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PARTICULARITIES OF FUNCTIONING OF THE GENERAL MEETING OF A JOINT-STOCK COMPANY UNDER MARTIAL LAW

Abstract. Purpose. The article specifies the procedure for holding a remote general meeting of a joint-stock company under martial law, differentiates between remote and electronic general meetings of shareholders, and covers the ways to improve the current legislation on remote general meetings of shareholders in line with European standards.

Research methods. The work was carried out using general scientific and special methods of scientific cognition.

Results. In the course of scientific analysis of normative legal acts regulating the procedure for holding the general meeting of a joint-stock company, it was established that a remote general meeting of shareholders is assisted by electronic document circulation, which is actualized via electronic communication, and an option to sign basic documents with a qualified electronic signature. It was noted that remote general meetings are held according to special rules enshrined in the Temporary Procedure. The authors characterized prospective corporate legislation and its compliance with European standards.

Conclusions. As a result of the study, it was proved that the legislative regulation of corporate relations should be improved by adopting a new Law of Ukraine "On Joint-Stock Companies", which would specify the forms of shareholders' participation in the general meeting: in-person, remote, and electronic. It is expedient to state that remote general meetings can be held by absentee voting using electronic and mail services, and electronic general meetings can be held via videoconference that allows all shareholders to be seen and heard on-line with a defined electronic voting mechanism. The mentioned innovations will allow for the further implementation of several forms of participation in the general meeting of shareholders using an authorized electronic system meeting European standards.

Key words: remote general meeting, joint-stock company, draft agenda, electronic documents, qualified electronic signature, ballot paper.

1. Introduction

Joint-stock companies constitute a significant layer of the Ukrainian economy since the banking system, industrial, and other strategic components of the domestic economic sector operate within the specific business legal structure. Over the past years, corporate legislation has been advancing that finds expression

in the introduction of numerous amendments to the Law of Ukraine "On Joint-Stock Companies", the national approval of the Corporate Governance Code, and the registration of the draft law "On Joint-Stock Companies" by the Verkhovna Rada of Ukraine. The draft Law of Ukraine "On Joint-Stock Companies" aims to improve the legal status of joint-stock com-

panies by implementing European approaches to managing the relevant companies given the recommendations presented in the European Union Directives and the practice of their application by the EU countries.

One of the significant directions of advancing corporate legislation should be the approach to corporate governance in joint-stock companies, as it is proposed to allow for an option of the management structure of a joint-stock company – one-level or two-level. In addition, it is proposed to introduce an option of holding a general meeting of shareholders by in-person voting (hereinafter referred to as “in-person general meeting”) or by electronic voting (hereinafter referred to as “electronic general meeting”). It is worth mentioning that the current Law of Ukraine “On Joint-Stock Companies” does not provide for such a benefit, which is limited to the fact that the general meeting of shareholders can be held only through actual participation and in-person voting on the territory of Ukraine within the settlement at the company seat. In other words, the legislation does not envisage the holding of a general meeting of shareholders via remote communication.

However, external factors of influence on the social and economic environment, such as the Covid-19 pandemic, led to the adoption of thoroughgoing measures to regulate corporate relations without waiting for the legislative improvement of normative acts. The above is because joint-stock companies have faced the challenge of the internal organization of company management. Since the annual general meeting of shareholders is not only mandatory under the law but also addresses strategic and current issues of corporate activities, it is impossible to ignore the settlement of the procedure under consideration. Therefore, keeping in mind the strategic importance of the proper continuous functioning of joint-stock companies to the state, the National Securities and Stock Market Commission (hereinafter referred to as the NSSMC) decided to approve the Temporary Procedure for Convening and Remote Holding of the General Meeting of Shareholders and the General Meeting of Participants of the Corporate Investment Fund (Rishennia NKTsPFR “Pro Tymchasovyi poriadok sklykannia ta dystantsiinoho provedennia zahalnykh zboriv aktsioneriv ta zahalnykh zboriv uchasnykiv korporatyvnoho investytsiinoho fondu”, 2020). It became the first document that enabled and specified a procedure for holding a remote general meeting of a joint-stock company. The temporary procedure is not mandatory for joint-stock companies, and thus, the company is entitled to decide

to hold a general meeting as usual after the termination of quarantine restrictions.

