of charge upon request. These rights are very limited, and allow very little time for shareholders - especially those living far from Luxembourg to be aware of and prepare for the meeting. It is best practice for companies to provide more notice and to be more proactive in providing shareholders with documentation beyond the minimum required by law.

3. The choices should prioritise ensuring shareholders appropriate communications and information

A great challenge for Boards faced with the lack of physical interactions is ensuring access to information that has not been overly filtered by management. Shareholders are faced with the same issue – specifically, concerns about access to information from the Board and management. Traditionally the main vehicle for

² SA/SE – art.461-6 – right to inspect documents at the registered office



this has been the receipt of certain key documentation (prospectus, annual accounts and reports), as well as the ability to ask questions at shareholder meetings, and in particular at the AGM.

Shareholders should receive adequate information to properly enable them to understand the company's strategy and accounts, and to vote in an informed manner.

Companies should use new technologies to engage with shareholders. For example, digital platforms such as data portals can be used to create an area where all information relevant to the meeting is accessible in one place, providing shareholders with personal access codes.

4. Review the Company Law and the entity's articles

When using digital solutions, the Company Law and the entity's articles may require amendments for legal certainty to be achieved, pending which hybrid formats may be required, such as requiring a proxy form to be returned which is what is formally counted for the quorum and voting, while nonetheless allowing access and participation of the shareholder to the meeting itself.

5. COVID-19

During 2021, COVID-19 will continue to affect options available for shareholder meetings, with safety concerns and legal restrictions to be considered carefully.

Given current circumstances, companies should do their best, and consider how to ensure as much transparency with shareholders considering current constraints on movement and meeting.

2. Before the meeting

Before the meeting, the company will need to prepare itself and also its shareholders. This will involve letting people know the meeting will take place, and ensuring relevant documents, such as the annual reports and accounts, are ready and available.

It is noted that certain shareholders may have additional rights in this period. In particular, shareholders holding together 10% or more of the share capital (art.450-8) (if listed – 5%, art 4 Shareholder Rights Law) are entitled to:

- add items to the meeting agenda
- ask questions in advance (e.g. art 1400-3)
- request postponement of the meeting for a period of up to 4 weeks

This is generally done by sending a registered letter at least five days before the shareholders' meeting is held.

6. Convening shareholder meetings – timing and method

If the articles of association are silent, Luxembourg shareholder meetings must be convened in accordance with the default procedures stipulated by law. As most companies have only registered shareholders, Luxembourg law generally requires these to be sent by registered mail only 8 days (if listed, 30 days) before the meeting. The articles may require longer time periods.

Often companies may agree other means of communication, such as use of email, however, these must be provided for in the articles and also have been accepted on an individual basis by each shareholder, which will not always be possible.

Enabling use of email to communicate with shareholders is advantageous for most parties.

- For the company, it saves time, printing & postage, and money.
- For the shareholders, they receive the information much more quickly (noting however some shareholders may have poor digital skills).

Social media and the entity's website should also be considered to mention the shareholder meeting, and links to where more information can be found.

Recommendation: Offer shareholders their preferred communications method

Even if also using registered mail, companies should offer an email or other alternatives to shareholders, and take care to register their preferred communication methods (including email addresses) of shareholders.

Entities should also consider using other communication methods such as social media and the entity's website to post information about the date and time of the shareholder meeting, and links to where more information can be found.

In certain circumstances, newspaper publications are also still required.

Over time, we expect all communications to become digital, however companies must expect to deal with a mixture of investor needs in terms of digital expertise and preferences for a while yet.

Recommendation: Allow shareholders sufficient time to receive – and respond to - notices

In the interests of their shareholders, companies should consider going beyond the minimum requirements set in the law, and in particular make sure sufficient notice is given in order for shareholders to actually receive the notice, and also be able to organise themselves to vote and to attend.

Particularly where voting by paper proxy is still being used, sufficient time should be allowed.

7. Contents of the convening notice

Luxembourg Company Law sets out certain minimum information to be included in convening notices, including the meeting agenda containing date, time, and place of meeting.

AGM Notices will usually include items such as submission of the reports of the board of directors and the auditors, approval of the annual accounts and allocation of the results, discharge of the directors, and statutory appointments such as (re)-election of Directors and auditor(s). Additional requirements apply to listed companies.

Recommendation: Clear and concise notices, containing all necessary information

Ensure all communications are clear and concise, using simple and direct language.

Check that all necessary information is included - and well presented.

Recommendation: Provide sufficient instructions and codes for accessing online platforms

If offering voting and/or participation via an online platform, shareholders should also be provided with relevant information necessary for registration and access.

