

Shareholders and Associates*

1. Introduction

by Emőd Veress

2. The Czech Republic

by Kateřina Eichlerová

3. Croatia

by Marko Ivkošić

4. Hungary

by Judit Barta

5. Poland

by Paulina Ledwoń

6. Romania

by Emőd Veress

7. Serbia

by Borko Mihajlović

8. Slovenia

by Gregor Dugar and Jernej Renko

9. Slovakia

by Žofia Mrázová

10. Conclusions

by Emőd Veress

1. Introduction

The general meeting is the primary forum in which the collective will of the shareholders is articulated and, within the limits imposed by law and the constitutive documents, made legally operative. In most corporate forms, the general meeting is neither a management body nor a mere ceremonial gathering; it is rather a decision-making organ to which the legislature and the company's internal governance instruments allocate defined competences. Typical matters reserved for the general meeting include, inter alia, the election, removal and remuneration of directors (and, where relevant, members of a supervisory board); the approval of annual financial statements and the allocation of profits (including dividend declarations); amendments to the constitutional documents; capital increases and reductions (with or without disapplication of pre-emption rights); approval of major transactions (mergers, demergers, acquisitions, and disposals of relevant material assets); appointment of statutory or external auditors; and decisions relating to winding up and dissolution. According to the legal literature,

* Eichlerová, K., Ivkošić, M., Ledwoń, P., Veress, E., Barta, J., Dugar, G., Renko, J., Mihajlović, B., Mrázová, Ž. (2025) 'Shareholders and Associates' In Veress, E. (Ed.) Joint Stock and Limited Liability Companies in East Central Europe. Miskolc-Budapest: Central European Academic Publishing. pp. 281–400. https://doi.org/10.54171/2025.ev.jsllcece_chapter4

‘matters which relate to the fundamentals of the company or the internal relationship between the shareholders are to be decided by the shareholders themselves. The same applies to the relationship between the company and the members of its management body. A comparative legal analysis shows that the matters assigned to the shareholders are mostly specifically enumerated where by contrast the management body is tasked with managing the business of the company without a more detailed description.’¹

The decisional process ensures that the shareholders’ collective voice is reflected in decisions which shape the company’s future. The legitimacy of decisions made at these meetings hinges on adherence to procedural requirements. The procedural requirements for convening, conducting, and recording general meetings, such as notice periods, quorum thresholds, and agenda specifications, are critical for ensuring transparency and legitimacy. Decisions are formalised through resolutions, which may require ordinary or qualified majorities depending on their nature.

Collective decision-making at general meetings rests on a small set of durable principles. The first is shareholder sovereignty: within the confines of statute and the company’s constitution, shareholders are the ultimate residual authority on matters that reshape the enterprise, electing and removing directors, approving accounts and distributions, amending the articles, or consenting to transformative transactions. This is the practical expression of shareholder democracy and ensures that those who bear the residual risk retain a decisive voice in the company’s strategic direction.

Second, agency theory explains why the general meeting matters in day-to-day governance. Because ownership and control are separated, agency costs inevitably arise. The general meeting provides a formal forum for scrutiny, questioning management, testing disclosures, approving remuneration policies, and signalling consent or dissent through votes. In doing so, it helps align managerial conduct with shareholder interests, reduces information asymmetry, and curbs conflicts of interest.

Third, a system of checks and balances preserves institutional equilibrium. Decisions of the general meeting do not replace, but rather complement, the supervisory and oversight functions of boards of directors (and, where applicable, supervisory boards or audit committees). Properly observed procedural safeguards reinforce this balance, and include notice, quorum, disinterested voting where conflicts exist, and transparent minute-taking, among others. The relationship between shareholders in the general meeting and directors in board meetings ensures that no single organ wields disproportionate influence, theoretically fostering an equitable governance framework that is capable of withstanding legal and commercial scrutiny.

Voting rights are fundamental to shareholder participation in corporate governance. Shareholders exercise their influence on corporate decisions primarily through voting at general meetings. The foundations of voting are grounded in key guiding principles that shape its role in corporate governance. The proportionality

1 Roth and Kindler, 2013, p. 80.

principle establishes that voting rights are typically aligned with the number of shares held by each shareholder, reflecting their financial stake in the company. This ensures that decision-making power is proportional to ownership, preserving equity in influence. Complementing this is the equality principle, which upholds that all shareholders possessing the same class of shares are entitled to equal voting rights. This principle promotes fairness and prevents discrimination, ensuring uniform treatment within shareholder classes. Finally, the concept of corporate democracy supports the essence of voting rights, providing shareholders with a means to express their preferences and participate actively in decisions on crucial issues. Together, these principles form the cornerstone of a fair and democratic voting system within corporate structures.

However, voting rights may be differentiated based on share classes (e.g. ordinary shares with voting rights, preference shares with limited or no voting rights, and shares with multiple voting rights). Modern company law and corporate governance recognise the need to balance majority rule with minority protection, preventing misuse of voting power to the detriment of other shareholders. Unlike political democracies grounded in the “one person, one vote” equality principle, corporate democracy allocates influence in proportion to economic contribution, typically “one share, one vote”, or, where lawfully provided, enhanced or limited voting power per share. This proportionality is a distinctive feature of company law: it aligns control with capital at risk, while remaining bounded by statutory and contractual safeguards for minority shareholders.

The dynamics between majority and minority shareholders play an important role in corporate governance. While majority shareholders wield significant influence, minority rights ensure equitable treatment and prevent abuse of power. The theoretical bases of corporate decision-making are fixed in the design of majority rule and minority protection. The majority rule dictates that decisions within a company are generally determined by the votes of the majority, aligning corporate actions with the preferences of stakeholders holding the larger financial interest. This ensures efficiency in decision-making and reflects the democratic structure of corporate governance. At the same time, the principle of minority protection ensures that the rights of minority shareholders are safeguarded against potential oppressive actions by the majority. Legal frameworks underpin this protection by granting minority shareholders the ability to challenge unfair decisions, access critical corporate information, and participate in significant corporate actions.

