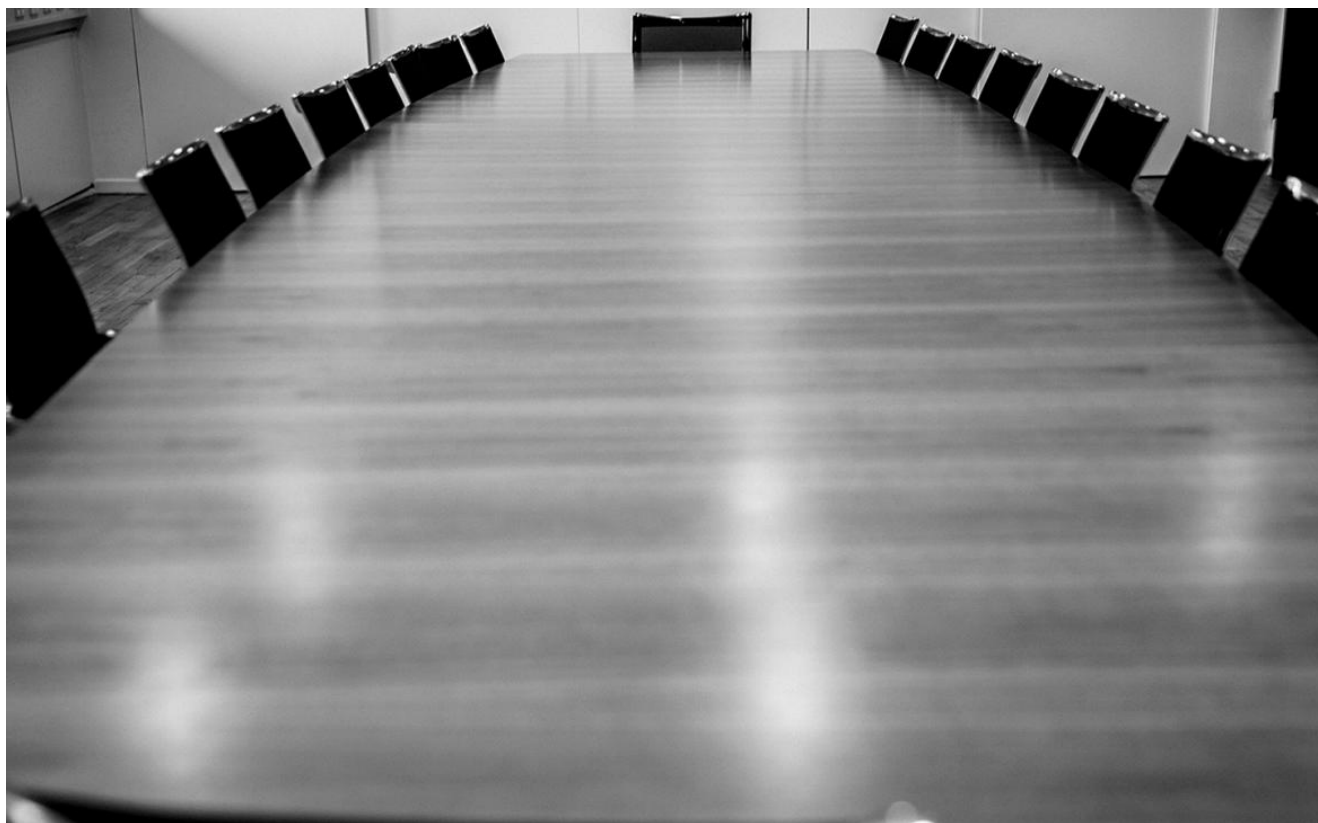


NJORD Estonia: Shareholders meetings during an emergency situation

Given that there is currently an emergency situation and that the procedure also requires individuals to comply with the two-meter distance rule indoors, it is quite difficult to organize physical shareholders meetings in such a way that all shareholders participate personally.



If in the case of private limited companies, it is possible to adopt resolutions without calling a meeting, then such a possibility is not provided for public limited companies. Adopting a resolution by the shareholders without calling a meeting requires a unanimous resolution for public limited companies. Under the current law, the possibilities for holding a meeting are specified in the articles of association, i.e. whether it is possible to vote, for example, by post or electronically. However, in order to include these opportunities in the articles of association, it is again, as a rule, necessary to hold a shareholders meeting. At the same time, listed companies are given the flexibility to hold meetings electronically without being physically present, provided that this is stipulated in the articles of association.

The quickest solution in this difficult situation is for the shareholders to authorize, for example, one shareholder or the chairman/secretary of the meeting to adopt resolutions with his votes. For example, a power of attorney is issued to amend the articles of association to allow the shareholders meeting to be held in such a way that not all shareholders need to be physically present. In particular, the amendment to the articles of association is advisable because practice shows that the articles of association of most companies do not currently provide for voting other than as a normal physical meeting.

Taking into account the recommendations to minimize the number of close contacts, a proposal has already been made to the Parliament of Estonia (Riigikogu) to make exceptional amendments to the Commercial Code in order to provide an opportunity to hold fully electronic shareholders meetings in both private limited companies and public limited companies. If at the moment the possibility of electronic voting seems to exist in law in case it is written in the articles of association, then, in reality, the observers of the meeting are not counted as a quorum and therefore they cannot vote in real-time. The address to the Parliament of Estonia indicates that more flexible possibilities for holding shareholders meetings should be maintained even after an emergency situation if the associations provide for it in their own articles of association.

After the crisis, it is worthwhile for companies to review their articles of association and, with a view to the future, make appropriate changes for similar situations. This does not require a national emergency situation to understand the need to adopt resolutions in certain situations other than by physically convening all shareholders.



TRIIN KAURSON
ASSOCIATE

(+372) 66 76 440

TRIIN.KAURSON@NJORDLAW.EE