Instructions should provide clear and concise information on what a shareholder needs to do to attend, vote, and ask questions, including any information required for verification purposes (such as personal access codes, shareholder numbers, or ID requirements).

Especially in corporations with a large number of retail investors, dedicated helplines should be provided, such as a dedicated AGM email address and contact number should be provided to shareholders.

Recommendation: Provide clear details on how to send questions in advance of the meeting

Whether via dedicated online possibilities to post questions, dedicated email address, or similar, shareholders should be provided with a clear and simple method to send questions in advance of the meeting.

8. Accompanying documents

Luxembourg Company Law sets out minimum information to be shared with shareholders, including the annual accounts and reports, at the registered office of the company. Mostly these are only required to be available for shareholders to inspect at the registered office in advance of the meeting. Certain laws and regulations may require additional specific information to be provided, such as the Shareholders' Rights Law and those related to specific situations, in particular if the entity is listed, such as pursuant to the Transparency Directive or Takeover Directive.



Best practice is to provide sufficient documentation that enables shareholders to vote in an informed manner, considering each of the resolutions on the meeting's Agenda. For example, if (re-)electing Directors, provide bios and other relevant information about the Directors being elected and considerations in respect of Board composition and skill sets. If asked to approve the accounts, make the accounts themselves available to the shareholders in a manner convenient for them to access and review these.

New technologies make it easy, quick, and cheap to share relevant documents with shareholders. In the past, it has been time consuming, costly, and cumbersome to print and post annual accounts or additional information, however, today this can be done via modern methods such as email, via information on websites or dedicated meeting portals. The cost of adding further documents and information to emails sent to shareholders is negligible. If using an online portal for the meeting, key documents should also be available on the portal for shareholders to review and download.

Recommendation: Provide sufficient and appropriate information regarding the matters of the meeting

The information required by relevant laws is only the minimum. Boards should consider whether it is also sufficient and appropriate given the items shareholders are being asked to vote on.

Shareholders should be provided with sufficient documentation to enable shareholders to vote in an informed manner.

Recommendation: Ensure shareholders have easy access to key information and documents

Entities should think about the way information is provided, and ensure it is provided in a manner which is easily accessible and convenient for shareholders.

New technologies make it easy, quick, and cheap to share relevant documents with shareholders.

9. Updates regarding the status of meeting preparations

Companies should think about keeping shareholders updated as the date of the shareholder meeting approaches.

If digital platforms are used, they should be updated periodically to ensure shareholders have access to the latest information regarding the status of the shareholder meeting, and FAQs updated to clarify common questions asked by shareholders.

Recommendation: Update FAQs and similar with commonly asked questions

If certain questions are being asked by many shareholders, the instructions may not be clear enough, entities should consider updating their FAQs or similar instructions to share further clarifications with all shareholders.

Recommendation: Provide helplines and/or meeting contact persons

Especially in corporations with a large number of retail investors, dedicated helplines should be provided, such as a dedicated AGM email address and contact number should be provided to shareholders.

Recommendation: Send reminders with instructions and helplines prior to the meeting

Explanations on how to vote as well as who is available to help in case of encountering issues should be provided to shareholders before the meeting.



Companies should also consider resending by email instructions and contact details of those available to help in case of problems before the meeting.

10. Digital Platforms - Easy Access, Adequate Security

The extent to which companies have embraced digital technologies varies greatly.

Larger entities In particular may find it useful to use dedicated online platforms for their shareholder meetings, to share information and to allow for live voting. Smaller entities and non-profits could also use similar technologies to provide similar access using encrypted and password protected document file sharing technologies and “drop boxes”.

As mentioned above, shareholders must be provided with clear explanation on how to access and use the chosen platforms, as well as easy access to technical helplines, FAQs, or other means of assistance.

It is also important that entities ensure that any platforms used are secure and have appropriate security measures in place. Companies must assure only shareholders (or proxyholders) can access the digital platform and attend the general meeting.

Recommendation: Keep platforms updated with current information

If digital platforms are used, they can be updated periodically to ensure shareholders have access to the latest information regarding the status of the shareholder meeting.

Recommendation: Use platforms to share important information and documentation

The platform should contain all important documentation related to the meeting, such as the meeting agenda, annual reports and accounts, proxy forms, clear instructions in order that shareholders may access and download these.

Recommendation: Ensure the security of the platform, confidential data, and votes

Any platform used must use reasonable security mechanisms to ensure the security of data uploaded and data related to participants using the platform and their identification.

If voting is organized via an online platform, the security and authenticity of the votes must also be ensured.