At the same time, the introduction of martial law in Ukraine has become another limiting factor that makes it impossible to hold a general meeting of shareholders following the Law of Ukraine “On Joint-Stock Companies” in regions where hostilities are ongoing, or there is such a threat. In this regard, the NSSMS Decision No. 176 dated 16.03.2022 “On the procedure for holding a general meeting during martial law” was amended and supplemented with a new section XXIII “Particularities of holding a meeting during martial law”. It states that a general meeting can be held remotely during martial law provided that the list of shareholders contains data on at least 95% of shareholders (owners of voting shares) of a particular issuer, without considering shares recorded on securities accounts of depository institutions that have ceased professional activities and shares redeemed by the joint-stock company. If the abovementioned is impossible, the general meeting of shareholders must be held within 90 days after the end of martial law (Rishennia NKTsPFR “Pro vnesennia zmin do Tymchasovoho poriadku sklykannia ta dystantsiinoho provedennia zahalnykh zboriv aktsioneriv ta zahalnykh zboriv uchasnykiv korporatyvnoho investytsiinoho fondu”, 2022).

The purpose of the article is to analyze the procedure for convening and holding remote general meetings of shareholders under martial law, outline positive aspects of improving the procedure for holding general meetings of shareholders, differentiate between remote and electronic general meetings of shareholders, and determine further actions to hold remote general meetings in joint-stock companies.

Methodology. The study covers topical scientific and applied issues regarding the remote general meeting of a joint-stock company under martial law. Keeping in mind the purpose of the study, methods which allowed identifying the relevant areas were used: formal logic, analysis and synthesis, systems analysis, induction and deduction, etc. In particular, formal logic contributed to elucidating special rules for holding remote general meetings, which made it possible to determine the essence of such meetings and differentiate them from electronic general meetings. Systems analysis and synthesis allowed characterizing the procedure for holding remote general meetings, which is based on ensuring the proper exercise of the shareholders’ right to participate in the general meeting using electronic document circulation and communication means.

2. The legal procedure for holding remote general meetings of shareholders under martial law

Amidst today's martial law, the traditional mode of operation of joint-stock companies, including the general meeting of shareholders, has become very complicated. First, in some regions of the country where hostilities are conducted or there is such a threat, the general meeting of shareholders is impossible due to the danger to life and health if the meeting is to take place at the company seat. Secondly, the NSSMS, the Central Securities Depository, and depository institutions operate in a special mode under a limited schedule and heavy workload.

The NSSMS Decision No. 176 dated 16.03.2022 "On the procedure for holding the general meeting during martial law" provides for the introduction of electronic document circulation between the Central Depository, depository institutions, and joint-stock companies; the option to sign basic documents with a qualified electronic signature (Protocol on registration results, Protocol on voting results, Minutes of the general meeting, etc.); optimization of the terms of approval and publication of basic documents (for example, publication no later than one day after making the decision) (Rishennia NKTsPFR "Pro vnesennia zmin do Tymchasovoho poriadku sklykannia ta dystantsiinoho provedennia zahalnykh zboriv aktsioneriv ta zahalnykh zboriv uchasnykiv korporatyvnoho investytsiinoho fondu", 2022).

Due to the introduction of martial law in Ukraine, the mentioned Decision dated 16.03.2022 No. 176 also allows for holding a remote general meeting of shareholders according to the Temporary Procedure (Rishennia NKTsPFR "Pro vnesennia zmin do Tymchasovoho poriadku sklykannia ta dystantsiinoho provedennia zahalnykh zboriv aktsioneriv ta zahalnykh zboriv uchasnykiv korporatyvnoho investytsiinoho fondu", 2022). The general meeting of shareholders may be held during the specific period subject to compliance with all the specified norms of the Procedure. As the general meeting can be remote, there are special rules for convening and holding them. Let us consider the peculiarities of holding the annual remote general meeting because their organization is a crucial component of the functioning of a joint-stock company.

