

**Scientific editors**

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# Evolution of Private Law

## NEW DIRECTIONS

Seria monografii konferencyjnych



Fundacja Wydziału Prawa i Administracji  
Uniwersytetu Śląskiego *Facultas Iuridica*

**KTW**.LEGAL

# EVOLUTION OF PRIVATE LAW

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Jakub Zamojski, Jaroslav Dolný, Liliana Sishchuk, Michal Sokol, Nadiia Petechel,  
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# **BASIC RULES FOR CONDUCTING REMOTE GENERAL MEETINGS OF SHAREHOLDERS OF A JOINT-STOCK COMPANY IN UKRAINE**

## **1. Introduction**

In the modern conditions of the development of the Ukrainian economy, the shareholding legislation is constantly updated. The purpose of introducing legislative changes is to adapt Ukrainian legislation to the law of the countries of the European Union. The legal regulation of the activities of joint-stock companies takes place according to the Law of Ukraine “On Joint-Stock Companies” of 2008,<sup>1</sup> the norms of which have been improved each time by making amendments to the current law. For the first time, the specified Law regulates the basic concepts of shareholder law, details the procedure for the creation, operation, and termination of joint-stock companies, their legal status, the rights and obligations of shareholders. The management system of a joint-stock company provides for the following management bodies – general meeting of shareholders, supervisory board, executive body, audit commission/auditor (two-level model). The general meeting of shareholders is the highest management body of a joint-stock company and it resolves all its strategic issues.

At the national level, the Corporate Governance Code was approved in 2020 by a decision of the National Securities and Stock Market Com-

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<sup>1</sup> Law of Ukraine «On Joint-Stock Companies» No. 514-VI dated 17 September 2008 Bulletin of the Verkhovna Rada of Ukraine, 2008, No. 50-51, Art. 384 with changes and additions. Retrieved from <https://zakon.rada.gov.ua/laws/show/514-17#Text>.

mission.<sup>2</sup> In addition, the Verkhovna Rada of Ukraine adopted a new Law of Ukraine “On Joint-Stock Companies”, which will enter into force on 1 January 2023. The new Law is aimed at implementing European approaches to the management of joint-stock companies in the light of the recommendations outlined in the Directives of the European Union.

At the same time, the pandemic associated with the spread of the coronavirus disease COVID-19 led to the adoption of radical measures to settle shareholder relations in 2020. After all, the continuous functioning of joint-stock companies is of strategic importance for the state. Therefore, the National Securities and Stock Market Commission decided to approve the temporary procedure for convening and remotely holding a general meeting of shareholders and a general meeting of corporate investment fund members (hereinafter – Temporary procedure). The by-law normative legal act was adopted for the period of validity of restrictive measures provided for as part of the quarantine introduced by the Cabinet of Ministers of Ukraine.<sup>3</sup>

However, the introduction of martial law in Ukraine in 2022 has become another limiting factor that makes it impossible to hold traditional general meetings of shareholders. In connection with this decision of the National Securities and Stock Market Commission, changes were made to the Temporary Order, which was supplemented with a new section XXII “Peculiarities of holding meetings during martial law”.

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<sup>2</sup> Code of Corporate Governance, approved by the NCCPFR No. 118 of 12 March 2020. Retrieved from <https://www.nssmc.gov.ua/documents/kodeks-korporatyvnoho-upravlinnia-kliuchovi-vymohy-i-rekomendatsii/>.

<sup>3</sup> Decision of the NSSMC «On Approval of the Temporary Procedure for Convening and Remotely Holding a General Meeting of Shareholders and a General Meeting of Corporate Investment Fund Members» No. 196 (with amendments), approved on 16 April 2020. Retrieved from <https://www.nssmc.gov.ua/documents/pro-zatverdzhennia-tymchasovoho-poriadku-sklykannia-ta-dystantsiinoho-provedennia-zahalnykh-zboriv-aktsioneriv-ta-zahalnykh-zboriv-uchasnykiv-korporatyvnoho-investytsiinoho-fondu/>.

