



# The role of the auditor in a written general meeting

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The traditional, physical, general meeting is gradually giving way to a more efficient alternative: the written general meeting. In the midst of this transformation, statutory auditors face a challenging issue: how do they maintain their role when physical meetings are replaced by pen and paper only? This contribution seeks to clarify the rights and duties of the statutory auditor in the written general meeting.

## *The traditional general meeting*

Companies are required to convene the annual general meeting at the place, day and hour mentioned in the articles of association. The following persons must be convened: the shareholder(s), bondholders and holders of convertible bonds and warrants, the director(s) and the statutory auditor.

The statutory auditor is responsible for auditing the financial condition of the company, including the financial statements. Following the annual accounts, the auditor prepares a report stating whether the accounts have been kept in accordance with legal and regulatory requirements. At the general meeting, the statutory auditor must answer the questions put to him orally or in writing that relate to the items on the agenda on which he reports. He has the right to speak at the general meeting in connection with the performance of his duties.

Not every company is required to appoint an auditor. For example, it is not required for general partnerships (VOF), limited partnerships (CommV) and European Economic Interest Groupings (EEIG) of which all unlimited liable partners are natural persons. Unlisted small companies are also not covered by this obligation. For a detailed description of which companies are obliged to appoint a statutory auditor, please refer to the legislation (Art. 3:72 et seq. Companies Code (CC)).

## *The written general meeting*

Especially in family-owned companies, the obligation to hold a physical general meeting is seen

as time-consuming and unnecessary. In these cases, there is often no need for effective deliberation because, for example, it is already known in advance that every shareholder will agree to the proposed resolutions or because there are consultation moments at regular intervals.

### ***Convocation***

To conduct a written general meeting, the CC requires unanimity with respect to (a) the decision to hold the general meeting in writing and (b) the actual decision-making at the general meeting itself. There will be no notice, which also means that the documents, including the auditor's report, do not have to be sent to shareholders in advance. These will be attached to the draft resolutions for their perusal and signature. As a shareholder of a BV, CV or NV, you still have the right to consult the documents 15 days prior to the written general meeting. In this way, you can make an informed decision whether or not you have further questions for the auditor.

Since the statutory auditor is not called to the general meeting, he or she will also not be aware that it will be held in writing. However, in the context of corporate governance, it is advisable to inform the auditor and all board members in advance of the intention to opt for written decision-making.

### ***Participation***

The CC provides that, among other things, the auditor may take note of the resolutions of the written general meeting. This implicitly excludes the auditor's right to participate in the meeting. As a result, the auditor can no longer answer questions.

### ***Notification of decisions***

The statutory auditor is not automatically informed of the resolutions passed at the written general meeting. The CC clearly states that perusal takes place only on the basis of a request. This means that there is no obligation of automatic disclosure, but that the auditor can apply to the governing body for access to the documents.

### ***Conclusion***

In general, the role of the statutory auditor seems to become rather formal in the written general meeting. Indeed, in the written general meeting, unanimity is required both in terms of procedure and decisions. Thus, shareholders actually agree in advance on the decisions to be taken. Moreover, they still have the chance to look at the auditor's report beforehand. If there are no questions for the auditor, his presence at the general meeting is also unnecessary.



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R. RUYBERGH, "De algemene vergadering in tijden van social distancing", *Acc.Act.* 2021, afl.06.

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