

Convening the general assembly on the request of one fifth of the members

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On June 24, 2013, the law of June 27, 1921 was modified regarding the rules applicable when one fifth of the members of a non-profit association requests the convening of a meeting of the general assembly. The purpose of this article is to briefly explain the new applicable rules which recently entered into force.

I. Article 5: the convening of the general assembly of a non-profit association

Until recently, Article 5 of the law of June 27, 1921 regarding non-profit associations, international non-profit associations and foundations (hereinafter: “Law”) only stipulated that: *“The general assembly shall be convened by the board of directors in the cases provided for by law or the articles of association or when at least one fifth of the members so requests”*.

Firstly, under Article 5 of the Law the board of directors is empowered to convene the general assembly. This means that a meeting of the board of directors must first be convened in order to decide upon the convening of the general assembly’s meeting and set up its agenda. It is not possible for one director to decide alone to convene the meeting and set up the agenda. Secondly, Article 5 of the Law requires that when one fifth of the members so requests, the general assembly must be convened.

In this last case two questions arose. Following the request of one fifth of the members, which body of the non-profit association must convene the general assembly? There was no unanimity amongst legal scholars on this question. According to some legal scholars the general assembly should be convened by the board of directors, whilst according to other legal scholars it should be convened by the president of the non-profit association. A second question relates to the time frame in which the general assembly should be convened. Indeed, as Article 5 of the Law did not mention any precise timing within which the general assembly must be convened after the members’ request, this provision of the Law was rather inefficient.

In order to answer the two questions mentioned above, the law of June 24, 2013¹ added a new second paragraph to Article 5 of the Law: *“In this last case, in the absence of provisions in the articles of association, the board of directors convenes the general assembly within twenty one days of the request to convene. The general assembly shall take place at the latest on the fortieth day following this request”*.

Article 5 of the Law is only applicable to Belgian non-profit associations (in French: *“association sans but lucratif”* / in Dutch: *“vereniging zonder winstoogmerk”*).

¹ Law of June 24, 2013 modifying the law of June 27, 1921 regarding non-profit associations, international non-profit associations and foundations with regard to the convening of the general assembly, published in the Belgian Official Gazette on July 10, 2013.

II. Which body must convene the general assembly?

Article 5, second paragraph of the Law now clearly answers this question: when one fifth of the members so requests, the board of directors must convene the general assembly.

III. What is the time frame for convening the general assembly?

Article 5, second paragraph of the Law also clearly answers this question: the general assembly must be convened (and thus the convening notices must be sent out) by the board of directors within twenty one days of the request made by one fifth of the members.

This new obligation is inspired by the Belgian Companies Code which provides, for private limited liability companies and public limited liability companies, that the general assembly must be convened within three weeks (Articles 345, 1° and 647, 1°) of the request to convene emanating from shareholders representing one fifth of the share capital (Articles 268 and 532).

The legislator has inserted in Article 5, second paragraph, first sentence of the Law the terms “*in the absence of provisions in the articles of association*”. The purpose is to avoid requiring non-profit associations to modify their articles of association to make them consistent with the Law. If the articles of association provide for a specific time frame within which the general assembly must be convened following a request of one fifth of the members, that specific timing will have to be complied with. The specific timing may be shorter or longer than twenty one days. If the articles of association do not provide for a specific timing, the general assembly will have to be convened within twenty one days of the request of one fifth of the members.

IV. The time frame within which the meeting of the general assembly must be held

Article 5, second paragraph of the Law also provides that the general assembly must be held at the latest on the fortieth day following the request made by one fifth of the members.

The articles of association of a non-profit association may decrease but not increase the time frame of forty days.

It is important that non-profit associations whose articles of association contain a specific timing to convene the general assembly and to hold the meeting of the general assembly (in case of a request by one fifth of the members) verify that their articles of association comply with the new provisions of the Law.

Let us take the example of a non-profit association whose articles of association provide that: (i) convening notices addressed to the board of directors are notified to the directors 7 days before the meeting of the board of directors, and (ii) in case one fifth of the members requests the convening of

the general assembly, the convening notices for the general assembly are notified to the members 35 days before the meeting of the general assembly. When the board of directors receives the request from one fifth of the members, it will first have to be convened in order thereafter to be able to convene the general assembly. Time wise this means: 7 days + 35 days = 42 days. The meeting of the general assembly will only be held on the forty-second day. This is not consistent with the forty day requirement of the Law. As a result, the non-profit association will have to modify its articles of association to render them compatible with the Law.

V. Sanctions

The Belgian Companies Code (Articles 345, 1° and 647, 1°) provides for criminal sanctions in case the directors of a private limited liability company or a public limited liability company fail to convene the general assembly in a timely fashion after a request made by shareholders representing one fifth of the share capital. The law of June 24, 2013 has not provided for any such criminal sanctions for the directors of a non-profit association. However, as a general principle, the members of the non-profit association may always invoke the civil liability of the directors if they do not comply with Article 5 of the Law.

What action can members of a non-profit association take where the board of directors does not convene the general assembly within the time frame prescribed by the new second paragraph of Article 5 of the Law? Under no circumstances will the members be allowed to convene the general assembly themselves. This is an exclusive power of the board of directors. The members will have to bring a legal action before the Court of First Instance of the judicial district in which the registered office of the non-profit association is located. The Court will either decide to appoint a provisional administrator who will convene the general assembly, or impose a penalty payment.

VI. Entry into force

The law of June 24, 2013 was published on July 10, 2013 in the Belgian Official Gazette and entered into force ten days thereafter, i.e. on July 20, 2013.