## **2. Rules for conducting general meetings of shareholders according to the Law of Ukraine “On Joint-Stock Companies”**

The procedure for calling and holding general meetings of shareholders is determined by Articles 32-50 of the Law of Ukraine “On Joint-Stock Companies”.<sup>4</sup> The current Law provides that general meetings of shareholders are held only through actual participation and in-person voting on the territory of Ukraine. The general meeting of shareholders is held within the locality of the company’s location. That is, the legislation does not stipulate the holding of general meetings of shareholders using remote communication and electronic vote.

*The main rules for conducting general meetings of shareholders are as follows:*

- general meetings of shareholders are called once a year, no later than on 30 April following the reporting year (regular general meeting) or at the initiative of the supervisory board of a joint-stock company, at the request of the executive body, at the request of the audit commission (auditor), at the request of shareholders (shareholder) who on the day of submission of the claim collectively own 10 percent or more of the company’s voting shares (extraordinary general meeting);
- shareholders who are included in a list of shareholders entitled to such participation, or their representatives, have the right to participate

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<sup>4</sup> Law of Ukraine «On Joint-Stock Companies» No. 514-VI dated 17 September 2008. Bulletin of the Verkhovna Rada of Ukraine, 2008, No. 50-51, Art. 384 with changes and additions. Retrieved from <https://zakon.rada.gov.ua/laws/show/514-17#Text>.

in the general meeting of a company. A list of shareholders who have the right to participate in the general meeting is compiled as of 24 hours three working days before the day of such meeting. The Central Depository of Ukraine compiles a list of shareholders who have the right to participate in the general meeting;

- a notice of the general meeting of a joint-stock company and the draft agenda are sent to each shareholder no earlier than 60 days before the date of the general meeting and no later than 30 days before the date of the general meeting;
- a joint-stock company additionally sends a notice of a general meeting and the draft agenda to the operator of the organized capital market on which the company's shares are admitted to trading and places it on its own website;
- from the moment of sending a notice of a general meeting, the shareholders have the right to familiarize themselves with the documents necessary for making decisions on the agenda. Documents must be available to shareholders on business days, during business hours in an accessible place. On the day of a general meeting, documents must also be available at the place of the meeting. Shareholders have the right to know the specific place to review the documents (room, office number, etc.) and a responsible official;
- shareholders have the right to submit their proposals on issues included in the draft agenda of the general meeting of a joint-stock company. Proposals are submitted no later than 20 days before the date of the general meeting of a joint-stock company. Proposals for candidates for members of a company's bodies shall be submitted no later than 7 days before the date of the general meeting. Proposals to include

- new issues in the draft agenda must contain draft decisions on those issues;
- proposals of shareholders (shareholders) who collectively own 5 percent or more of the voting shares must be included in the draft agenda of a general meeting;
  - the general meeting of a joint-stock company begins after the registration of shareholders (their representatives). Registration of shareholders (their representatives) is carried out on the basis of a list of shareholders who have the right to participate in the general meeting. The registration of shareholders (their representatives) is carried out by a registration commission appointed by the supervisory board of a joint-stock company;
  - supervision may be appointed for the registration of shareholders, holding of a general meeting, voting and tallying of its results. The supervision can be initiated by shareholders who have the right to participate in the general meeting and collectively own 10 percent or more of the voting shares. In that case, the National Securities and Stock Market Commission appoints its representatives and/or representatives of shareholders who request it. Supervision of general meetings can also be carried out at the initiative of the National Securities and Stock Market Commission;
  - a general meeting of shareholders is held in the presence of a quorum of the general meeting, with the participation of shareholders who collectively own more than 50 percent of the voting shares;
  - shareholders vote according to the principle “one voting share gives a shareholder one vote” to make decisions on the issues of the agenda put to the vote, except for cumulative voting;