Stages of the remote annual general meeting of shareholders:

1. Rendering a decision to convene the annual general meeting of shareholders. Only the supervisory board of the joint-stock company is authorized to take the relevant decision.

2. The supervisory board of the joint-stock company concludes with the Central Depository an agreement for the provision of services for holding a remote general meeting of shareholders. The agreement for the provision of services for holding a remote general meeting and amendments to it shall be published on the Central Depository's website. At the same time, the supervisory board appoints the person authorized to interact with the Central Depository during the general meeting, whose term of office expires 10 days after the date of the meeting, unless another (longer) term is established. One or more persons may be authorized.

3. Drawing up the list of shareholders via the depository system of Ukraine, according to which they are notified of the annual general meeting of the joint-stock company.

4. Approval and sending of the notice of the general meeting of shareholders and the draft agenda to the shareholders, the stock exchange where the company's securities are admitted to trading, the NSSMC, as well as publication on the NSSMC public information database and the website of the joint-stock company. A notice of the general meeting shall be sent through the depository system of Ukraine not earlier than 60 days and not later than 30 days before the date of the general meeting. The notice of the general meeting of shareholders shall indicate that it is held remotely. According to the Procedure for shareholders' notification via the depository system of Ukraine, approved by the NSSMC decision No. 148 as of March 7, 2017, professional participants of the depository system of Ukraine can send notifications via the depository system of Ukraine using e-mail, mobile communication, and in other ways specified by the agreement and/or internal documents of professional participants of the depository system of Ukraine (Rishennia NKTsPFR "Pro Poriadok napravlennia povidomlen aktsioneram cherez depozytarnu systemu Ukrainy", 2017).

5. Familiarization of shareholders with documents while preparing for the general meeting. From the moment of receipt of the notice of the general meeting until the date of its holding, the shareholders are entitled to familiarize themselves with the documents necessary for making decisions on the agenda. A shareholder is entitled to request specific and necessary information via e-mail specified in the notice of the general meeting. The shareholder shall sign his request by a qualified electronic signature or by other means ensuring identification and confirmation of document sending by the person. The person responsible for familiarization with information sends the relevant doc-

uments to the shareholder's e-mail, from which the request was sent with the attestation of documents by a qualified electronic signature. The shareholder is provided with the electronic documents or their copies on the agenda free of charge. In addition, the supervisory board may post all relevant information on the website of the joint-stock company, which should also be indicated in the notice of the general meeting. All documents posted on the website of the joint-stock company shall be signed by a qualified electronic signature of the authorized person of the company.

6. Amendments to the draft agenda of the general meeting of shareholders. The draft agenda of the general meeting is approved by the supervisory board of the joint-stock company. Each shareholder has the right to make proposals on the issues submitted for consideration. Proposals are made not later than 20 days before the date of the general meeting of shareholders, and for candidates to the agencies of the joint-stock company – not later than 7 days before the date of the general meeting of shareholders. Proposals for amendments to the draft agenda may entail new issues in the draft and contain relevant draft decisions on these issues. Proposals for amendments to the draft agenda may not exclude issues and draft decisions on the issues submitted for consideration. However, the supervisory board shall additionally introduce a draft decision, which differs from that specified on the relevant agenda item, in the draft agenda of the general meeting. The supervisory board of the joint-stock company decides on the inclusion of proposals and approves the updated agenda no later than 15 days before the date of the general meeting, and for candidates to the agencies of the joint-stock company – no later than 4 days before the date of the general meeting. The supervisory board shall send a notification with the updated agenda of the general meeting and proposals for its amendments to the shareholders through the depository system of Ukraine no later than 10 days before the date of the general meeting. It shall also be available on the stock exchange where the company's securities are admitted to trading and on the company website.