Recommendation: Ensure only shareholders can access the platform

Companies must ensure that only authorized persons such as shareholders and their proxyholders can access the digital platform and attend the shareholder meeting.

11. Shareholders sending questions to the Board and management

Subject to more permissive provisions in the entity’s articles, the Companies Law allows certain shareholders (holding at least a 10% shareholding, or 5% if listed) to submit questions to management, or to ask for additional items to be added to the meeting agenda.

For listed companies, the Shareholders’ Rights Law further provides that shareholders may ask written questions about the items on the meeting agenda.



Recommendation: Allow all shareholders to send questions in advance of the meeting

The Company Law sets out minimum requirements for asking questions in advance of a shareholder meeting.

Best practice is, however, to allow questions from all shareholders and to ensure these are answered at the meeting.

This is not only more inclusive of all shareholders generally, but as shareholders attending the shareholder meeting are entitled in any event to ask questions to the Board and management during the meeting, it also allows the Board and management notice of questions that shareholders plan to ask during the meeting and to prepare accordingly.

One of the criticisms of remote participation to shareholder meetings has been the curtailing of question opportunities. Digital platforms can make it easier to collect and collate questions prior to the meeting.

Consider entrenching in the articles of association rights for all shareholders to send written questions as soon as the convening notice for the general meeting is published, as well as the relevant cut-off time.

Recommendation: Cut-off times for sending questions should be reasonable

Shareholders should have sufficient time to submit questions and not be required to submit questions too far in advance.

The meeting notice should provide cut-off times by which the company must receive the written questions.

Recommendation: Confirm to shareholders that questions have been received

Shareholders have reported uncertainty around whether their questions have been received, and whether they will in fact be addressed.

Entities should confirm receipt of questions and confirm they will be addressed at the shareholder meeting (or if not, why not).

Recommendation: Be clear how you will deal with questions

Companies should make it clear how questions will be dealt with.

If planning to group similar questions, explain this and state why. Best practice is to contact prior to the meeting those shareholders who have submitted similar questions to ensure they are content that their questions are being grouped in this manner.

Recommendation: Consider sharing questions with all shareholders

Where shareholders attend meetings physically in person, they are entitled to ask questions to the Board and management during the meeting. This means they not only hear all the questions posed by other shareholders, but they also hear the responses. During breaks and social parts of the meeting, they can discuss these and other thoughts and concerns also with other shareholders as well as more informally with the Board and with management.

One of the criticisms of remote participation to shareholder meetings is that this aspect has been hindered or curtailed. One way for entities to help maintain this interactivity is to share all questions. For example, if using an online platform, the questions asked could be posted for all to see.

3. During the meeting

Participating in Shareholders' Meeting and voting are part of the fundamental rights of holding shares. The AGM is an annual event that provides an invaluable opportunity for communication and dialogue – a opportunity which Boards should embrace.

In general, there are no obligations on shareholders, however, certain entities may have obligations to attend and vote at meetings of their investee companies, those regulated in the financial sector or subject to certain obligations imposed by the recent updates to the Shareholder Rights Directives, as transposed into the Shareholders' Rights Law.

During each meeting, **a committee (bureau)** must be formed, composed of a chairman, a secretary, and a scrutineer. The meeting's committee must:

- verify that the **shareholders present or represented** are authorised to attend the meeting;
- draw up an **attendance list**.

The committee is also in charge of the rules of the meeting and other procedural matters, including ensuring the validity of the meeting.

12. Use of the Digital Platform

Many different technological solutions are available to enable shareholder engagement in meetings by virtual means, including social media tools like live chat, raise hands and polling.

The richness and diversity of digital offerings allowing a fully interactive digital experience is expected to grow. Companies with fewer shareholders may, however, be able to achieve similar interactions via a simple open video link.

Recommendation: Offer low-data alternatives for retail shareholders with poor connectivity

Depending on the types of shareholder, these may be dispersed across regions and countries with poor connectivity, making video participation challenging. If this is the case, consider offering alternatives such as being able to switch off video.

Telephone dial-in alternative may be feasible in some cases, however, depending on the number of people accessing the meeting, this should be balanced with security and privacy of the meeting which is more difficult if using analogue technologies such as telephone dial-ins.

Recommendation: Provide support for chosen software or platforms – especially to those participants who are not already familiar with such techniques

Companies should ideally try to limit the need to download specific software to view or participate in the AGM, however this may be difficult.

If specific software is required, information on how to download such software should be specified in the meeting notice to ensure it can be downloaded and set up well in advance.

Companies should highlight available support to help with technical issues.

Recommendation: Platform security

The platform should be able to ensure the security and privacy of the meeting.

