

An overview of the competencies of the annual shareholders' meeting

The general shareholders' meeting is an obliged organ with legal powers. When your accounting period equals the calendar year, the annual meeting is usually held in May or June since it must be held within six months after the accounting period. The annual shareholders' meeting can exercise all powers given by the Belgian Companies Code and the articles of association. An overview.

Kinds of shareholders' meetings

There are three kinds of general shareholders' meetings. We list them here below.

The **general shareholders' meeting or annual meeting** decides on the approval of the annual accounts and on giving décharge to the directors and auditors. This general shareholders' meeting should be kept annually within six months after the accounting period. This meeting takes place at the time and place as foreseen in the articles of association.

The **exceptional general shareholders' meeting** decides on propositions to amend the articles of association. The Belgian Companies Code provides for the public limited liability companies, abbreviated NV (in Dutch) and private limited liability companies, abbreviated BVBA (in Dutch) specific rules regarding presence and majority for such meetings amending the articles of association. For a cooperative company, abbreviated CV (in Dutch) the provision of the articles of association should be taken into account. If the amendments on the articles of association relate to the corporate goal of the company, the law provides in a similar procedure for the NV, BVBA and CV.

A **special shareholders' meeting** is every general shareholders' meeting which does not coincide with the annual shareholders' meeting and does not decide on amending the articles of association. The purpose of such meeting is to grant rights to third parties which have an influence on the capital of the company such as making a public offering on shares or the change of control over the company.

Legal powers (minimum powers) of the general shareholders' meeting

The general shareholders' meeting of an **NV, BVBA** and limited partnerships with a share capital, abbreviated Comm. VA (in Dutch) is only competent for the tasks which the Belgian Companies Code has granted. These legal powers are minimum powers. The general shareholders' meeting cannot renounce these powers, not in favour of another company nor in favour of any third party. The articles of association however can provide that the powers of the directors or managers are limited in favour of the general shareholders' meeting, but these provisions only have internal validity. They are not opposable to third parties.

In the **cooperative companies**, cooperative companies with limited liability, abbreviated CVBA (in Dutch) and cooperative companies with unlimited liability, abbreviated CVOA (in Dutch), the powers of the general shareholders' meeting can be freely determined by the articles of association. These statutory provisions are opposable to third parties provided they have been published, or when not published, the company can prove that the third parties are aware of these provisions.

The general shareholders' meeting has the most extensive powers to make or ratify all company's transactions. If your company's accounting period is the same as the calendar year, the general shareholders' meeting will mostly be held in May or June, since it should be held within six months after the end of the accounting period. Do you doubt which powers your general shareholders' meeting has? The common powers which the Belgian Companies Code reserves for the general shareholders' meeting of an NV, Comm. VA or BVBA and which can be exercised by the annual meeting are the following:

- resolve (approval) of the annual accounts, the annual report and the report of the commissioner. This is the most important competency of the annual meeting;
- giving décharge to the directors/managers and commissioners and granting or not granting them a compensation;
- appointment or dismissal of the directors/managers and commissioners. Directors or non-statutory managers can be dismissed at any given moment, a statutory manager in a BVBA or Comm. VA can only be dismissed by an unanimous vote of all partners or for serious reasons (majority is required for amending the articles of association);
- starting the company's claim when the directors have damaged the company by their fault (actio mandati);
- amending the company's articles of association;
- if the company is incorporated for a definite period, the general meeting may resolve to extend it for a definite or indefinite period;
- decision to early voluntary dissolution of the company, followed by the appointment of the liquidators and determining their powers. Example, when due to losses the net assets of the company have fallen below one half of the corporate capital, the general shareholders' meeting then deliberate as if it concerned an amendment of the articles of association. When the net assets have fallen below one-fourth of the capital, the general shareholders' meeting can resolve on the dissolution of the company with one-fourth of the votes;
- decision to close the dissolution;
- decision to transfer the company according the provisions for a normal amendment of the articles of association;
- decision to purchase own shares;
- approving of quasi-contribution, i.e. acquisition by the company of an asset belonging to a founder, a director/manager or a shareholder/partner, within two years from the incorporation;
- decision on mergers or scission or assimilated transaction;
- decision on the contribution of a business or a branch;
- decision to emit convertible bonds or preferred bonds in a NV or Comm. VA. Emitting a normal bond loan is usually a task for the board of directors/managers, unless otherwise provided for by the articles of association.

In theory an exceptional general shareholders' meeting can also decide on the appointment of the managers and commissioners, starting the company's claim or on a quasi-contribution.

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