7. Registration of shareholders and their representatives, determination of the quorum of the general meeting of shareholders. The registration of shareholders (their representatives) is based on the list of shareholders entitled to participate in the general meeting drawn up via the depository system of Ukraine. The list of shareholders is compiled as of 24 hours, three working days before the day of such meeting. The general meeting has a quorum if the share-

holders registered for participation and collectively own more than 50 percent of the shares. Shareholders or their representatives may participate in the general meeting. The shareholder has the right to appoint a representative permanently or for a certain time. The document certifying the right of a representative to participate in the general meeting of shareholders is a proxy notice relating to participation and voting at such the meeting. The proxy may authorize the representative to vote at the instruction of the shareholder or vote at the general meeting at own discretion.

To register shareholders for participation in the general meeting, shareholders (their representatives) submit voting ballots to the depository institution that services the securities account, where corporate securities belonging to the shareholder are recorded. The ballot for voting at the general meeting authenticated with a qualified electronic signature of the shareholder (his representative) shall be sent to the e-mail specified by the depository institution. The depository institution checks the validity of data about the shareholder (his representative), a status of the corporate depositor (a proxy notice), checks the reliability of the ballot paper for voting at the general meeting and the presence or absence of invalidity signs in it. The central securities depository shall, within one working day after receiving the necessary documents, consolidate the information into a single document – a list of the shareholders who have submitted ballots for participation in the remote general meeting, and send it to the supervisory board of the joint-stock company in electronic form. According to the results of the analysis of documents received from the Central Depository, the registration commission makes up a record of the registration of shareholders (their representatives). The registration of shareholders (their representatives) is carried out by comparing the list of shareholders entitled to participate in the general meeting with the list of shareholders who submitted ballots for participation in the remote general meeting.

Supervision involves observing and monitoring its object (Sierov S. L., 2019, p. 126). The procedure for holding a general meeting may be controlled by the NSSMS on the initiative of the supervisory board, which shall send such a notification to the Commission within three working days from the date of approval of the notice of the general meeting. The NSSMS is entitled to supervise the registration of shareholders, voting, and summing up the results of a general meeting. A joint-stock company informs about the supervision of the general meeting on its website, on

the page where a notice of the general meeting is posted, and sends it to the shareholders via the depository system.

8. Conducting remote general meetings and voting at general meetings. The date of a general meeting (the date of voting completion) may not be a date that is a public holiday or a day off. Voting at the general meeting begins at 9:00 a.m. on the day indicated as the date of placing the ballot papers. Voting at the general meeting shall end by 6:00 p.m. on the day specified in the notice of the general meeting. The supervisory board of the joint-stock company appoints the chairperson and secretary of the general meeting. Each shareholder, an owner of voting shares, is entitled to exercise its right to manage the company by participating in the general meeting and voting by submitting ballots to the depository institution servicing the securities account of such shareholder. The form and text of the voting ballot shall be approved by the supervisory board of the joint-stock company not later than 10 days and published not later than 9 days before the date of the general meeting of shareholders, and for election of candidates to the agencies of the joint-stock company – not later than 4 days, and published not later than 3 days before the date of the general meeting of shareholders.

A ballot for voting at a general meeting shall be certified by one of the following methods at the shareholder's option: 1) using a qualified electronic signature of the shareholder (his representative); 2) notarially, provided that the ballot is signed in the presence of a notary or an official who performs notarial acts; 3) by a depository institution servicing the securities account of such shareholder, provided that the ballot is signed in the presence of an authorized person of the depository institution. Vote counting at the general meeting is carried out by the counting commission, which draws up a protocol signed by all members of the company's counting commission. A voting protocol may be signed by a qualified electronic signature of each member of the counting commission. The decision of the general meeting of shareholders is considered to be made from the moment of drawing up the minutes of voting results. All minutes of voting results at the general meeting shall be notified to all shareholders along with the minutes of the general meeting by posting on the website of the joint-stock company.