Minority rights in company law serve as critical safeguards to ensure the equitable treatment of all shareholders, regardless of the size of their stake. It has been emphasised that

‘as firms grow, ownership eventually separates from control. Hence, corporations end up being run by professional managers with no or very little equity ownership on behalf of the owners or the shareholders. However, (...) this is only an accurate description of the Anglo-American system of corporate

governance. Indeed, in the rest of the world most stock-exchange listed firms have large shareholders that have a substantial degree of control over the firm's affairs (...) These corporations have two types of shareholders: the controlling shareholder(s) and the minority shareholders. While the former type has enough control over the firm's affairs to dominate or at least influence its decision-making process the latter lack power to intervene. As a result, the main corporate governance problem in most corporations across the world is not the classic agency problem between the managers and the shareholders, but the potential expropriation of the minority shareholders by the controlling shareholder.²

Among the most fundamental of these rights is the right to information, which grants minority shareholders access to key documents, such as financial statements, meeting minutes, and other essential records. This transparency helps mitigate information asymmetry, empowering minority shareholders to make informed decisions and hold the company accountable. Additionally, minority shareholders have the right to participate in corporate decision-making. Even if their voting power is limited as a result of their smaller shareholding, their participation ensures that their perspectives and interests are not completely disregarded in pivotal matters affecting the company. The right to challenge decisions is another cornerstone of minority shareholder protections. When resolutions are perceived to be harmful, oppressive, or in violation of legal or procedural standards, minority shareholders can contest these decisions, often through judicial review. This right serves as a check on potential abuses of power by the majority and reinforces the principle of fairness within the company. Derivative actions further enhance the ability of minority shareholders to protect their interests and the integrity of the company. Through these actions, minority shareholders can initiate legal proceedings on behalf of the company to address instances of managerial misconduct or breaches of fiduciary duty. By enabling such recourse, derivative actions help ensure that the company's leadership remains accountable and aligned with the best interests of all shareholders. Together, these rights provide minority shareholders with essential tools to participate actively in corporate governance, safeguard their interests, and contribute to the company's overall health and transparency.

For cooperation between shareholders, specific contracts, called shareholders' agreements, can play a decisive role. Shareholders' agreements are private contracts among shareholders that govern their rights, obligations, and relationships within the company. These agreements often address issues not covered in corporate bylaws or the articles of association. Shareholders' agreements embody the principle of freedom of contract (contractual autonomy), allowing parties to customise arrangements to suit their needs. These agreements provide flexibility to address unique concerns of shareholders while offering certainty through binding commitments.

2 Goergen, 2012, p. 13.

Shareholders' agreements often contain key provisions that establish a framework for governance and collaboration among shareholders. One significant aspect is voting arrangements, which specify how shareholders will vote on critical issues, such as the appointment of directors or the approval of major transactions. These arrangements help align decision-making processes with the shared goals of the shareholders. Another essential component is the inclusion of share transfer restrictions, which outline conditions for the sale or transfer of shares. Common clauses include the right of first refusal, which ensures existing shareholders have the opportunity to purchase shares before they are offered to external parties, and drag-along or tag-along rights, which provide mechanisms to protect minority or majority shareholders during transactions involving the sale of the company. Dispute resolution mechanisms also play a vital role, offering structured procedures to address conflicts among shareholders. These mechanisms often involve mediation or arbitration, ensuring disputes are handled efficiently and without escalating to lengthy litigation. Additionally, shareholders' agreements may include provisions for management participation, granting specific shareholders the ability to influence key decisions within the company. Such arrangements ensure that certain stakeholders have a voice in the strategic direction and operational governance of the business. By incorporating these provisions, shareholders' agreements provide clarity, prevent disputes, and foster a collaborative environment aligned with the interests of all parties. Shareholders' agreements complement corporate governance structures by addressing potential conflicts and aligning shareholder expectations.

Finally, the control of legality in general meetings' resolutions is essential to ensure decisions comply with legal requirements, the company's governing documents, and principles of fairness. The theoretical foundation for controlling the legality of corporate resolutions is rooted in several key concepts. Central to this is the rule of law, which mandates that all corporate decisions comply with statutory requirements and the provisions outlined in the company's articles of association. Adherence to these legal frameworks is essential for protecting the interests of stakeholders and ensuring that corporate governance operates within established boundaries. Judicial oversight serves as a critical element, whereby courts act as arbiters in disputes concerning the legality of corporate resolutions. By providing a mechanism for review and enforcement, courts ensure that corporate actions align with legal and ethical standards.

Corporate integrity captures the idea that legality and transparency are not formalities but the operating system of sound governance. Where processes are documented, disclosures are timely and accurate, and decisions track statutory and constitutional requirements, investor confidence deepens, the cost of capital falls, and the credibility of the company's institutions (board, committees, and the general meeting) is sustained. A culture of compliance, supported by internal controls, audit functions, and clear record-keeping, turns these norms into day-to-day practice. Together, these elements form the backbone of a fair and resilient corporate governance framework, ensuring that resolutions are taken in accordance with legal and ethical obligations and can withstand scrutiny by courts, regulators, and the market.

Legality control operates through both ex-ante safeguards and ex-post review. Pre-meeting requirements set the stage for lawful decision-making: proper authority to convene; observance of notice periods; clear agenda and supporting materials; verification of the record date and quorum; and, where relevant, class votes and conflict-management tools (e.g. related-party transaction procedures or “majority-of-the-minority” approvals). Procedural review seeks to clarify whether the meeting was duly convened and conducted, whether participation, voting, proxy use, and minute-taking complied with the statute, articles/bylaws, and any rules of procedure. Material irregularities may warrant adjournment, a re-run, or annulment. Substantive review examines the content of the resolution. While courts typically defer to business judgment or grant a margin of appreciation to shareholder majorities, they intervene where decisions are *ultra vires*, unlawful, tainted by fraud or bad faith, oppressive/unfairly prejudicial to minorities, or in breach of fiduciary duties.

