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Acting and decision-making by the statutory body

Legal requirements and rules of good practice of statutory bodies of limited liability companies and joint-stock companies

How many statutory bodies must a company have?

At least one; no maximum is given.

In limited liability companies ("s.r.o."), the statutory body is represented by one or several managing directors who may also form a collective body. How many managing directors there are follows from the memorandum of association, which must give a specific number. The first managing directors, who were appointed upon the establishment of the company, must be listed by name in the memorandum of association.

By law, if several managing directors have been appointed, each of them represents an independent statutory body. However, the memorandum of association may deviate from this and determine that the managing directors form a collective body. This is of relevance in particular in terms of the majority needed to pass decisions (see further below for the details). A limited liability company cannot have several managing directors of whom some remain independent statutory bodies while the others form a collective statutory body. If the memorandum of association stipulates that the managing directors form a collective body, then this body will be subject to the same rules which apply to the board of directors of joint-stock companies (and we shall hereinafter refer to it as "board of directors" as well).

In joint-stock companies ("a.s."), the statutory body is either a board of directors (this being the more common alternative, under what is known the two-tier system of corporate governance) or a CEO (in companies which are organized under the one-tier system of corporate governance). There can always only be a single CEO, but the board of directors has three members under the law (though the articles of association may stipulate a different number of directors, including a one-person board).

The articles of association must give a specific number of members of the statutory body (though not their concrete names, except for the first board members who assumed their office when the company was established). Giving a range ("1 to 5 members") is not permissible. One permissible alternative, though, is to include a rule in the articles of association by which the number of board members can be computed (so that the number of directors may e.g. vary depending on the size of the company's workforce / number of employees).

One member of the board of directors of a joint-stock company (and of a limited liability company with a collective statutory body) must be elected as chairperson. If the joint-stock company anticipates that another member will act as the deputy chairperson, then the articles of association must provide rules for this particular corporate office.

How often must the statutory body convene?

The law stipulates no rule for the frequency of meetings of the statutory body, which instead follows from the articles of association (joint-stock company) or the memorandum of association (limited liability company), depending on the needs of the company. Meetings once per week to once per month are typical, always in reflection of what specific needs the given company may have. In contrast to the general meeting, the law does in fact not require any regularity of meetings at all.

Managing directors who are not organized as a collective statutory body are exempt from the obligation to formally convene and to record their meetings in protocols (as discussed further below). However, in the interest of legal certainty and in order to be able to prove adherence to the duty of care, it is strongly advisable to create a record at least in the case of major decisions as to what information and documents were obtained by the managing directors and what reasons compelled them to decide in favor of one alternative over another. This is also applicable to one-person boards.

How does one convene meetings of the statutory body?

The law imposes no mandatory requirements for calling these meetings. Again, the memorandum (articles) of association may contain relevant rules. Under a typical arrangement, the meeting will be called by the chairperson (or, in their absence, from the deputy chairperson if one was elected). The invitation ought to specify the venue, date, and time of the meeting and contain an agenda, and ought to be signed by the person who convened the meeting. Invitations are usually delivered via e-mail with sufficient advance notice, whereas the articles of association or memorandum of association define what time span is "sufficient" – and if they don't, it is advisable to take a page from the book on general meetings and circulate the invitation 15 days in advance. In the case of electronic delivery, the invitation should be signed, scanned in, and attached to the e-mail message.

The invitation should also include (as schedules) all agreements or other transactions and documents which the statutory body is expected to approve, and any and all material which serves as the basis for decisions by the statutory body, so as to give all members enough time to familiarize themselves with the material before the meeting opens.

Alternatively, one may want to consider the creation of Shared Space on a shared disk or intranet page etc. and post the material there. In such a case, the invitation should provide a link to the storage location and an itemized list of all the materials

Where do meetings of the statutory body take place?

The law provides no specific venue for such meetings. Of course, they will typically take place at the company's seat, though they may be held anywhere suitable (e.g. during an off-site team-building event). Of course, this requires that the members of the statutory body can be physically present. See further below for exceptions to this rule.

