

Convocation formalities for the general meeting

Traditionally the annual meeting is organized in May and June. The convocation of a general shareholders meeting is subject to the rules of the Belgian Companies Code. The convocation depends on the legal form of your company and nature of the issued securities. The general meeting can exceptionally renounce these convocation formalities and meet without formal convocation. Some points of attention.

The Belgian Companies Code determines the convocation formalities for the general shareholders or partners meeting. When the articles of association of your company contain more severe rules than the law, the articles of association prevail.

Who to convoke?

The general meeting of an NV, Comm. VA or BVBA (in Dutch) is in principle convoked by the board of directors or the directors. They should convoke all owners of shares, of certificates which were issued with the coöperation of the company, of bonds or warrants. Also owners of shares without voting rights or suspended voting rights are convoked since they have the right to attend the general meeting.

How to convoke?

The abolition of bearer shares has an impact on the convocation formalities you have to comply with. The transition period to transfer bearer shares into identified shares or dematerialized securities has ended. Since 1 January 2014 bearer shares can no longer be held. The convocation formalities for bearer shares therefore no longer apply. If no separate measures are foreseen for dematerialized securities (in an NV and Comm. VA), the general convocation rules apply.

For all identified shares, bonds, warrants or certificates which are issued with the coöperation of the company, an invitation by registered mail suffices. A convocation through another means of communication is also possible foreseen that all recipients have individually and explicitly accepted in writing. However, as soon as all or part of the securities are dematerialized, the convocation by registered mail is no longer sufficient (see below). With the exception for companies which shares are listed on a regulated market, the convocation for the general meeting should no longer be made through the press.

The general meeting (inclusive the annual meeting) can also be convoked without formalities. This is possible provided that all shareholders/partners are present or represented, that they do not object against the absence of a formal convocation and they agree with the agenda. This should be mentioned in the minutes. This only works if your company has a limited number of shareholders/partners.

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When to convoke?

The annual meeting should be held within six months after closing of the financial year. A general meeting of an NV, Comm. VA and BVBA on demand of 1/5 of the capital, should be convoked three weeks after this request.

The convocation is sent fifteen calendar days before the general meeting. When dematerialized shares or bonds exist, the convocation for the general meeting is made by an announcement in the Belgian Official Gazette at least fifteen days before the meeting; and fifteen days before the meeting in a nationally distributed paper. This announcement in the press is not required for annual meetings which are held in the town, on the place, day and hour mentioned in the articles of association and with a limited agenda (discussion on the annual accounts).

For listed companies - which are not treated in this article - a derogation applies (the period amounts to at least 30 days).

What to convoke?

In general the convocation for the general meeting of your non-listed company should contain the following elements:

- the name of your company;
- the reference to its legal form, in full or abbreviated;
- mentioning of the legal address;
- the company number;
- the word "rechtspersonenregister" or the abbreviation "RPR" followed by the address of the court of the legal county wherein your company resides;
- if applicable, mentioning of the bankruptcy of the company;
- place, date and hour. For the annual meeting this information is mentioned in the articles of association, which is not the case for special and extraordinary general meetings. Lacking other information the general meeting is held at the official address of the company. Unless otherwise foreseen in the articles of association, this is a working day, Sunday, holiday, during or after normal working hours;
- the agenda. The general meeting can only legally decide on items on the agenda: the annual accounts or the report of the board of directors; the report of the statutory auditor; discharge for the directors, managers or auditors. Other items can be placed on the agenda (e.g. nomination or extension of the mandate of the directors and auditors or dismissing a director);
- the formalities to be fulfilled in order to have access to the general meeting.

Shareholders can also decide unanimously and in writing, except for the decisions which have to be passed by notarial deed. This general meeting in writing is clearly meant for companies with a limited number of shareholders. Since an annual meeting does not contain decisions requiring a notarial deed, the decision of this meeting can be taken in writing.

Finally. The general meeting which is not convoked according to the conditions of the Belgian Companies Code, can lead to the nullity of the general meeting. So be aware what you start with.