Remedies match the defect. They include declarations of nullity or voidability, injunctions to restrain implementation, orders for corrective action (rectification of the register or minutes, convening a new meeting, and re-tabulation of votes), and, where loss is proven, damages against the company or responsible officers. Derivative claims may be available where the company is the primary victim; interim relief can preserve the status quo pending determination. Standing, limitation periods, and burden of proof are typically specified by statute and must be observed. Collectively, these mechanisms uphold the integrity of corporate decision-making, deter abuses of power, protect shareholder rights, and safeguard the interests of stakeholders, who rely on lawful and transparent governance.

2. The Czech Republic

2.1. General Introduction

The status of shareholders in limited liability companies (LLCs) and joint-stock companies (JSCs) has many of the same elements but differs in many ways. The protection of the shareholder’s position in an LLC is primarily based on their right of ‘veto’. They must always agree to the interference with their position (ex-ante protection), while the protection of any shareholder’s position in a JSC is based on the possibility to leave the company in cases of a change in their position as a result of exercising the right of redemption.³

Primarily, in both companies, the status of the shareholders is based on their shares. Both companies can create different types of shares in terms of content (see Chapter 3).

3 The consent of all the shareholders concerned is required only if a decision is taken to merge shares or to change the type of shares into non-voting shares (Article 417(4), BCA). However, this is a very exceptional case.

A special category comprises the rights of qualified shareholders, which are granted by law to a shareholder or group of shareholders if they reach the statutory share in the share capital or voting rights. Qualified shareholders' rights derive from the law or the memorandum or articles of association and are not directly part of a specific shareholding, but belong to a shareholder if, in aggregate, all their shares or together with other shareholders, reaches the proportion of the share capital prescribed by law or the articles of association by law or the articles of association. In other words, they are 'additional' rights that are activated at a certain share size.

2.2. Rights of Shareholders to Participate in Company Management

Shareholders in both companies have the right to participate in the management of the company. This right includes a number of sub-rights. The first is the right to participate in the general meeting. The exercise of this right presupposes that the general meeting is convened in time, that the agenda is set so that the shareholder can prepare for the meeting, and that the place and time of the general meeting are appropriately chosen. The right to participate in the general meeting includes the right to be present at the general meeting in person or together with an advisor or to participate in the general meeting in any other way, if the memorandum or articles of association so permit, or to participate in the general meeting by proxy. The right to participate in the decision-making of the general meeting, if the general meeting is to take decisions outside the meeting, includes the right to be informed in good time of the draft decision of the general meeting and to have the opportunity to vote on it.

Another sub-right is the right to influence the agenda of the general meeting. A qualified shareholder has the right to add additional items to the agenda and to convene a separate general meeting. Each shareholder has the right to make proposals and counterproposals on the items included.

Among the partial rights in the aggregate constituting the right to participate in the management of the company are the right to protest and the right to file a petition with the court to declare the general meeting resolution invalid.

Probably the most important right of a shareholder is the right to vote on motions for resolutions at the general meeting. The current Czech legislation is not based on the principle of "one share-one vote", which means that the share of voting rights should correspond to the share in the share capital. In fact, shares may be created which do not have voting rights attached to them or, on the contrary, shares with multiple votes may be created.

There must be at least one share with voting rights in an LLC. If the decision to change the content of the memorandum of association in an LLC affects the rights and obligations of a shareholder, the consent of the shareholder who owns a non-voting share is also required (Section 171(2), Business Corporations Act (BCA)). In a JSC, voting rights must be attached to shares whose aggregate nominal value amounts to at least 10% of the share capital (Section 276(2), BCA). Where voting by class of shares is required, shareholders also vote with shares without voting rights. For these cases, the articles of association must include a determination of the

number of votes also for non-voting shares (Section 250(2)(e), BCA). Thus, it would be more accurate to speak of shares with limited voting rights.

A distinction is made between preventive and ex-post suspension of voting rights (*sistace hlasovacích práv*).⁴ Preventive suspension of voting rights refers to conflicts of interest. In preventive suspension of voting rights, the shareholder is excluded in advance from the decision-making process. Meanwhile, the ex-post suspension of voting rights refers to the case when the court, upon the motion of the one who demonstrates a legal interest, decides that the shareholder's vote is not taken into account because they have abused the voting right to the detriment of the whole (Section 212(2), Czech CC).

In the case of preventive suspension of voting rights, the shareholder cannot vote or have their votes counted towards the quorum of the general meeting (Sections 173 and 426, BCA), but their other rights are not affected. Even if voting is prohibited, a shareholder has the right to participate in the general meeting, to make motions and countermotions, to request information, to participate in the debate, to protest or, subsequently, to apply to the court for a declaration that the resolution of the general meeting is invalid. The right to vote is not excluded by law for all conflicts of interest between a shareholder and the company, but only for the cases listed by law, which may be extended by the memorandum or articles of association for important reasons. Among the cases of suspension of voting rights set out in the law are:

- a) default in meeting the contribution or, in the case of an LLC, the surcharge obligation to the extent of the default;
- b) deciding on a contribution in kind;
- c) deciding on the waiver of the obligation;
- d) deciding on the removal from office of a director for breach of duty in the performance of their duties;⁵ and
- e) in an LLC, deciding on the exclusion of a shareholder from the company or filing a motion for their exclusion with the court.

If a shareholder is in default in meeting the contribution obligation or surcharge obligation, that shareholder may not vote at all on any matters to the extent of the default. Other cases are directed only at specific matters on which the prohibition on voting applies. In these other cases, the prohibition on the exercise of voting rights applies not only to the shareholder directly concerned (e.g. when a decision is taken on their contribution in kind) but also to the shareholder acting in concert with them, unless they are all acting in concert. Typical examples of partners acting in concert are close persons (e.g. spouses).

