

## The general shareholders meeting and the importance of the notice period

When organizing a general shareholders meeting a number of rules should be complied with. In case of non-compliance with these rules, there is a risk that the decisions of the general shareholders meeting will be declared null and void. One of the most common nullification reasons is the non-compliance with the notice formalities.

### Notice formalities

The notice period for the general shareholders meeting for non-listed companies is 15 days. The notice for listed companies should be made at least 30 days before the general shareholders meeting. The start of this notice period is not clear. By the classic interpretation - which is the majority position in legal literature - the notice period starts by sending the documents by (registered) letter, and not at time of receipt.

The company code states that a company should notify but does not state that the company should prove the receipt of the notice letter. However there is case law putting the burden of proof of receipt with the company.

It is however clear that the notice period should be complied with for every item on the agenda. Who wants to add something to the agenda, should comply with the notice period for that specific item.

The notice period is a minimum period. The articles of association can extend this period, but cannot reduce it. Clearly calendar days are concerned, in other words also public holidays, Saturdays and Sundays. In case the last day is a public holiday, the period is not automatically extended until the next working day. However articles of association can derogate.

### Consequences of non-compliance with notice formalities

The Commercial Court can on demand of every party concerned declare a decision of the general shareholders meeting null and void. A reason for nullity is the non-compliance with the notice formalities. However the nullity will only be pronounced when the party concerned can prove that he would have had influence on the decision in case the formalities would have been complied with. Additionally, the claimant should prove that the decision was disadvantageous for him and he may not have revoked on the irregularity. This means that a shareholder which was present or represented in the general shareholders meeting and did not invoke the irregularity, cannot invoke the nullity afterwards.

Nullity does not apply legally. The Commercial Court should pronounce the nullity. The claim for nullity or suspension should be made within a period of six months. After six months, the decision of the general shareholders meeting is final.

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