The degree to which this is important will depend on the size and importance of the meeting and the matters to be discussed, with small non-profits, for example, usually being less sensitive than large listed entities.

The platform should clearly show how many shareholders are attending the meeting, and ideally also identify them. For a small asbl it may be sufficient to have a video call with each attendee visible on screen, for larger entities a dedicated system will be required with more control over access.

Systems used for anonymised voting will require higher security levels.

13. Questions asked during the shareholder meeting

In principle, during the shareholder meeting all shareholders present have the right to ask questions about the items on the agenda.

For listed companies, the Shareholders' Rights Law specifically states:

- every shareholder has the right to ask questions related to items on the agenda of the general meeting;
- the company shall answer the questions put to it by shareholders;
- answers may be subject to measures ensuring the identification of shareholders, the good order of the general meeting, and the protection of confidentiality and business interests.

If holding a meeting which includes remote participation, thought should be given to how this will be facilitated for all participants to the meeting. Whilst not replacing the ability to ask questions during the meeting allowing questions and queries to also be submitted prior to meeting can assist in this regard.

Recommendation: Enable possibilities for “live” questions and answers during the meeting

Questions should be facilitated in real-time, both for shareholders who attend in person and those who participate remotely.

If possible, the questions submitted at the AGM along with answers should be visible to all members that attend the AGM.

Opportunity for shareholders to follow up on given answers may be appropriate to ensure matters raised at the AGM have been properly addressed.

Recommendation: Ensure all questions asked prior to the meeting are read out - and answered

In addition to the opportunity to ask questions in “real time”, those questions sent in prior to the meeting should also be answered at the meeting, with all shareholders able to hear both the questions and the answers.

Recommendation: Think about time allocated to questions, and to each question

Shareholders may have many questions. A particular shareholder may on their own have many questions.



Take time in advance to consider and be clear about the amount of time that will be allowed per question, and also in total. Ensure that the meeting's committee is clear on the approach, and communicates it clearly and fairly.

Promising to answer unanswered questions in writing after the meeting can help balance this aspect if there are many questions to be answered.

Asking questions during the meeting (and receiving answers to these questions) is a right enshrined in law, so any restrictions must be carefully considered and managed, and exercised in a way which does not deny shareholders this right.

14. Voting at the AGM

For valid decisions to be made at general meetings, the appropriate quorum and voting thresholds must be met.

These thresholds depend on the type of general meeting convened in relation to the scope of decisions to be taken, with the minimums set out in the Company Law, subject to any higher thresholds as may be contained in the entity's articles.

See also Section 4.3 above for a fuller discussion of certain challenges regarding remote participation, the question of being "present" by participating remotely, and possible implications for quorum and for voting majorities.

Recommendation: Allow remote participation to count as "present"

Where possible (considering the legal framework and the entity's articles), shareholders who have accessed and input their votes using a digital platform (even if done prior to the meeting itself) should ideally be counted as "present" for the purposes of a meeting rather than "represented" unless it is clear that they have appointed a representative to attend and (re-)cast these votes on their behalf.

Where using a combination of different methods, ensure it is clear what the implications are for the shareholders (e.g. if returning a proxy form does it appoint a representative, and if so can the shareholder still attend and participate in the shareholder meeting).

For some entities, clarification of the law and/or amendments to the articles may be necessary to ensure legal certainty.

Recommendation: Allow voting (or changes to votes) at the meeting

Shareholders should have the ability to hear from the Board before voting on resolutions.

It is best practice for companies to make every effort to ensure that shareholders should have the ability to vote (or to still change their vote) during the meeting – and in particular after the presentations relevant to those votes.

Where the technology allows, shareholders should also be allowed to change during the meeting, up until a clear deadline for voting cut-off.



Recommendation: Allow proxy voting in writing as well as remote digital voting, and consider the implications for cut-off dates

We are currently in a transition phase towards the use of new technologies, and the inevitable transition towards digitised voting.

Given the wording in many companies' articles, it may be prudent to still allow proxy voting in the traditional manner -whether in paper and/or online.

For written proxies, a cut-off for proxy voting in the traditional form of returning the provided proxy form will be needed, as in the past to receive the votes prior to the meeting. This makes sense to be able to prepare for the meeting and to count these in the quorum, and ensure they are ready and available to be counted with all the votes cast physically during the meeting.

Where a digital voting option is also offered, the same cut-off deadlines may not be applicable, however rules will need to be set. For example, perhaps for a remote participant to be counted they must have entered the platform and voted prior to the start time of the meeting, even if the vote may still be capable of change during the meeting.

