

CS Alert 5 of 2020

Remote corporate governance: how to maintain operational continuity amid the COVID-19 pandemic



While restrictions previously imposed on physical meetings due to the coronavirus outbreak are now slowly being lifted in Botswana, in the current circumstances social distancing is still compulsory. Companies with restricted meeting space or concerns from attendees who do not prefer to be present in-person due to the ongoing risks posed by the virus, can consider utilisation of legal tools that allow governing bodies to work remotely.

The primary measures facilitating the operation of corporate governing bodies in the era of social distancing may include holding meetings using remote communications and voting by circulation procedure. The use of remote communications is possible as long as the relevant provisions have been included in the company's documents (its constitution or statute).

Online meetings

Pursuant to the provisions of the Company's Constitution and the Companies Act the following can be held using electronic means of communication:

- 1) shareholder meetings including Annual General Meetings and Extraordinary General Meetings,
- 2) Board meetings, and
- 3) Board Committee meetings.

Therefore, members of governing bodies may adopt valid resolutions as required by law or the constitution without having to convene physical meetings.

Please note that in the case of general meetings of shareholders of companies, the meeting may be convened in the conventional, "physical" way, electronically only or with an option for both "physical" and electronic means. In the case of a meeting that is being held only electronically, attendees can use electronic means of communication, including but not limited to:

- real-time transmission of the general meeting,
- real-time two-way communication enabling shareholders to address the general meeting from a remote location,
- casting votes in person or by a proxy holder, before the general meeting.

The obligation to include relevant provisions in the Constitution

To adopt the solution described above, i.e. hold virtual meetings of governing bodies, the company must ensure that they have adopted the Constitution in line with the Companies Act (Cap 42:01).

Adopting resolutions by circulation procedure

Provisions of the Companies Act (Cap 42:01) stipulate that a company resolution can be adopted without convening a shareholders' meeting if all the shareholders give their written consent to the given resolution or to voting in writing. These rules also apply to board of directors' resolutions in all companies to which the Act applies.

Other solutions

Other solutions, which may prove helpful in ensuring business continuity, may include granting powers of attorney (including for specific circumstances) or appointing authorised officers to expand the range of individuals authorised to act on behalf of the legal entity. The exceptional circumstances we are currently facing require special measures to maintain reasonably efficient business operations. To this end, businesses may take advantage of the instruments described above, such as video conferencing, powers of attorney or voting by circulation procedure.

For any queries, please contact Aparna Vijay, Head of Corporate services, on +267 76 237 789 / aparna.vijay@bw.gt.com

In case you missed it:

Corporate Services Alert 4 of 2020: Clarification for NEPC on submission of AFS to CIPA <https://bit.ly/GT-BW-NEPC-AFSsubmission>

Corporate Services Alert 3 of 2020: Company re-registration deadline extension <https://bit.ly/GT-BW-CIPAdedlineextension>