⁴ Kovaříček, 2020, pp. 162 et seq.

⁵ The courts have held that if the voting rights of a shareholder who is removed from the office of a director for breach in the performance of their duties are to be eliminated, the reason for the removal must be sufficiently specified in the invitation (Judgment of the Supreme Court in case No. 27 Cdo 1175/2021).

There are discussions about whether the statutory cases of suspension of voting rights can be narrowed by the articles of association compared to the law. J. Dědič suggests that the nature of these rules is not *per se* mandatory and the nature of the prohibition must be examined on a case-by-case basis. He concludes that they would, for example, allow a derogation from the prohibition of voting rights in the event of removal from office for misconduct in the performance of their duties, because there are other ways of terminating the office (a decision on disqualification from office by a court pursuant to Section 63 ff, BCA).⁶ However, this discussion is in the early stages and therefore, it is difficult to predict how it will develop.

A special law may extend the scope of cases of prohibition of exercising voting rights. For example, pursuant to Section 54 of Act no. 37/2021 Sb., on the registration of beneficial owners (*o evidenci skutečných majitelů*), the absence of the registration of the beneficial owner of the company in the register of beneficial owners results in the prohibition of the exercise of voting rights. The BCA itself provides for other cases of prohibition of exercising voting rights (e.g. when acquiring own shares).

It is up to the chairman of the general meeting, as the guardian of legality, to assess whether the voting rights of a shareholder have been suspended in a particular case.⁷ It is their responsibility to assess correctly whether there has been a suspension of voting rights. The High Court in Prague takes the opposite view.⁸ According to the court, the chairman of the general meeting is not entitled to assess whether the conditions for the suspension of voting rights have been fulfilled; only the court can examine whether the conditions have been fulfilled in proceedings for the annulment of the resolution of the general meeting. I agree with J. Flídr that this opinion of the court is not correct. That judicial opinion is contrary to the overall approach to the legal relevance of the announcement of the result of the vote by the chairman of the general meeting. If their assessment of the voting rights system were not legally relevant, then other factual and legal issues for the chairman to assess (e.g. whether a quorum is present at a general meeting, what majority is required in a particular case, whether to vote by class of shares, etc.) could not be legally relevant either, and the entire approach of doctrine and case law to the announcement of the result of a vote as a formalised conclusion to the vote would fall apart. The existing long-standing approach that if the chairman of a general meeting has declared a resolution passed, the presumption of validity applies in respect of that resolution unless one of the persons entitled to vote invokes its invalidity, serves to protect the company and the stability of its internal affairs.

The right to information is one of the core rights of a shareholder. Sufficient information about the company is a prerequisite for the proper exercise of the right to participate in the management of the company in general, as well as its constituent

6 See Dědič, 2023.

7 Flídr, 2024, pp. 24 et seq.

8 Judgment of the High Court in Prague case No. 68/2022.

sub-rights (e.g. the right to vote, and the right to submit proposals and counter-proposals at the general meeting).

There is a significant difference between the right to information of a shareholder in an LLC and a shareholder in a JSC. While a shareholder in an LLC is entitled to extensive information rights and extensive control rights, a shareholder in a JSC is entitled only to a right of explanation, not to general control of the management board. In the two-tier model, a special body, the supervisory board, is created for the purpose of controlling the board of directors. In a one-tier system, the management board also performs this function in relation to itself. A very limited shareholder control right in a JSC can be seen in the special right of qualified shareholders to ask the supervisory board to review the board of directors' action on a particular matter (Section 370, BCA) and in the right to bring a shareholder action (Section 371 ff, BCA).

The difference in the scope of the right to information is clearly visible, for example, in the fact that a shareholder in an LLC has the right in principle to know the company's trade secrets,⁹ whereas a shareholder in a JSC does not.

In an LLC, in addition to the right to information, shareholders have the right to direct control of the managing directors, namely, the right to inspect the company's documents (Section 155 ff, BCA). The scope of the shareholder's right to information in the broad sense (including the right of control) is similar to the regulation for partners in partnerships and silent partners. A shareholder may request only such information as is necessary to obtain a reasonable overview of the company's affairs and to properly exercise their rights. Such information includes, in particular, information on the extent and structure of the company's assets and on major legal transactions which may affect those assets, even if they are protected as trade secrets.¹⁰

Publicly available information is excluded from the range of information provided only for the purpose of reducing the administrative burden on the part of the company, as well as classified information which the company may not provide to the shareholders based on a special law anyway, unless the shareholders meet the legal conditions for obtaining it. Unlike a JSC, a shareholder may exercise the right to information against the managing director at any time, not only at the general meeting.

The Supreme Court has admitted that the memorandum of association of an LLC may, to a certain extent, regulate the right to information differently from the law, so that the range of information provided may be narrowed, expanded or the conditions for providing it may be tightened.¹¹ However, according to the Supreme Court, the right to information cannot be completely withdrawn from the shareholder, nor can it be marginalised in such a way that the shareholder is effectively deprived of the possibility to participate in the management of the company. In my opinion, the modification of the right to information in the memorandum of association is possible but very limited. The right to information can be extended to publicly available information,

9 Judgment of the Supreme Court case No. 29 Cdo 3704/2009.

10 Judgment of the Supreme Court case No. 27 Cdo 368/2019.

11 Judgment of the Supreme Court case No. 27 Cdo 2708/2018.

but not to classified information. The narrowing can only apply to trade secrets. The tightening of the conditions for the provision of information is conceivable to the extent and in the manner provided by law for a JSC. The right to information must remain to the extent that the shareholder can exercise inalienable control rights (e.g. file a shareholder action) and can exercise rights at the general meeting.¹²

The right to information is generally barred by the expiry of 1 month from the date on which the company refuses to provide the requested information without the requesting shareholder having applied to the court (Sections 156(2) and 360(3), BCA). However, the right to specific information is not extinguished in the case of information necessary for the exercise of a shareholder's inalienable control rights and information relating to matters discussed at a general meeting.¹³