In a few years, all voting is likely to be done digitally, however, until then entities should accommodate the transition as best they can, and within the parameters of the current legal framework.

Recommendation: Remind shareholders to vote

Technology makes it easy to send reminders closer to cut-off to attend, register, vote, or even that the meeting is about to begin

Email, social media and other digital platforms can all be of use for reminders.

Recommendation: Announce voting results (or preliminary results) during the meeting

Some matters may require the votes to be complete in order for the meeting to progress the next matters. In such cases the votes obviously need to be fully reported on during the meeting.

The company should provide a detailed preliminary voting report (including the percentages of votes cast For and Against each item of business) before the end of the meeting.

The final voting results should be made available by the end of the meeting. Where possible, these could also be made available after each individual resolution.

4. After the meeting

After the meeting, there will be follow up on various items. Beyond the legal obligations such as filing accounts, the company should think about its communication strategy regarding the shareholder meeting and how it went, as well as the documents and other items approved by the shareholder meeting, such as the annual accounts and reports and changes to the Board of Directors.

15. Voting results

The Company Law is not specific regarding how the results of the meeting be shared, other than the articles should set out the procedures for shareholder meetings.

For listed companies, the Shareholders' Rights Law requires companies to publish the voting results after the general meeting. These must be published on its Internet site within a period which shall not exceed 15 days.

Recommendation: Share voting results and the Q&A

It is recommended that companies using technologies use these to share the voting results with shareholders.

If using a platform for the meeting, the voting results along with the questions and answers discussed during the meeting could be shared on the platform.

Recommendation: Send confirmations of votes

Where votes are cast electronically, shareholders should receive an electronic confirmation of the receipt of their votes.

Especially in larger entities with diverse shareholdings, shareholders should be able to receive a confirmation whether their votes have been taken into account. Ideally this will be automated by the chosen system. If shareholders enquire within 2 months of the meeting, companies should confirm whether their vote had been registered and counted.

16. Questions & Responses

Technologies can be powerful in increasing transparency towards shareholders, enhancing the purpose of shareholder meetings by enabling shareholders to hold Boards and management to account. As discussed above, part of this is the possibility to ask questions to Boards and management, and the answers received to those questions.

If recorded (and bearing in mind privacy rights) the video of all or parts of the shareholder meeting may also be shared on the meeting portal after the meeting.

Recommendation: Share the list of all questions asked, and confirm all questions have been answered

Where shareholders attend meetings physically in person, hear all the questions posed by other shareholders, and also hear the responses.

One of the criticisms of remote participation to shareholder meetings is that this aspect has been hindered or curtailed, with shareholders unable to assess whether all questions that shareholders asked were in fact answered, or whether the Board and management have "cherry picked" and only answered those questions they felt like answering.



One way for entities to help maintain this interactivity is to share all questions. For example, if using an online platform, the questions asked could be posted for all to see.

Recommendation: Be transparent about Board/management answers to shareholder questions

It is recommended that companies using technologies use these to share the voting results with shareholders- whether detailed or simply a statement that all (or which) resolutions presented were duly passed.

If using a platform for the questions and answers discussed during the meeting with shareholders after the meeting, such as by posting these on the platform used for the meeting.

17.Minutes of the shareholder meeting

Minutes of meetings are important records. Depending whether the articles contain anything specific, these will usually be written by the Secretary of the meeting, approved by the whole meeting Committee, and signed by the meeting Chair. The minutes of shareholder meetings will be kept at the registered office, where shareholders are entitled to inspect them.

Recommendation: Share the meeting minutes

Shareholder meeting minutes should be made available in a timely manner following the meeting. This can be done simply by making them available upon request or, for example, via email, posted on the meeting platform and/or on the company's website.

18.Information published on the company website

Companies' websites are becoming increasingly informative and include news, history, press releases, as well as information on senior staff, company divisions, products, and key operations.

Social media profiles are also increasingly important for messaging and sharing key announcements.

Recommendation: Consider the extent to which information should be made public on the company's website

Companies should also consider the extent to which information should be published on their website after the meeting.

This will likely depend on the type and size of company, with listed entities also obliged to share some of these.

Some may decide to make public on their website their annual accounts and reports, their AGM voting results, the Q&A summaries, and if recorded, the video extracts from the shareholder meeting, such as the presentations by Board and management.

Recommendation: Consider the extent to which information should be shared only with shareholders

Documents not intended for public, but which should be shared with shareholders, should be shared in an appropriate manner, such as to the meeting portal or via email. Recordings of parts of the AGM may also be shared on the AGM portal after the meeting, after ensuring privacy rights are respected.