9. Drawing up the minutes of the general meeting of shareholders. The minutes of the general meeting shall be drawn up within 10 days after the date of receipt from the Central Depository of documents containing information on the list of shareholders participating in

the general meeting of the joint-stock company and original ballots for voting at the general meeting or their duly certified copies. The minutes of the general meeting shall be signed by the chairperson and secretary of the general meeting, bound, and authenticated by the chairperson of the executive body of the company (in the case of a collegial executive body) or the sole executive body. The minutes of the general meeting may be signed by a qualified electronic signature of the chairperson of the meeting, the secretary of the meeting and the executive body of the company. Minutes of the general meeting of shareholders shall be published on the website of the joint-stock company within one working day from the date of its compilation.

3. Prospects for further implementation of a remote general meeting in joint-stock companies in line with European standards

The temporary procedure specifies holding a remote general meeting of shareholders, which allows using electronic documents and electronic communications for mutual exchanging necessary information between authorized legal subjects (the supervisory board of the joint-stock company, shareholders (their representatives), the NSSMC, the Central Depository, and depository institutions servicing the securities account of the shareholder), as well as a qualified electronic signature that ensures the identification of persons who organize and participate in the general meeting of shareholders. The peculiarity of a remote general meeting of shareholders is that it takes place without the actual participation of shareholders in the discussion of agenda items and the format of a real-time meeting via video communication.

Leading corporate lawyer Shadi Saad notes that a remote general meeting makes it possible to vote by submitting ballots for voting remotely through the depository institution that serves the shareholder. And here lies the greatest threat of all remote general meetings – depriving a shareholder of the right to express own opinion on a specific issue and the right to ask questions. To date, there is as yet no practice of appealing against distance meetings, but there is such a risk (Shadi Saad, 2020).

If we refer to the Corporate Governance Code, which is recommendatory for application, it does not contain any progressive proposals on the issue concerned. It only states that companies shall hold a general meeting of shareholders at the place of incorporation or at a place readily accessible to the shareholders. At the same time, it is emphasized that in the future, the company should promote using electronic (absentee) voting, including electronic distribution of materials, as well as use its website to provide all information necessary for shareholders to facil-

itate their participation in a general meeting and inform shareholders about decisions made during the general meeting of shareholders (Kodeks korporatyvnoho upravlinnia, 2020).

If we refer to Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies, this document states that the company shall ensure equal treatment for all shareholders who are in the same position with regard to participation and the exercise of voting rights in the general meeting (Art. 4). In addition, it is provided that Member States shall permit companies to offer to their shareholders any form of participation in the general meeting by electronic means, notably any or all of the following forms of participation: real-time transmission of the general meeting; real-time two-way communication enabling shareholders to address the general meeting from a remote location; a mechanism for casting votes, whether before or during the general meeting, without the need to appoint a proxy holder who is physically present at the meeting. (Part 1 of Art. 8) (Dyrektyva 2007/36/JeS, 2007).

It follows from the above provisions that Directive 2007/36/EC provides for holding an electronic general meeting of shareholders with the choice of several forms of participation, namely videoconferencing, which allows all shareholders to be seen and heard, or electronic voting without a joint presence in real-time.

If we refer to the draft Law of Ukraine "On Joint-Stock Companies", Part 2 of Art. 36 and Part 4 of Art. 40 allows for holding an electronic general meeting. At the same time, the normative act does not specify the forms of participation in an electronic general meeting and does not clarify the peculiarities of its holding. Only Art. 52 of the draft law states that shareholders participating in an in-person general meeting authenticate a ballot paper with a qualified electronic digital signature, and a ballot paper at an electronic general meeting is authenticated with a qualified electronic digital signature of the shareholder (Proiekt Zakonu Ukrainy "Pro aktsionerni tovarystva", 2019). In other words, following the above presentation of the norm, the option of holding a general meeting using various forms of participation is allowed, but nevertheless, it is about remote participation in an in-person general meeting, which also does not specify the ways remote and electronic general meetings can be held. As of today, a remote general meeting does not provide for the participation of shareholders in the general meeting in real-time via video communication. Moreover, both in-person and electronic general meetings of a joint-stock

company will be held with the use of an authorized electronic system, which is a software and hardware complex of the Central Securities Depository, ensuring the identification and registration of shareholders (their representatives) for participation in the general meeting, obtaining documents shareholders can get acquainted with when preparing for the general meeting, ballot voting and taking part in the discussion on the agenda, summing up the voting results on the general meeting agenda, etc.