A shareholder's request for information does not have to be justified.¹⁴

In the case of an LLC, the following case law conclusions also apply. The period in respect of which a shareholder requests information is not limited to the period for which they are a shareholder. A shareholder may request information from the managing director and inspect the company's documents and check the data contained therein even during the period when they were not yet a shareholder.¹⁵ The failure to disclose the requested information for a prolonged period of time, to provide documents relating to the company's customers and suppliers, and to disclose complete accounts may constitute a reason that the shareholder cannot fairly be required to remain in the company, and therefore, a reason that their participation in the company may be terminated by the court on their application.¹⁶

A shareholder in a JSC has a more limited right to information about the company than a shareholder in an LLC. They can only request information about the company and the persons controlled by it if such information is necessary for the consideration of the matters put on the agenda of the general meeting or which they need for the exercise of their shareholder rights at the general meeting. The company will not provide information if it is classified information, inside information, trade secrets or any other information that could cause harm to the company or its controlled companies (e.g. confidential information). A shareholder may only apply to the court for a refusal to provide information after having unsuccessfully applied to the supervisory board in the case of a JSC with a two-tier model. An unlawful refusal to provide information may also be grounds for a court to declare a resolution of the general meeting invalid.¹⁷

Control rights include the right to bring a shareholder action. In an LLC, every shareholder has the right to bring a shareholder's action (*action ut singuli*, *actio pro socio*, derivative action), unlike in a JSC, in which this right belongs only to a qualified

12 Judgment of the Supreme Court case No. 27 Cdo 1385/2022.

13 Flídr, 2023, p. 88.

14 Judgment of the High Court in Prague case No. 7 Cmo 150/2022.

15 Ibid.

16 Judgment of the Supreme Court case No. 27 Cdo 368/2019.

17 Judgment of the Supreme Court case No. 29 Cdo 1970/2007.

shareholder. The purpose of a shareholder's action (Section 157 and 371 et seq., BCA) is to give the shareholder the option of defending the interests of the company in specified instances when the company itself or its boards are inactive. The essence of a shareholder's action is that the shareholder, as the company's representative, may bring an action on its behalf and at the company's expense against a specified number of persons for specified causes of action and represent the company throughout the proceedings.¹⁸ A shareholder may bring a shareholder's action against a director or an influential person, seeking compensation for damage caused to the company by them. A shareholder may also bring a shareholder's action against another shareholder for the fulfilment of a contribution obligation or, in the case of an LLC only, an action for expulsion of a shareholder from the company by the court for failure to fulfil a contribution obligation. This is a special case of representation of the company. A shareholder has the right to bring an action on behalf of the company only if the company is inactive, and therefore, they are obliged to first inform the competent boards of the company of their intention and allow them to defend the interests of the company.

A qualified shareholder, to whom the law grants special rights, is either an individual shareholder or several shareholders holding a qualified share. A qualified share in an LLC is a share to which contributions amounting to at least 10% of the share capital or to which a 10% share of voting rights is attached (Section 187, BCA). To qualify as a qualified shareholder, it is sufficient to meet one of these two conditions. Their alternative setting pursues the protection of the shareholder as an investor, and therefore, reference is made to the amount of the contribution, and the protection of the shareholder with regard to their actual position in the company, and therefore, reference is made to their voting power. In the context of a JSC, the status of the qualified shareholder depends on the share of the share capital. However, the limits are lower because a higher share capital is assumed. To qualify as a shareholder in a JSC with a share capital of 500,000,000 Czech koruna (CZK) or more, it is sufficient to own shares with an aggregate nominal value of at least 1% of the share capital. With a share capital of more than 100,000,000 CZK, at least 3% of the share capital is required. For share capital up to 100,000,000 CZK, a 5% share of the share capital is required.

In a memorandum or articles of association, the legal limits for qualifying as a shareholder cannot be increased and thus, the degree of protection of the shareholders reduced. However, the memorandum or the articles of association may grant the status of qualified shareholder to a wider range of persons than required by law. The statutory provisions setting the limits are unilaterally mandatory. It is also permissible for the statutory list of special rights belonging to a qualified shareholder to be extended by the memorandum or articles of association. Its narrowing is again excluded.

A qualified shareholder does not have to be the only shareholder, but may be placed in this position by agreement of several shareholders who may jointly exercise

18 Judgment of the Supreme Court case No. 29 Odo 871/2002.

the special rights granted to a qualified shareholder. The special rights attached to the status of qualified shareholder are not only conferred on the minority shareholders but also on the majority shareholder.¹⁹

The differences in the scope of rights of qualified shareholders between an LLC and a JSC are related to their nature. In both companies, a qualified shareholder has the right to request that the managing board convene a general meeting with a set agenda (Sections 187 and 366 et seq., BCA). The consequences of the managing board not granting the request are regulated differently by law. In such a case, a qualified shareholder in an LLC is entitled to convene the general meeting themselves; in a JSC, the qualified shareholder must apply to the court to authorise the convening of the general meeting.

A qualified shareholder also has the special rights indicated below (Sections 187 and 365 et seq., BCA).

The shareholder has the right to ask the managing director to place a matter designated by them on the agenda of the general meeting. In the case of a member of an LLC, this right is not expressly mentioned in the list of rights of a qualified shareholder, unlike a qualified shareholder in a JSC (Section 369, BCA). However, the existence of this right may also be inferred for a qualified shareholder by applying the *a maiori ad minus* argument.. If a qualified shareholder has the right to demand the convening of a general meeting, it follows all the more strongly that they have the right to demand only the addition of an item to the agenda. Adding to the agenda is also more economical than convening a separate general meeting.

A qualified shareholder has the right to request the appointment of an expert by the court to review a report on relations between related parties for serious reasons. A qualified shareholder has the right to have a relationship report, and thus, effectively a review of the performance of directors, reviewed by a person independent of the company's boards. Thanks to this right, the qualified shareholder can obtain the necessary information to decide whether there are grounds for filing a shareholder action against the directors or for other measures (e.g. filing a motion to remove a particular director from office or filing a shareholder action against an influential person, etc.).