CONCLUSION

2020 and 2021 have thrown many challenges at companies, their shareholders, and at society in general. It has also pushed all to improvise at short notice to be able to hold meetings and continue their businesses even when faced with the on-going social and sanitary challenges.

It has also forced the mastering of new technologies which will continue to be used even after the end of the pandemic.

Companies should use this period of change to re-consider how they engage with shareholders and their wider stakeholder community, to use this opportunity to experiment and optimise. With the increasing focus on ESG and sustainable governance, pressure is mounting to enhance the meaningfulness of stakeholder engagement and communications. With new possibilities and combinations offered by digital tools, Boards need to deliver what investors want and in formats fit for meeting the purpose of shareholder engagement and democracy. Using new technologies to better enable shareholders to use their collective voice - concerns, questions, votes - to exercise their fundamental rights and to hold management to account may initially feel awkward and uncomfortable to some Boards, however, it should reap rewards in the form of increased shareholder engagement.

ILA will continue to study the different efforts and innovations – both the good and the bad – to assess what works well and what doesn't. This assessment will enable the development of recommendations to the legislator for changes to the Company Law allowing for the modernisation of Luxembourg shareholder meetings in order that companies can meet the digital challenge.

Modernisation of shareholder meetings – next steps

ILA plans to complement this paper with a paper setting out proposals for the modernisation of Luxembourg company and asbl laws, including suggestions to make it easier to implement these best practices, for example:

- Possibilities to hold hybrid meetings regardless of any statutory considerations, provided certain conditions are met
- Proposal to consider assimilating digitalised forms of AGM and AGM participation to that of physical AGMs. For example, shareholders to be recognised as being 'present' also when attending remotely.
- Minimum requirements for shareholder meetings – both in terms of shareholder engagement and transparency and in terms of technical requirements
- Use of eIDs for identification - eIDAS, but also from other regions
- Use of electronic signatures
- Alternatives to newspapers and registered letters e.g. email communications, use of shareholder portals, social media announcements, ...
- Moving away from individual consent for use of new technologies
- Recommendations regarding how shareholders can be assured they are treated in the same way, regardless of which means of participation they choose
- Other considerations around new technologies

APPENDIX 1

Temporary COVID laws – The law of 25 November 2020

Article 1 explicitly states that physical attendance of the participants is not required at a general meeting:

“A company may, even if its articles of association do not provide for this and irrespective of the intended number of participants in its general meeting, hold any general meeting without a physical meeting, and require its shareholders or members and other participants¹ in the meeting to act at the meeting and exercise their rights using one or more of the following forms of participation:

1. by remote vote in writing or in an electronic form allowing for their identification, provided that the full text of the resolutions or decisions to be taken has been published or communicated to them;
2. by videoconference or by any other means of telecommunication allowing for their identification.”

The law also provides for a shareholder, member, or other participant to participate in the general meeting and exercise his rights through a proxy appointed by the company.²

Finally, the law also mentions that the provisions regarding meetings shall also apply to general meetings of shareholders or members, as well as to meetings of the legal or statutory management bodies of a certain number of legal entities, associations, institutes, institutions, including:

- non-profit organisations and foundations established under the amended law of 21 April 1928 on non-profit organisations and foundations (...)
- economic interest grouping and European economic interest grouping established under the amended law of 25 March 1991 on economic interest grouping (...)
- trade unions governed by the amended law of 16 May 1975 on the status of co-ownership of buildings.
- the *Institut des réviseurs d'entreprises* governed by the amended law of 23 July 2016 on the audit profession (...)
- the social security institutions governed by the Social Security Code (1st par. of art. 396, al.1)³(...)

¹ The extended scope to “other participants” seems to address the question raised above (see point 6.2., last par.) on the presence of the “Bureau” which can be composed of a board member or an employee of the company.