4. Conclusions

Thus, both the Temporary Procedure and the Draft Law of Ukraine "On Joint-Stock Companies" regulate the holding of a general meeting of shareholders using electronic document circulation and electronic means that meet European standards. In particular, we are talking about the possibility for shareholders to register for participation in the general meeting through the depository system by submitting voting ballots to the depository institution using a qualified electronic signature, to get acquainted with information on the agenda of the general meeting through a request using a qualified electronic signature sent to e-mail or other means of communication, and examine various documents relevant to the general meeting on the website of the joint-stock company, etc.

However, there is now no distinction between such concepts as remote and electronic general meetings of shareholders. Thus, when improving the draft Law of Ukraine "On Joint-Stock Companies", it is necessary to specify the forms of participation of shareholders in a general meeting as well as the peculiarities of holding in-person, distance, and electronic general meetings. In addition, it is appropriate to mark that an in-person general meeting is held at the place of incorporation with an option of participating in the general meeting of shareholders using video communication; remote general meetings can be held by absentee voting using electronic and postal communication means; electronic general meetings can be held via videoconference, which allows one to see and hear all shareholders in real-time with a specific electronic voting mechanism. These innovations will allow further implementation of remote general meetings according to the Temporary Procedure. The introduction of electronic general meetings in videoconferencing mode, which make it possible to see and hear all shareholders in real-time, will provide equal opportunities for participation in a general meeting for both residents and non-residents of the country under European standards, which is another incentive to promote the inflow of foreign investment into the economy of Ukraine.

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ОСОБЛИВОСТІ ФУНКЦІОНУВАННЯ ЗАГАЛЬНИХ ЗБОРІВ АКЦІОНЕРНОГО ТОВАРИСТВА НА ПЕРІОД ВОЄННОГО СТАНУ

Анотація. Мета. У статті окреслено порядок дистанційного проведення загальних зборів акціонерного товариства в умовах воєнного стану, визначено відмінність дистанційних та електронних загальних зборів акціонерів, розкрито напрями вдосконалення чинного законодавства щодо впровадження дистанційного проведення загальних зборів акціонерів відповідно до європейських стандартів.

Методи дослідження. Робота виконана на підставі загальнонаукових та спеціальних методів наукового пізнання.

Результати. У ході наукового аналізу нормативно-правових актів, що регламентують порядок проведення загальних зборів акціонерного товариства, встановлено, що дистанційне проведення загальних зборів акціонерів відбувається за допомогою електронного документообігу, що здійснюється засобами електронного зв'язку, а також можливості підписувати основні документи кваліфікованим електронним підписом. Визначено, що дистанційні загальні збори проводяться за спеціальними правилами, закріпленими у Тимчасовому порядку. Охарактеризовано перспективне акціонерне законодавство та його відповідність європейським стандартам.

Висновки. У результаті проведеного дослідження доведено, що законодавче регулювання акціонерних відносин має вдосконалюватися шляхом прийняття нового Закону України «Про акціонерні товариства», у якому більш детально необхідно окреслити форми участі акціонерів у загальних зборах: очних, дистанційних та електронних. Доцільно визначити, що дистанційні загальні збори можуть проводитися шляхом заочного голосування за допомогою засобів електронного та поштового зв'язку, а електронні загальні збори можуть проводитися у режимі відеоконференції, що дозволяє бачити і чути всіх акціонерів у реальному часі з визначеним електронним механізмом голосування. Вказані нововведення зможуть дозволити подальше впровадження декількох форм участі у загальних зборах акціонерів із застосуванням авторизованої електронної системи відповідно до європейських стандартів.

Ключові слова: дистанційні загальні збори, акціонерне товариство, проєкт порядку денного, електронні документи, кваліфікований електронний підпис, бюлетень для голосування.

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