A qualified shareholder in a JSC has the right to request the supervisory board to review the actions of the management board.

Meanwhile, in an LLC, any shareholder is entitled to bring a shareholder action, in a JSC only a qualified shareholder is entitled to bring a shareholder action.

Minority shareholders are defined by practice and doctrine as the other shareholders of a company that has a majority shareholder, or those shareholders who are not in the position of a majority shareholder. A minority partner may or may not be a qualified shareholder. If there are only two shareholders with equal shares in a company, the company has neither a majority nor a minority shareholder. If there

are four partners in the company, each with a 25% interest, the company has only minority partners.

For its protection, a minority shareholder may use the blocking minority and other rights that belong either to all shareholders (e.g. the right to information, the right to challenge the validity of a resolution of the general meeting), or only to qualified shareholders (e.g. the right to have an expert review the relationship report pursuant to Section 85, BCA), or in principle only to minority shareholders (the right to require the controlling person to buy out the minority shareholder's share under the conditions set out in Section 89, BCA).

Because the majority shareholder is able to use its votes to determine who will be the managing director or a member of the supervisory board, if one is established, it is essential for the protection of the minority shareholder that such directors maintain loyalty to the company and not to the majority shareholder. This is primarily the purpose of the concept of due diligence. However, if the minority shareholder is to be able to assess whether the directors are performing their duties properly, that is, in the interests of the company, they need sufficient information to do so. In particular, the following obligations ensure sufficient information about the company's functioning in legally qualified situations: the obligation for the company to submit public statements, the obligation to draw up a report on relations between related parties, the obligation to draw up an annual report, possibly certified by an auditor, and the obligation for directors to report conflicts of interest. In addition, a minority shareholder in an LLC may exercise the right of control vested in all shareholders. The minority shareholder may then consider filing a shareholder action based on the information obtained. This set of rules should have a preventive effect on the directors, so that they do not cause damage to the minority shareholders to the benefit of the majority shareholder, and can be used subsequently to remedy the damage.

Special protective rules are aimed at

- a) protecting the shareholder against a qualitative change of the share, that is, against change of their rights and obligations (ex-ante protection is enforced in an LLC, ex-post protection in a JSC),
- b) protecting against change of the shareholding structure (this is ensured, e.g. by a pre-emptive right when increasing the share capital) or
- c) protecting against depreciation of their share (right of redemption in a group of companies).

The protection of the minority shareholder is also ensured by the fact that in certain exceptional situations, they are allowed to terminate their participation in the company if it is not fair to require them to remain. These cases include the right of a shareholder to demand that the controlling person buy their share at a reasonable price (sell out) if the position of the shareholder has deteriorated significantly as a result of the influence of the controlling person on the company. The termination of a shareholder's participation in an LLC also occurs if the shareholder exercises the

right to withdraw from the company. A shareholder has the right to withdraw from the company if:

- a) the general meeting has decided to change the predominant nature of the company's business (Section 202, BCA),
- b) the general meeting resolves to extend the duration of the company (Section 202, BCA),
- c) the competent body of the company has not given its consent to the transfer of the share to another shareholder without a relevant reason or in cases in which it is obliged to give its consent under the articles of association (Section 207, BCA), or
- d) the general meeting has decided to impose a surcharge (Section 164, BCA).

In all these cases, the right to withdraw from the company can arise for the minority shareholder only on condition that they did not vote for the decisions of the general meeting because the majority shareholder either managed to force the adoption of the above decisions of the general meeting by the power of their votes or could have prevented them by the power of their votes. For the sake of completeness, I note that the right to withdraw from an LLC is supplemented by the right of a shareholder to request the court to dissolve their participation in the company.

2.3. The General Meeting

The general meeting is a permanent body that meets for deliberations or takes decisions outside the general meeting. That the general meeting may meet only once or twice a year does not change this. The general meeting is composed of all shareholders, regardless of whether they are present at the meeting itself or not.

The general meeting has primarily an internal function. Exceptionally, its decisions also have external effects (e.g. approval of a conversion project, and election or removal of a director). We distinguish between statutory competence and competence arising from the memorandum or articles of association. The legal competence may be extended by the memorandum or articles of association or, exceptionally, narrowed (this is subject to discussion).

The basic definition of the competences of the general meeting is contained in Sections 190(2) and 421(2) of the BCA. However, this is not an exhaustive list. Other cases are provided for directly by the BCA, such as approval of a damage settlement agreement pursuant to Section 53(3) of the BCA – the decision to prohibit the conclusion of a contract in the event of a conflict of interest of a director (Section 56(2), BCA), the approval of a contract for the performance of duties (Section 59(2), BCA) – or other laws (e.g. Section 17(1), Act no. 93/2009 Sb., on auditors (*o auditorech*) entrusts the appointment of the auditor to the general meeting).

The competences of the general meeting may also be extended by the memorandum or articles of association. The limit is the prohibition on interfering in the business management of the managing director and the prohibition to interfere in the controlling activities of the supervisory board, if established. However, this does

not preclude the general meeting from deciding on the principles of business management or control activities. Nor can it exclude the narrowing of the powers of the general meeting provided for by law. However, it is always necessary to consider what the purpose of including a particular matter in the statutory list is and whether it is consistent with corporate law for another body to decide on the matter. As an example of a permissible narrowing of the statutory competence, if a supervisory board is established, the election and dismissal of the managing director and the approval of their performance contract may be entrusted to its competence. In the case of both companies, it is conceivable that the general meeting will not decide to assume the obligations taken on behalf of the company before its incorporation and that the memorandum or articles of association will entrust this matter to the directors.