² Art.1 (1), 2nd par.- free translation

³ Art.2 - free translation

APPENDIX 2

Current Luxembourg laws regarding remote participation to shareholder meetings

Company Type		Current Luxembourg law
Sociétés Anonymes (SA) – Public limited companies Sociétés Europeas (SE) – European companies	<p>Remote participation allowed, but only if expressly provided for in the articles and certain technical requirements are met ¹</p> <p>The Company Law expressly provides for the possibility for shareholders of SA and SE to participate remotely.</p> <p>Where the articles and tools provide, the shareholder has the possibility to exercise all or part of its rights by videoconference or other means of telecommunication.</p> <p>The tools used must:</p> <ul style="list-style-type: none"> • ensure identification • satisfy technical characteristics that guarantee effective participation in the meeting, of which the deliberations must be transmitted continuously 	<p>Company Law article 450-1,</p> <p>(3) “Notwithstanding any provision to the contrary, but in accordance with the rules of the Articles of Association, every shareholder has the right to vote by himself or by proxy. If the Articles of Association so provide, shareholders who participate in the meeting by videoconference or by means of telecommunication allowing their identification are deemed present for the calculation of the quorum and the majority. These means must meet technical characteristics that guarantee effective participation in the meeting, whose deliberations are transmitted continuously.”</p> <p>(4) “The articles may authorise any shareholder to cast its vote by mail by means of a voting form the mentions of which shall be laid down in the articles.</p> <p>Voting forms which indicate neither the direction of a vote nor an abstention are void.</p> <p>For the calculation of the quorum, only those voting forms” shall be taken into account which have been received by the company prior to the general meeting of shareholders, within the period provided by the articles.”</p>

¹ Interestingly, there was commentary on remote participation in the opinion of the Council of State dated 5 May 2020 on draft law n°7566, resulting in the law of June 20,2020 on the extension of measures concerning the holding of meetings in companies and other legal entities which stated:

“With regard to postal voting and the use of videoconferencing and other means of telecommunication, the law refers to the articles of association, which must expressly provide that the company may use them. As regards the right of the shareholder to vote by himself or by proxy, it may not be defeated, in principle, by the articles of association, but must be used in accordance with the rules of the articles of association. Moreover, the legislation (...) does not envisage the full dematerialization of the organization of shareholders’ or partners’ general meetings. Thus, remote participation in general meetings is not supposed to replace physical meetings. It is on these two points that (...), the authors of the bill under notice make a radical break with the legislation in force before the state of crisis by waiving the legal requirement of a statutory authorization and by allowing the complete dematerialization of the organization of general meetings”

<p>Sociétés à responsabilité limitée (SARL) – Private Limited liability companies</p>	<p>Remote participation allowed, but only if expressly provided for in the articles and certain technical requirements are met</p> <p>The Company Law expressly provides for the possibility for shareholders of SARL to participate remotely, however the articles must specifically provide for this.</p> <p>Where the articles and tools provide, shareholder has the possibility to exercising all or part of its rights by videoconference or other means of telecommunication.</p> <p>Written shareholder resolutions allowed in lieu of shareholder meetings</p> <p>Unless the articles state otherwise, where there are less than 60 associates, holding general meetings is not mandatory for SARL (Company Law art 710-17).</p> <p>As a result, it is common practice in SARL to use written resolutions of the associates in lieu of a physical general meeting, with each associate approving identical written resolutions. By signing these, the associate casts his vote in writing.</p>	<p>Company Law article 710-21, paragraph 2:</p> <p>“(2) If the articles of association so provide, the shareholders who participate in the meeting by videoconference or by means of telecommunication allowing their identification are deemed to be present for the calculation of the quorum and the majority.</p> <p>These means must satisfy technical characteristics that guarantee effective participation in the meeting, whose deliberations are transmitted continuously. For application of this paragraph, a partner or his proxy must however be physically present at the registered office of the company.</p> <p>Where, in accordance with the preceding paragraph, the meeting is held with partners who are not physically present, the meeting is deemed to be held at the place of the registered office of the company”.</p>
<p>Listed companies</p>	<p>Distance voting by mail or in electronic form is authorized:</p> <ol style="list-style-type: none"> 1. by means of a voting form made available by the company, 2. provided that distance voting is provided for in the articles of association. 	<p>Shareholder Rights Law:</p> <p>Art. 10. Voting from a remote location</p> <p>“(1) The Articles of Association may permit every shareholder to vote from a remote location in advance of the meeting, by correspondence or in electronic means, using a form provided by the company.</p>



