Re: Coronavirus and General Assembly meetings of associations

The Federal Council has banned all public or private gatherings, making it impossible for most Swiss associations to hold their General Assembly meetings. But there is good news: The Federal Council has also introduced an exceptional measure to allow associations to organize General Assembly meetings remotely, with members voting in writing or electronically.

(1) Ban of public events

Following Article 6 para. 1 of Federal Council Ordinance 2 COVID-19 (Ordinance), issued on 19 March 2020, all public or private events are banned until, at least, 19 April 2020. This prohibition applies to General Assembly meetings (GAM) of associations and federations.

(2) Alternative introduced by the Ordinance

Fortunately, the Federal Council has anticipated the issue that this would represent for all entities having to hold a GAM, and it has introduced an alternative solution. Article 6a of the Ordinance provides that the Board may decide to setup such meetings in a way that allows participants to exercise their rights exclusively in writing or in electronic form. In sum, Article 6a of the Ordinance provides the Board with the following options:

- The members may vote or ask questions to the Board in writing, under certain conditions, or
- The members may participate by an electronic mean, e.g. by video-conference, and vote through this mean.

A third option exists, namely to allow members to participate via a third-party representative. This option is however not appropriate for associations, given the personal nature of the membership in associations.

The FAQ of the Federal Office of Justice FOJ (reference below), contain the following precision: “En cas d’unanimité, le consentement écrit à une proposition est possible. S’il existe une base légale statutaire correspondante, une décision à la majorité écrite (vote par correspondance) est également autorisée”, which can be translated as follows: In case of unanimity, written consent to a proposal is possible. If there is a corresponding statutory legal basis, a written majority decision (vote by ordinary mail) is also permitted. Against this, an electronic meeting sounds preferable to us.
(3) How to implement this in practice

This exceptional rule is applicable to GAM of associations and to all items of their usual agenda. It is an exception to an essential principle of the association, following which members of an association must necessarily be present (in person) and be authorized to participate to the debates before taking a vote.

It applies even if the GAM takes place after the period of validity of the Ordinance (i.e. after 19 April 2020), provided that the Board has taken the relevant decision during the period of validity of the Ordinance. The Board may thus decide until 19 April 2020 (or later if the Ordinance is extended) to hold a GAM in electronic format, even if the statutes of the association do not contemplate this possibility.

From a formal perspective, the following should be considered:

- the GAM must take place at a defined date and place, but it does not need to happen physically (in person);

- the rules applicable to the form of the invitation to the GAM remain applicable (e.g. sending an agenda in advance). However, Art. 6a of Ordinance allows members to be informed of the measures taken for remote participation up until four days before the meeting;

- the rules applicable to voting processes must be respected. In particular, the majorities must remain the same as contemplated in the statutes, and members must be allowed to vote yes or no, or to abstain, for each motion that is presented, unless contemplated differently in the statutes;

- it is also advisable, in our view, that members be formally identified if they participate online, or be requested to sign and date their votes, if participating in writing, in order to avoid issues with quorum, majorities and evidence of participation and vote;

- the decisions taken during such remote GAM, and other relevant elements such as the quorum, the number of votes, the majorities achieved etc. must be properly recorded in minutes.

(4) Postponing the GA

Finally, another option remains to postpone the ordinary in-person GAM to a later date. However, the later should in principle still take place in 2020, in order to allow to deal with urgent matters, appoint necessary Board members, and approve the (audited) accounts in order to allow for a timely filing with tax authorities.

(5) Relevant documentation and information
