

Participating in the annual shareholders meeting: to be or not to be

The annual meeting of shareholders/partners in an nv, bvba and cvba is a mandatory body with exclusive powers such as the approval of the annual accounts. Not everyone can attend the general shareholders meeting. The articles of association and the Belgian Companies Code determine who is allowed and can participate in the vote.

The Belgian Companies Code states that every year at least one (normal) general shareholders meeting should be held in the commune as stated in the articles of association. Also the date and the time of the normal general shareholders meeting can freely be laid down in the articles of association, provided that it is held within six months after the closing of the financial year.

Not everyone can attend the general shareholders meeting

In first instance all **shareholders** should be convoked. These are the holders of shares with voting rights and holders of shares without voting rights. Only persons which are recorded as owner of shares in the shares register have access to the general shareholders meeting.

A shareholder/partner can send a representative to the general shareholders meeting, with a power of attorney. In principle an accountant cannot act as representative of a shareholder on the general shareholders meeting. Making acts of administration is incompatible with the deontology of the profession of accountants.

Also the **directors** or **managers** and the **statutory auditor(s)** should be invited to the annual meeting. The shareholders or partners have the right to question them. The statutory auditors attend the general meeting when it debates on a report which has been drafted by them.

Special admission for third parties

Given its private nature the general shareholders meeting can decide itself on the admission of certain third parties. They are welcome by silence, if there is contestation a vote is necessary.

'Certain' third parties such as holders of (convertible) **bonds and warrants** and holders of named certificates issued in collaboration with the company should be invited. They can attend the general meeting only with advisory vote.

'Normal' third parties such as the **auditor** and **accountant** can also be present on the general meeting if they obtain authorization by simple majority, unless the articles of association provide otherwise. The accountant which e.g. runs the accountancy for the company, has no automatic right to attend the general meeting, but the general meeting can grant him permission.

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'Special' third parties are the **press** and lawyers. It is generally accepted that the press does not need special permission to attend the general shareholders meeting of listed companies. Whether a **lawyer** is admitted will depend on his capacity. Does he act for the company, then he can be present unless the general meeting decides otherwise. If the lawyer acts as counselor of a shareholder (and not as a special agent), only a minority of the doctrine finds that shareholder can be accompanied by his lawyer. When drafting the articles of association, it should be kept in mind what is the best possible clause with respect to the representation of shareholders by non-shareholders if you do not want a lawyer to show up at your general shareholders meeting.

Consequences for decisions

When third parties are excluded from the general shareholders meeting unlawfully, the decisions will be null and void if the plaintiff proves that third parties (e.g. an expert) can influence the decisions through their presence or questions.

If third parties are allowed to the vote, it should be verified whether the challenged decision would also be taken in their absence. If this is not the case, then the decision should be nullified.

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