Unlike the general meeting of a JSC, the general meeting of an LLC may take over matters that are not entrusted to it either by law or by the memorandum of association. In this *ad hoc* extension of its competences, the general meeting of an LLC is limited by the fact that

- a) it must deal with a matter that falls within the competence of another body of the company (i.e. it cannot, e.g. reserve to itself the amendment of the content of the memorandum of association if the memorandum of association can only be amended by agreement of all the shareholders, as this matter does not fall within the competence of any of the bodies of the company) and
- b) it must not violate the prohibition on giving instructions to the managing director concerning business management or the prohibition on interfering with the supervisory board's control activities.

The second fundamental difference in the competence of the general meeting of an LLC and a JSC is that only the general meeting of a JSC can decide by law on the amendment of the articles of association and the dissolution of the company with liquidation. The general meeting of an LLC can only decide on these matters if the memorandum of association so provide

Matters falling within the competence of the general meeting can be divided as follows:

- a) Matters regularly decided by the general meeting. This category includes:
 - I) regular decisions on matters relating to management, such as approving the annual accounts, deciding on the distribution of profits or the payment of losses; and
 - II) regular decisions on personnel issues, such as the election and dismissal of directors, appointment of the auditor, approval of the granting and dismissal of proxies, approval of performance contracts, etc.
- b) Making decisions on fundamental issues of the company. This category includes:
 - I) deciding on matters relating to the existence or basic structure of the company, such as decisions to amend the articles of association, to increase or decrease the share capital, to convert the company or to dissolve it; and

- II) decisions on significant property dispositions, such as approval of the transfer or pledge of a business enterprise, approval of a silent partnership agreement.
- III) other cases provided for by law or the memorandum or articles of association. This category includes other cases in which the law entrusts certain matters to the competence of the general meeting (e.g. decision on the exclusion of a shareholder).

The general meeting decides at a meeting in the presence or other participation of the shareholders or outside the meeting (*per rollam*). If the general meeting is in session, it shall take decisions in the presence of the shareholders or their representatives (general meeting with compulsory attendance). If the articles of association so allow, such decision-making may also be attended by shareholders who are not present in person or by their representatives, but only ‘virtually’ by technical means (typically videoconferencing). Distance participation at the general meeting also includes correspondence voting before the general meeting. A special case is the additional consent of a shareholder in an LLC to a decision of the general meeting, for the adoption of which their consent is necessary (Section 174, BCA).

The law requires that a general meeting be held at least once a year, within 6 months of the end of the previous financial year. It is a general meeting with a regular agenda. In particular, the annual accounts and the decision on the distribution of profits or the payment of losses are discussed at this general meeting. The memorandum or articles of association may provide that the general meeting is to meet more frequently (e.g. two or four times a year) and specify the issues to be dealt with (approval of the financial plan, etc.).

Managing directors are also obliged to convene a general meeting if the company’s interests require it, for example, if the company is threatened with bankruptcy, the company’s objective is threatened, or the position of the managing director becomes vacant. Managing directors are also obliged to convene a general meeting if a qualified shareholder requests it. In other cases, it is up to the discretion of the managing director whether to convene a general meeting (e.g. they want to propose the sale of a substantial part of the plant to the general meeting). The right to convene a general meeting may also be linked by the memorandum or the articles of association to certain types of shares.

The institute of a substitute general meeting is regulated in the law of JSCs. The substitute general meeting shall be convened without undue delay after a duly convened general meeting has not been held because a quorum was not present. The agenda of the substitute general meeting shall be the same as that of the general meeting not held. The minimum legal quorum requirements shall not apply unless the articles of association provide otherwise. I believe that it is permissible for the memorandum of association to introduce it in an LLC.

The general meeting shall be convened by written invitation. Nothing may be discussed that was not stated in the invitation unless all (not only present) members

agree to it. A shareholder may waive the right to have a general meeting convened in a timely and orderly manner. This is very practical, for example, if the shareholders find that the managing director is in material breach of their duties and all shareholders agree that they should be removed from office immediately.

The person of the chairman of the general meeting is important for the successful conduct of the general meeting. In addition to the chairman, the position of recorder is also filled, and in the case of a JSC, the position of scrutineers and verifiers of the minutes (however, this is not always strictly necessary).

The general meeting shall decide by resolution. Most doctrine and case law is inclined to conclude that a resolution is a juridical act.²⁰ However, the law opts for a special regulation to assess its validity; the general regulation of juridical acts does not apply (Section 45(4), BCA). A resolution of a general meeting may suffer from a number of defects. Depending on the severity of the defects, two main consequences are distinguished, namely invalidity nullity (Sections 191 et seq. and 428 et seq., BCA in connection to Section 258 et seq., Czech CC) and apparent nullity of the resolution of the general meeting (Section 45(13–), BCA in connection with Section 245, Czech CC). Under the case of nullity, I also include the absence of legal effects of the resolution of the general meeting (Sections 34 and 40, BCA), although these cases are distinguished by some authors.²¹ However, the consequences are the same as in the case of apparent nullity, therefore, in my opinion, there is no reason to make a distinction.

The basic rule is that defects in a resolution of a general meeting can only be grounds for invalidity (*neplatnost*). Exceptionally, defects in the resolution of the general meeting give rise to nullity (*zdanlivost*) (the law uses the phrase ‘the resolution shall be regarded as if it had not been adopted’).

Less serious defects invalidate the resolution. The invalidity of a resolution can only be declared by a court in a special court proceeding; the invalidity of a resolution of a general meeting cannot be assessed in any other proceeding.²² The court decision is constitutive with *ex tunc* effects.²³ Unless and until the court declares the resolution invalid, it shall be deemed valid even if it is defective.²⁴ If the court is to declare the resolution invalid, it must subject the matter to the following test: Is the resolution contrary to law, memorandum or articles of association or good morals? The contradiction may be in terms of content (e.g. the articles of association require that a person over 30 years of age be elected as a director and a younger person is elected) or in terms of form (the rules for convening the general meeting were not observed, the shareholder was not provided with the necessary information they requested, the chairman of the general meeting declared that the general meeting approved the resolution even though the necessary majority did not vote in favour of it, etc.).