- decisions are made at a general meeting of shareholders by a simple majority of votes of the shareholders who have registered to participate in the general meeting and are owners of voting shares.
- decisions on certain issues are made by more than three-quarters of the votes of the shareholders who have registered to participate in the general meeting and are owners of voting shares (see paragraphs 2-7, 23, part 2 of Article 33 of that Law);
- voting at the general meeting of a joint-stock company is carried out exclusively using voting ballots. The counting of votes, a clarification of the voting procedure and other issues are provided by a counting commission, which is elected by the general meeting of shareholders. Based on the results of each vote, a protocol is drawn up, which is signed by all members of the counting commission of a joint-stock company who participated in the counting of votes;
- a protocol of the general meeting of a joint-stock company is drawn up within 10 days from the moment of closing the general meeting and is signed by the chairman and the secretary of the general meeting.

Therefore, the general rules reflect the procedure for conducting general meetings of shareholders in Ukraine. General meetings of shareholders have traditionally been held according to these rules since the adoption of the Law of Ukraine “On Joint Stock Companies” in 2008. Any violation of the specified rules is the basis for a shareholder to file a lawsuit to the court to invalidate a decision of the general meeting of shareholders.

### **3. Rules for conducting general meetings of shareholders according to the Temporary procedure for conducting remote general meetings**

As already mentioned, after the introduction of quarantine measures related to COVID-19 in Ukraine, a decision was made to approve the temporary procedure for convening and remotely holding a general meeting of shareholders and a general meeting of corporate investment fund members (hereinafter referred to as the Temporary Procedure).<sup>5</sup> The Procedure became the first document that determined a detailed procedure for conducting remote general meetings of joint-stock companies in Ukraine. The temporary order became mandatory for joint-stock companies only during the period of restrictive measures, i.e. the quarantine restrictions related to COVID-19 and the introduction of martial law in Ukraine. However, joint-stock companies have the right to decide to hold general meetings in the ordinary manner after the end of the restrictive measures.

In particular, the decision of the National Securities and Stock Market Commission introduced a rule under which general meetings can be held only remotely in the period of martial law. Chapter XXII of the Temporary Order titled “Peculiarities of holding meetings during martial law” states that general meetings can be held remotely during martial law, provided that a list of shareholders contains data on at least 95% of the shareholders (owners

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<sup>5</sup> Decision of the NSSMC “On Approval of the Temporary Procedure for Convening and Remotely Holding a General Meeting of Shareholders and a General Meeting of Corporate Investment Fund Members” No. 196 (with amendments), approved on 16 April 2020. Retrieved from <https://www.nssmc.gov.ua/documents/pro-zatverdzhennia-tymchasovoho-poriadku-sklykannia-ta-dystantsiinoho-provedennia-zahalnykh-zboriv-aktsioneriv-ta-zahalnykh-zboriv-uchasnykiv-korporatyvnoho-investytsiinoho-fondu/>



of voting shares) of a certain issuer. A list of shareholders does not include data on shares that are accounted for in securities accounts of depository institutions that have ceased professional activity and shares that have been purchased by a joint-stock company. If it is impossible to hold a general meeting of shareholders during martial law, the general meeting must be held within 90 days after the end of martial law.

According to the Temporary Order, the rules for holding remote general meetings are defined, which does not violate the general rules for holding them. However, the Procedure provides for changes in certain features of the procedure for holding general meetings remotely.

The decision of the National Commission for Securities and the Background Market<sup>6</sup> provides for the introduction of an electronic document flow and a means of electronic communication for a mutual exchange of necessary information between the Central Depository, depository institutions and joint-stock companies; the ability to sign basic documents with a qualified electronic signature (protocol on the results of registration, protocol on the results of voting, protocol of general meetings, etc.); optimization of the terms of adoption and publication of the main documents (for example, publication of a decision no later than 1 day after its adoption).