What procedural rules apply to meetings of the statutory body?

As the first order of business, a chair of the meeting and a minute-keeper must be elected (whereas these roles cannot be filled by the same person). This rule applies to joint-stock companies and to limited liability companies with a collective statutory body. The statutory body then goes through the agenda point by point, holding discussions and passing resolutions as necessary.

We have already seen that the law provides no rules for meetings of managing directors who do not form a collective body. It is advisable to incorporate at least a set of general rules in the memorandum of

How many members must convene for the meeting to have a quorum, and how many votes must be cast to pass decisions?

Meetings of the board may proceed if a majority of more than half of all members are present. The board of directors passes decisions by holding a vote (typically in the form of a show of hands, though voting technology may also be used - these matters are usually addressed by the articles of association). The law prescribes that resolutions require a simple majority of votes of those present in order to pass. The articles of association may impose stricter quotas (such as the majority of votes of all members, or of 2/3 of those present, etc.).

In the case of a limited liability company with a collective statutory body, the deviations from the standard rules set out in the law are obviously specified in the memorandum of association. In the

case of a limited liability company whose managing directors are all independent statutory bodies, decisions are passed if they have the support of a majority of directors.

Does the vote of each member of the statutory body carry the same weight?

Each member of the statutory body has one vote; the articles (memorandum) of association cannot give individual members a greater number of votes. A tie is broken by the chairperson of the board of directors (both in the case of joint-stock companies and in the case of limited liability companies with a collective statutory body). The articles (memorandum) of association may provide a different rule as to the decisive vote for tie-breaking, or rule out the exercise of such a vote.

Are members of the statutory body required to attend the meeting in person?

The statutory body principally exercises its role in person. However, this rule does not prevent members of the statutory body from authorizing another member in the individual case so that the other member may represent them and cast votes on their behalf at the meeting in their absence.

Such authorization may be given to another member of the same body, but only for a vote on a specific issue or regarding matters which are listed in the agenda of the meeting. In other words, blanket authorization to vote on a certain range of issues or on matters of an unspecified kind which will arise only in the future is not permitted. Authorization presumably need not be given in writing if it concerns a single item on the agenda or a specific legal transaction, but in the interest of legal certainty, one always ought to observe the written form.

How does attendance of board meetings by proxy work?

Members of the statutory board who make use of the authorization of another member to represent them in the individual case as described above are responsible for their choice of such proxy. It is upon them to decide whether they want to put it at the discretion of their proxy how to vote on proposals or whether they commit them to a specific voting behavior.

Are circular resolutions, modelled upon the per rollam decision-making of the general meeting, permitted?

The law anticipates that decisions will be taken not only at the board meeting but also at a distance, not requiring the physical presence of the members of the statutory body (whereas this is known as the passing of a circular resolution, or decision ‘per rollam’).

This mechanism for remote decision-making must have been expressly allowed in the articles (memorandum) of association, along with rules as to how the circular resolution will be proposed and passed. Principally, the law allows the circulation of the proposal in written form (i.e., via regular mail) or with the use of technology (via the internet, per e-mail, using chat programs, or in a phone or video conference, etc.). As for the majority needed to pass a circular resolution, the same rules apply as in the case of voting at a board meeting.

How to document the proceedings of the board meeting and the decisions made there?

The board of directors at joint-stock companies (and at limited liability companies with a collective statutory body) record their meetings and decisions in minutes. Circular resolutions are also being protocoled, irrespective of the manner in which they were passed. The minutes shall be signed by the chair of the meeting and by the minute-keeper. It is standard practice that the minute-keeper is not actually a director of the company himself or herself. In certain cases (such as an increase of the registered capital by way of a board decision), the law prescribes special certification by way of a notarial deed.

