

## Newsletter

### *Practical difficulties in holding annual and extraordinary general meetings of shareholders and the impact of COVID-19 coronavirus on corporate governance*

April 6<sup>th</sup>, 2020

#### Dear Ladies and Gentlemen,

Spring is a busy period in terms of corporate governance. It involves the computations, confirmations and conclusions related to the results of the previous financial year, when the following decisions are needed among others:

- Approval of annual reports and annual financial statements;
- Election of a new Board of Directors;
- Election of an internal Auditor and/or members of internal Audit Commission;
- Approval of company's external auditor.

To resolve these issues, it is necessary to convene a general meeting of participants or shareholders (hereinafter General Meeting of Shareholders (**GMS**)), or General Meeting of Participants (**GMP**), for whom the term, according to the general rule, expires on April 30<sup>th</sup> for limited liability companies (LLC) and on June 30<sup>th</sup> for joint-stock companies (JSC).

As a general rule, the general meeting of shareholders has a right to consider the said issues, only within the framework of voting in person<sup>1</sup>.

In connection with the imposition of restrictive measures to combat the spread of coronavirus, many companies have faced difficulties in holding a physical meeting. For these reasons, the legislator and the regulator have taken a number of measures. On March 18<sup>th</sup>, 2020, the Federal Law No. 50-FZ<sup>2</sup> ("**Law**") came into force (except for certain provisions). It introduced amendments to the organization of general shareholder meetings in joint-stock companies, in 2020.

According to Article 2 of the Law, to reduce the number of activities involving large concentrations of people due to the spread of coronavirus infection COVID-19 from **18<sup>th</sup> March till the end of 2020**, the GMS, which is scheduled to address the above issues, **can be held in absentia**. The decision to hold the meeting in absentia is taken by the Board of Directors (the Supervisory Board), and in its absence, the decision should be taken by the appropriate governing body, whose competence includes the issues of convening and holding shareholder meetings.

If the Law does not provide any specific reference to the type of company, Article 2 applies to any joint-stock company, both public and non-public. Please note that the Law does not apply to other organizational and legal forms of legal entities, nor to other meetings (e.g., the annual meeting of owners of investment units of Closed-End Investment Funds), which are necessarily provided for by law.

In addition to the Law, on April 3<sup>rd</sup>, the Central Bank of the Russian Federation issued clarifications<sup>3</sup> stating that the **in-person form of already-appointed GMS can be changed to an in-absentia form**. The decision to change the form can be taken by the body that summoned the GMS. At the same time, the shareholders should be immediately informed about the change in the form of the meeting.

<sup>1</sup> Paragraph 2 of Article 50 of the Federal Law of December 26, 1995 No. 208-FZ "On Joint-Stock Companies"

<sup>2</sup> Federal Law of March 18, 2020 No. 50-FZ "On the acquisition of ordinary shares of PAO Sberbank of Russia by the Government of

the Russian Federation from the Central Bank of the Russian Federation, and invalidating certain provisions of the legislation of the Russian Federation"

<sup>3</sup> Information letter of the Central Bank of the Russian Federation on holding general meetings of shareholders in 2020 dated April 3, 2020 No. IN-06-28/48

Furthermore, on April 2nd, the Federation Council approved the bill 771509-7<sup>4</sup> that was previously adopted by the State Duma. According to the bill, the GMS and a similar annual meeting of participants of limited liability companies are allowed to be held on or before September 30th, 2020. In connection with the rescheduling, companies may postpone the general meeting until the crisis is over, or conditions improve.

The bill also provides for easing corporate requirements for companies, in 2020, as follows:

- Reducing the value of net assets of a LLC, or a JSC, below the amount of share capital, by the end of 2020, does not entail an obligation to reduce the share capital, nor liquidate the company;
- Annual consolidated financial statements in 2020 are to be submitted within 180 days after the end of the reporting year, at the latest;
- A Public Joint-Stock Company can buy back their shares in 2020 under a simplified program, through a broker and at a market price.

It is expected that the bill will be signed by the President in the near future, following which, its provisions will come into force.

It should also be noted that, under the current regulation, a meeting, in the form of a joint presence, is also permitted to be held using information and communication technologies that enable remote participation in the meeting,

discussion of the agenda and decision-making on issues put to vote<sup>5</sup>. This method can be chosen as an alternative to absentee voting. In this case, it is necessary to take into account the requirements for the procedure for confirmation of the fact of decision-making and the composition of shareholders present.

Please note that, due to the fact that the legislator provides the opportunity to hold the GMS in absentia, or by remote voting, the failure to conduct the GMS within the time allowed by law, by reference to force majeure circumstances in the form of COVID-19, is not allowed and may lead to negative consequences, up to and including administrative liability.

Despite the above-mentioned legislative and regulatory measures, the legislator has not yet proposed a solution to the issue regarding the procedure for holding GMS and GMP by personal attendance, which requires a notarial certification. At the moment, no remote notarial certification mechanism has been introduced either for deals or decisions of GMS/GMP and, if all participants/shareholders cannot gather in one place, alternative solutions should be sought.

If you have any difficulty in holding a physical / in presence general meeting, including with the notary, ALRUD lawyers will be happy to help you.

We will closely monitor trends in court practice, statutory regulation, and promptly inform you about any changes taking place.

We hope that the information provided herein will be useful for you. If any of your colleagues would also like to receive our newsletters, please send them the link to complete a [Subscription Form](#). If you would like to learn more about our [Corporate and M&A Practice](#), please let us know in reply to this email. We will be glad to provide you with our materials.

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If you have any questions, please, do not hesitate to contact ALRUD partners

Sincerely,  
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<sup>4</sup> Draft law 771509-7: "On amendments to certain legislation of the Russian Federation as it pertains to unification of the content of annual reports of State corporations (companies), public companies, and to establishing the specifics of corporate relations regulation in 2020, and on suspension of provisions of certain legislation of the Russian Federation"

<sup>5</sup> Paragraph 11 of Article 49 of the Federal Law dated December 26, 1995 No. 208-FZ "On Joint-stock Companies."