The peculiarity of remote general meetings of shareholders is that they are held without the actual participation of shareholders in the discussion of agenda items and without the format of a meeting in real time using means of video communication.

The supervisory board of a joint-stock company concludes an agreement on the provision of services for holding remote general meetings

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<sup>6</sup> Decision of the NSSMC “On Amendments to the Temporary Procedure for Convening and Remotely Holding a General Meeting of Shareholders and a General Meeting of Corporate Investment Fund Members” No. 176, approved on 16 March 2022. Retrieved from <https://document.vobu.ua/doc/10653>.

of shareholders with the Central Depository of Ukraine. Notices to shareholders of general meetings are issued by professional participants through the depository system of Ukraine. Messages to shareholders are sent using e-mail, mobile communication, other methods specified by the contract and/or internal documents of professional participants of the depository system of Ukraine.<sup>7</sup>

After receiving a notice of the general meeting, a shareholder has the right to receive information on the agenda by sending a request to the company using the e-mail address specified in the notice of the general meeting. The shareholder's request must be signed using the shareholder's qualified electronic signature or other means that provides identification and confirmation of the sending of the document by a person. The company's responsible person sends the relevant documents to the shareholder's e-mail address from which the request was sent along with the certification of the documents with a qualified electronic signature. Electronic documents or their copies on the items of the agenda are provided to the shareholder free of charge. In addition, the supervisory board of a joint-stock company can post all important information on its website. All documents posted on the website of a joint-stock company must be signed with a qualified electronic signature of an authorized person from the company.

In order to register shareholders for participation in a general meeting, shareholders (their representatives) submit ballots for voting to the depository institution that maintains the securities account on which the shares of the company owned by shareholders are recorded. The ballot for voting at a general meeting is certified with a shareholder's (his representative's) quali-

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<sup>7</sup> Decision of the NSSMC "On the procedure for sending notices to shareholders through the depository system of Ukraine" No. 148, approved on 7 March 2017. Retrieved from <https://zakon.rada.gov.ua/laws/show/z0408-17#Text>.

fied electronic signature. The ballot paper is sent to the depository institution to the e-mail address specified by the depository institution. The depository institution sends all the information about shareholders to the Central Depository. The Central Depository consolidates the information into a single document within one working day after receiving the necessary documents. It is a list of shareholders who submitted ballots for participation in remote general meetings. The Central Depository sends the list of shareholders to the supervisory board of the joint-stock company in electronic form. After that, the registration commission draws up a protocol on the results of the registration of shareholders (their representatives). The registration of shareholders (their representatives) is carried out by comparing the data of the list of shareholders who have the right to participate in the general meeting with the data of the list of shareholders who submitted ballots for participation in the remote general meeting.

The supervisory board of a joint-stock company elects the chairman and secretary of the general meeting. Voting at the general meeting begins at 9 o'clock on the day indicated as the date of the posting of ballots. Voting at the general meeting ends by 6 p.m. on the day specified in the notice of the general meeting. The form and text of the ballot are approved by the supervisory board of the joint-stock company. The ballot for voting at the general meeting is certified in one of the following ways at the option of a shareholder: 1) with the help of a shareholder's (his representative's) qualified electronic signature; 2) notarially, provided 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 a shareholder, provided that the ballot is signed in the presence of an authorized person of the depository institution.

The votes at the general meeting are counted by a counting commission, which draws up a protocol signed by all the members of the company's counting commission. The protocol on the voting results is signed with a qualified electronic signature of each counting commission member. Protocols of voting results at the general meeting are made available to all the shareholders along with the protocol of the general meeting on the website of the joint-stock company.

The protocol of the general meeting is 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 receipt of the original ballots for voting at the general meeting. The protocol of the general meeting is signed with a qualified electronic signature of the chairman of the meeting, the secretary of the meeting and the executive body of the company. The protocol of the general meeting of shareholders is posted on the website of the joint-stock company within one working day from the date of its compilation.