The minutes shall always give the names of those members of the statutory body who voted against the passage of individual resolutions (or abstained from the vote). Members in attendance who are not specifically named in the minutes are deemed to have voted in favor of the resolution. The minutes must also document all opinions and statements made on the floor by the directors with respect to the individual items of the agenda. This record may later have great value as evidence if claims for damages are brought against individual members of the statutory body. Each member of the statutory body may require that their dissent / protest against passed proposals for a resolution be recorded in the minutes.

The minutes shall also include (as a schedule) the attendance list, showing who was present at the meeting. This need not be limited to directors but may also include e.g. invited guests.

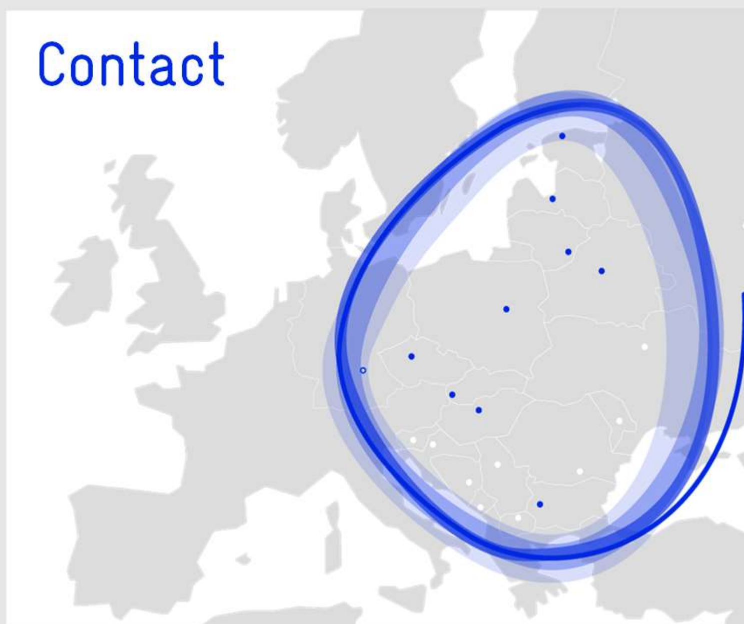
The following should also be attached to the minutes of the meeting: all materials which served as the basis for decisions made by the statutory body, the wording of all agreements, legal transactions, and other documents approved by the statutory body, and, if members of the statutory body attended by proxy, the power of attorney based upon which they were represented at the meeting. It also makes sense to attach the invitation to the board meeting (including proof of delivery, e.g. by printing out the relevant e-mail). The minutes shall then be archived together with all the schedules (see further below). Alternatively, one could give an itemized list of the schedules in the minutes, together with references to the location where they are stored electronically. In such a case, the documents should be stored such that their existence can be proven, as well as their content as at a given date (document integrity).

How and where to archive the documentation of proceedings of the statutory body?

The law does not specify what documents are to be archived, and for how long. It is advisable to archive all documents which can be used to evidence that the board meetings were properly called and took place, and to evidence the proceedings of such meetings, including the decisions that were taken there – in other words, the invitations including all schedules for each item on the agenda and the minutes of all meetings, also including all schedules. It is upon the company to decide whether it wants to keep hardcopies or create a purely electronic archive (scan copies, electronic database with the material underlying board decisions), or to combine the two methods.

Minutes of meetings of the statutory body may serve as important evidence that the company acted in compliance with its duties under the law, or that the criteria are satisfied so that the company may relieve itself from corporate criminal liability, etc. Also, in case of a later sale of the company, these records will customarily be requested by prospective buyers for the entire history of the company as part of the legal due diligence exercise. These aspects should be taken into consideration when determining the archiving period. With a view to the fact that the law prescribes the archiving of records related to proceedings of the general meeting for the entire time during which the company is in existence, it appears prudent to do the same also with respect to the records of the way in which the statutory body exercised its managerial powers and passed decisions.

Companies will usually address these issues in a set of formalized archiving rules or a document management policy (which then also applies to other documents).



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