		<p>Where the company permits remote voting, it must be able to control the qualification and the identity of the shareholder. The terms and conditions under which the status of shareholder and the identity of the person wishing to vote remotely are verified and guaranteed are provided in the Articles of Association.</p> <p>(2) The distance voting form must include at least the following information:</p> <ul style="list-style-type: none">1° the name or corporate name of the shareholder, his domicile or registered office;2° the number of votes that the shareholder wishes to cast at the general meeting as well as the direction of the votes or abstention;3° the form of the shares held;4° the agenda of the meeting, including draft resolutions;5° the deadline by which the form for remote voting must reach the company;6° the shareholder's signature, where applicable, in the form of an electronic signature that meets the conditions of Articles 1322-1 and 1322-2 of the Civil Code. <p>(3) Forms in which no vote is expressed or which do not indicate an abstention are void.</p> <p>In the event of a modification, in a meeting, of a draft resolution on which a remote vote has been cast, the vote cast is considered null and void.</p> <p>(4) Article 5 is applicable when the company permits voting from a remote location. For the calculation of the quorum, only forms that have been received by the company before the date of the general meeting within the time limits set by the articles of association shall be taken into account".</p>
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ASBL and Foundations	No mention in law. Position unclear.	<p>The law of 21 April 1928 does not mention the possibility of using videoconferencing or other means of telecommunication to participate in the holding of general assemblies at a distance.</p> <p>The law only specifies in its article 6 that it will be possible for the associates to be presented to the general meeting by another associate or, if the articles of association authorize it, by a third party.</p> <p>It also adds that if two thirds of the members are not present or represented at the first meeting, a second meeting may be convened which may deliberate regardless of the number of members present; but, in this case, the decision will be submitted to the civil court for approval.²</p> <p>With regard to the statutes of the nonprofit association, the law stipulates that they must specify the attributions and the method of convening the general meeting as well as the conditions under which its resolutions will be brought to the attention of the associates and third parties.³</p> <p>There is no mention in this article of the mode of holding the general meeting to be set out in the articles of association.</p>
Co-ownership of buildings	No mention in law. Position unclear.	<p>The law of 16 May 1975 and the Grand-Ducal Regulation of 13 June 1975 prescribing the measures for the implementation of the law of 16 May 1975 on the status of co-ownership of buildings, do not mention the possibility of using videoconferencing or other means of telecommunication in order to participate in the holding of a general meeting at a distance.</p> <p>Article 15 of the law of 16 May 1975 only specifies that the decisions of the general meeting taken by a majority of the votes of the co-owners present or represented by a regular representative, all co-owners duly convened, if not otherwise ordered by law.</p>

² Art.8 of the law of April 21, 1928 – free translation

³ Art.2,6 of the law of April 21,1928 – free translation

APPENDIX 3

Current Luxembourg laws regarding convening shareholder meetings

Company Type		Current Luxembourg law
<p>Sociétés Anonymes (SA) – Public limited companies</p> <p>Sociétés Européas (SE) – European companies</p>	<p>Convening notices in SA and SE shall generally be sent by registered letter at least 8 days prior to the meeting.</p>	<p>Chapter V General Meetings (SA & SE) (Art 450-1 et seq)</p> <p>Art 450-8 sub 7 and 8 - “the convening notices for every general meeting shall contain the agenda and shall take the form of announcements filed with the register of commerce and companies and published on the Recueil électronique des sociétés et associations and in a newspaper published in the Grand Duchy of Luxembourg at least 15 days before the meeting.</p> <p>The convening notices shall be communicated to registered shareholders at least 8 days before the meeting. This communication shall be made by post unless the addressees have individually agreed to receive the convening notices by way of another means of communication. No proof need be given that this formality has been complied with. “</p> <p>450-9 - “Where all the shares are in registered form, the company may for any general meeting communicate the convening notices at least 8 days before the meeting by registered letters only, without prejudice to other means of communication which need to be accepted on an individual basis by their addressees and to warrant notification. The provisions of the law prescribing the publication of the convening notices on the Recueil électronique des sociétés et associations or in a newspaper of the Grand Duchy of Luxembourg shall not apply in that case.”</p>
<p>Sociétés à responsabilité limitée (SARL) – Private Limited liability companies</p>	<p>Convening notices in SARL shall generally be sent by registered letter.</p> <p>The rules for the shareholder meetings largely follow the rules for SA.</p>	<p>Art 811-5</p> <p>4°. “all members may vote at the general meeting; they shall have equal votes; convening notices shall be In the form of registered letters, signed by management; the powers of the meeting shall be determined and its resolutions shall be adopted in accordance with the rules provided for sociétés anonymes;”</p>



Listed companies	<p>Convening notices in listed entities shall be published at least 30 days before the meeting.</p> <p>The rules for the shareholder meetings largely follow the rules for SA, but are enhanced with extra information requirements, and more detailed.</p> <p>Listed entities must also publish on its website the convening notice and certain other information and documents.</p>	Shareholder Rights Law, art. 3 “information prior to the general meeting”
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OUR MISSION STATEMENT

The mission of ILA is to promote the profession of Directors by developing its members into highly qualified, effective and respected Directors.

In parallel, it will promote best practice in Luxembourg in the field of Corporate Governance of companies and institutions by actively engaging with those institutions charged with the introduction, application and oversight of those Corporate Governance rules and practices. It will achieve this through high quality training, forum discussions, research, publications and conferences.

ILA aims to be the premier interlocutor in Luxembourg on issues affecting Directors.



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15
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