#### **4. Peculiarities of holding general meetings of shareholders under the new Law of Ukraine “On Joint Stock Companies”, which will enter into force in 2023**

According to Directive 2007/36/EC of the European Parliament and the Council dated 11.06.2007, the company must ensure equal rights to all shareholders who are in the same position with regard to participation and the exercise of voting rights in the general meeting (Article 4). Member States should allow companies to offer their shareholders any form of participation in general meetings using electronic means: broadcasting of general meetings in real time; two-way communication in real time, which

allows shareholders to address the general meeting from a remote location; the voting mechanism either before or during the general meeting, without the need to appoint a proxy who is physically present at the meeting (Part 1, Article 8).<sup>8</sup>

An important area of a new Law “On Joint Stock Companies”, which is to enter into force in Ukraine on 1 January 2023, is the improvement of corporate governance in joint stock companies. Under the new Law, it is possible to choose the management structure of a joint-stock company: one-level or two-level. The general meeting of participants, which makes the company’s strategic decisions, is its highest management body. Parts 1, 2 of Art. 38 of the Law of Ukraine “On Joint-Stock Companies” provide for the following methods of holding general meetings of shareholders, namely:

- 1) in-person voting (hereinafter referred to as in-person general meetings);
- 2) electronic voting (hereinafter referred to as electronic general meetings);
- 3) survey (further – remote general meeting).

Face-to-face general meetings provide for the joint presence of shareholders (their representatives) on the day and time of a general meeting at the place of its holding for discussion and decision-making on the agenda. Electronic general meetings do not involve the joint presence of shareholders (their representatives) and are held exclusively by electronic absentee voting of shareholders using an authorized electronic system. Remote general

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<sup>8</sup> Directive 2007/36/EC of the European Parliament and the Council of 11 June 2007 on the exercise of certain rights of shareholders in listed companies. Official Journal of the European Union. L 184/18. 17.7.2007. Retrieved from [https://minjust.gov.ua/m/str\\_45877](https://minjust.gov.ua/m/str_45877).

meetings do not involve the joint presence of shareholders (their representatives) and are held by remote filling in ballots by shareholders and sending them to the company through the depository system of Ukraine.<sup>9</sup>

It follows from the above provisions that the methods of holding general meetings of shareholders have been expanded to three options. However, such methods involve either the actual participation of shareholders at the place of holding a general meeting of shareholders, or remote vote using an authorized electronic system, or filling in a voting ballot. That is, in a specified format of the statement of norms, the possibility of holding general meetings with the help of various forms of participation in voting is allowed. But the regulation on the forms of shareholder participation in a general meeting in real time using video communication means, where it is possible to participate remotely in the discussion of the issues on the agenda of a general meeting of shareholders, is deliberately bypassed.

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<sup>9</sup> Draft Law of Ukraine “On Joint Stock Companies” No. 2493 dated 25 November 2019. Retrieved from [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=67468](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=67468).

## 5. Conclusions

Consequently, Ukrainian legislation has been in a state of gradual changes in the shareholding legislation for the past few years. At the challenge of time, joint-stock companies concentrate the organization of company activities through the use of electronic document management and electronic means of communication that meet the European standards. However, as of today, there is no regulation of the essence of the forms of participation in general meetings of shareholders, which would provide for the specifics of holding face-to-face, remote and electronic general meetings. In this regard, it should be observed that the new Law of Ukraine “On Joint Stock Companies” allows face-to-face general meetings to be held at the location of the company with the possibility of virtual participation of shareholders in the general meeting through video communication means. Electronic general meetings can be held in a video conference mode, which allows all shareholders to be seen and heard in real time with a defined electronic voting mechanism. Finally, remote general meetings can be held by absentee voting using electronic and postal means. This will be another incentive to promote the inflow of foreign investments into the economy of Ukraine and increase confidence in doing business on the territory of Ukraine.

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