

COMPANY MEETINGS via ELECTRONIC MEANS Cyprus Companies Law, Cap. 113

I. INTRODUCTION

Existing Cyprus companies may have to amend their Articles of Association or their existing Shareholders' Agreements to improve their functionality to hold board meetings and general meetings through modern communication technologies. For new companies, it is recommended that specific provisions to hold board meetings and shareholders' meetings via electronic means be expressly included in their Articles of Association, even if there is no intention to use them.

A company in Cyprus is governed by the Companies' Law Cap. 113 and by its Memorandum and Articles of Association. Per Section 10 (1) of Cap. 113, the Articles of Association of a company may adopt all or any of the Regulations contained in Table A of the First Schedule of the Companies Law Cap. 113, which are model Regulations / Articles.

This insight sets out provisions of the Companies Law Cap. 113 relevant to Directors' and Shareholders' Meetings via electronic means.

II. DEFINITION OF ELECTRONIC MEANS

The Companies Law, Cap. 113 defines in its **Section 2** "*electronic means*" as the means of electronic equipment used for the processing (including digital compression), storage and transmission of data by wire, by radio, by optical technological means or by other electromagnetic means.

III. BOARD MEETINGS

1. Board Meetings may be held, **unless otherwise expressly provided in the Articles of Association**, via conference call or other means such as Skype call, as per the provisions of **Section 191 A of Cap. 113 (Law 89 (I) / 2015)**:

Participation in a meeting of the directors by electronic means. 191A. Unless otherwise expressly provided in the articles of association of a company, a meeting of the directors may be held via a conference call or other means whereby persons present may simultaneously hear and be heard by all the other persons present and the persons who participate in such a manner are counted for quorum purposes and any other purpose to be present at the meeting of the directors. Provided that, in such a case, the meeting of the directors shall be deemed to have taken place where the person keeping the minutes of the relevant meeting of the directors.

1. **Regulation 106 of Part I of Table A** provides: *A resolution in writing, signed by all the directors for the time being entitled to receive notice of a meeting of the directors, shall be as valid and effectual as if it had been passed at a meeting of the directors duly convened and held.*

IV. SHAREHOLDERS' MEETINGS / GENERAL MEETINGS

2. The term *general meeting* refers to the Annual General Meeting (AGM) and to all other General Meetings, which are called Extraordinary General Meetings (EGMs).
3. Per **Section 125 (1) of Cap. 113**, every company must hold an Annual General Meeting within 18 months of its date of incorporation and thereafter once in each calendar year and at intervals of no more than 15 months.
4. **Section 127 of Cap. 113** provides that any notice period in the Articles of Association of a company which falls short of the following time frames, shall be considered void:
 - (a) At least 21 clear days' notice in writing of the AGM
 - (b) At least 14 clear days' notice in writing of the EGM
5. Consent to Short Notice: Provided all members entitled to attend and vote agree, an AGM can be held with shorter notice or entirely without notice. The same applies for EGM for the 95% of voting strength members agree. Due compliance must be reflected with the provisions of **Section 127 (3) of Cap. 113**.
6. Proxy: Shareholders have always been able to register their vote without attending at the meeting itself and by appointing a Proxy. Entitlement to appoint a Proxy is provided in **Section 130 of Cap. 113**.
7. A company listed in a regulated market may offer participation in the general meeting by electronic means as per **Section 128 B of Cap. 113 (Law 60 (I)/2010)**. The said law has transposed Directive 2007/36/EC on the exercise of certain rights of shareholders in listed companies, the so-called "Shareholder Rights Directive" (SRD I) to ensure better protection of the shareholders' rights in listed companies.
8. General Meetings (AGMs and EGMs), for all companies, including listed companies, may be held, **unless otherwise expressly provided in the Articles of Association**, via conference call or other means such as Skype call, as per the provisions of **Section 128 D of Cap. 113 (Law 89 (I) / 2015)**:

Participation in the general meeting by electronic means. 128D. Subject to the provisions of section 128B, unless otherwise expressly provided in the articles of association of a company, the general meeting of a company, including a company listed in a regulated market, may be held via a conference call or other means whereby persons present may simultaneously hear and be heard by all the other persons present and the persons who participate in such a manner are counted for quorum purposes and any other purpose to be present at the general meeting. Provided that in such a case, the general meeting shall be deemed to have taken place where the person keeping the minutes of the relevant general meeting is situated.
9. **Regulation 53 of Part I of Table A:** *No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business; save as herein otherwise provided, **three members present in person** shall be a quorum.*
10. **Regulation 5 of Part II of Table A (applicable to private company limited by shares):** *Subject to the provisions of the Law, a resolution in writing signed by all the members for the time being entitled to receive notice of and to attend and vote at general meetings (or being corporations by their duly authorised representatives) shall be as valid and effective as if the same had been passed at a general meeting of the company duly convened and held.*

11. The relevant provisions for **single member companies**:

- **Section 128 (2) of Cap. 113** provides that the member concerned shall exercise all of the powers of the general meeting of the company subject to any decision taken by him duly recorded in minutes or stipulated in writing.
- **Regulation 3 of Part III of Table A**: *The only member of the company shall exercise all the powers of the general meeting, pursuant to this Law, provided always that the resolutions which shall be taken by such member in general meetings shall be recorded in minutes, or shall be made in writing.*

V. PLACE OF THE MEETING HELD VIA ELECTRONIC MEANS

1. Per **Section 191 A of Cap. 113**, the meeting of the directors held by electronic means, shall be **deemed to have taken place where the person keeping the minutes of the relevant meeting of the directors**.
2. Per **Section 128 D of Cap. 113**, the general meeting held by electronic means, shall be **deemed to have taken place where the person keeping the minutes of the relevant general meeting is situated**.
3. Statutory requirement exists for the Company to keep Minutes of both Directors' meetings and General Meetings (**Section 139 (1) of Cap. 113**: *Every company shall cause minutes of all proceedings of general meetings, all proceedings at meetings of its directors ... to be entered in books kept for that purpose.*).
4. The Minutes of the Meetings must be signed by the Chairman (**Section 139 (2) of Cap. 113** or the Chairman of the next succeeding meeting); their signature is prima facie evidence that the meeting has been properly constituted and conducted (**Section 139 (3) of Cap. 113**) and be kept at the registered office of the company (**Section 140 of Cap. 113**). Failure to comply with keeping minute books will make the company "**and every officer**" liable (**Section 139 (4) of Cap. 113**).
5. The liability imposed on "**every officer**" (i.e. S. 2 of Cap. 113, the Directors and the Secretary of the company), and the administrative duties of the Secretary (as opposed to the managerial duties of the Directors), justify why **the obligation to keep the Minutes of the Meetings is widely accepted to be within the province of the Secretary** of the company.
6. The company providing "**Administrative Services**" per the definition of Article 4 of the Law Regulating Companies Providing Administrative Services and Related Matters of 2012 (Law 196(I)/2012), such as the management or the administration of companies, could also be the person responsible to keep the Minutes of the Meetings of the company, pursuant to a relevant Agreement / Engagement Letter between the company and the Service Provider.

VI. CONCLUSION

There is no "one size fits all" answer to the question "**Is it possible for a Cyprus company to hold board meetings and general meetings via electronic means?**"

The Companies Law, Cap. 113 opened doors for board and general meetings via electronic means, **“unless otherwise expressly provided in the Articles of Association”**. Existing Articles of Association are unlikely to work if they follow Table A or if they refer to the “place” of the meeting and to members being present “in person” and being able to see and hear each other.

It is sensible for the relevant provisions contained in the Articles of Association of a company to be reviewed. As the company and its circumstances change, and in view of the current global coronavirus pandemic, some existing clauses may no longer be useful or new provisions may be desirable for company meetings. By reviewing and where appropriate, carefully edit / amend the Articles of Association under a Special Resolution (**Section 12 of Cap. 113**), or by adjournment of a scheduled meeting where appropriate (**Section 138 of Cap. 113**), the company may achieve the most appropriate balance between the needs of the Directors and the Shareholders and at the same time comply with the statutory limits and the current Government restrictive measures.

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