20 Judgment of the Supreme Court case No. 27 Cdo 445/2018.

21 Lavický et al., 2022, p. 954.

22 Judgment of the Supreme Court case No. 27 Cdo 1104/2016.

23 Ruban, 2017; Judgment of the Supreme Court case No. 27 Cdo 3420/2017.

24 Judgments of the Supreme Court case Nos. 27 Cdo 3796/2017, 27 Cdo 1407/2019, 27 Cdo 2805/2021.

The resolution may be invalidated (avoided) in the following circumstances:

- a) The invalidity was invoked by one of the entitled persons (a shareholder, a director, a liquidator).
- b) The application for invalidity was filed with the court within the time limit. The subjective time limit is 3 months, the objective time limit is 1 year. It is a substantive and preclusive period (Section 259 Czech CC).
- c) If a shareholder submits an application, a reasoned objection (protest) (including by another shareholder) must have been raised at the general meeting at the latest.²⁵ The shareholder is bound by the grounds set out in the petition to the court and the court is bound by the petition.²⁶ A reasoned protest is not required in the case of a compelling reason; however, this does not include, for example, every absence of a shareholder from a general meeting, but only those which are excusable (e.g. illness).
- d) If the court finds that the aforementioned conditions are met, it shall further examine whether the violation of the law, the articles of association or good morals had serious consequences, whether it is in the company's interest not to declare the resolution invalid and whether the declaration of invalidity would not substantially affect the rights of third parties acquired in good faith (Section 260 Czech CC). Only if the court assesses that the violation of the law, the articles of association or good morals has had serious consequences, leaving the resolution in force would not serve the company's interests and the rights of third parties are not substantially affected, the court will declare the resolution invalid. Regardless of whether the court declares the resolution invalid or not, it may decide to award the shareholder appropriate compensation if the company has violated their rights as a shareholder in a serious manner (Section 261 Czech CC).

Null (non-existent) resolutions of a general meeting are those to which the fiction of non-acceptance applies under 45(1)(2) of the BCA or which the law provides have no legal effect (e.g., the additional non-recording of a notarial deed under Section 45(3), BCA).

The null resolutions of the general meeting include:

- a) decisions that turn out not to have been voted on by the general meeting (although they are listed as adopted in the minutes of the general meeting), nor has the chairman of the general meeting announced the result of the vote, and therefore, there is no such decision at all.²⁷
- b) decisions falling outside the competence (Section 45(1) in connection to Section 245, Czech CC).²⁸

²⁵ Judgment of the Supreme Court case No. 27 Cdo 927/2020.

²⁶ Ibid.

²⁷ Judgment of the Supreme Court case No. 27 Cdo 2586/2018.

²⁸ Judgments of the Supreme Court cases Nos. 29 Odo 1138/2005 and 29 Odo 1060/2006.

- c) a decision on a change to the articles of association contrary to a mandatory provision (Section 45(1) in connection to Section 245, Czech CC).²⁹
- d) a decision to appoint a person who does not meet the prerequisites for the performance of their function (Section 155(1), Czech CC).
- e) decisions vague or unintelligible (Section 45(2), BCA).
- f) a decision binding an impossible performance (Section 45(2), BCA). Impossibility means not only factual impossibility but also legal impossibility. Examples of legal impossibility are decisions that are contrary to public policy, for example, taken in violation of the Banking Act³⁰ or in violation of a restraining order in a criminal proceeding.³¹
- g) a decision of a person claiming to be a sole shareholder who is not a sole shareholder, or a decision of a meeting of persons who are not shareholders at all, and therefore, cannot be regarded as a defectively convened general meeting.³²
- h) a decision which has not been notarised even within the additional period pursuant to Section 45(3) of the BCA.
- i) other statutory cases (e.g. distribution of profits in violation of the balance sheet tests under Sections 34(2) or 40(1)(2), BCA).

The fact that the resolution of the general meeting is null, that is, without legal effect, must be taken into account by the courts as a matter of course in any legal proceedings. The absence of a resolution may be considered as a preliminary question in any proceedings, including registration proceedings.³³ The non-existence of a resolution is decided directly by a judicial pronouncement, either in the proceedings on the invalidity of the resolution of the general meeting (Section 90 of Act no. 292/2013 Sb., on Special Judicial Proceedings) or in the proceedings to determine whether the resolution exists (does not exist) (Section 80 of Act no. 99/1963 Sb., on the Code of Civil Procedure). According to Section 27 of Act no. 292/2013 Sb., on Special Court Proceedings, a final judgment by which the court has decided that the resolution of the general meeting of the company is not in question is binding on everyone, including the court in the proceedings to amend the entry in the Commercial Register, which cannot re-examine this issue (as a preliminary issue).³⁴

The review of the non-existence of the resolution is not, on the face of it, limited in time, although the legal interest in establishing the apparent validity of the order necessarily diminishes over time. An application for a declaration of the *prima facie* validity of a decision is a declaratory application within the meaning of Section 80 of

29 Judgment of the Supreme Court case No. 27 Cdo 4460/2018.

30 Judgment of the Supreme Court case No. 27 Cdo 1141/2020.

31 Judgment of the Supreme Court case No. 27 Cdo 3903/2017.

32 Ruban, 2017, p. 305; Judgments of the Supreme Court cases Nos. 27 Cdo 2816/2020, 27 Cdo 3315/2018, 27 Cdo 4500/2018, 27 Cdo 2798/2020.

33 Judgment of the Supreme Court case No. 29 Cdo 1104/2016.

34 Judgment of the Supreme Court case No. 27 Cdo 3451/2020.

Act no. 99/1963 Sb., Code of Civil Procedure, which requires the existence of an urgent legal interest in the declaration sought; and the urgent legal interest diminishes significantly over time.³⁵

2.4 Shareholders' Agreements

Shareholders' agreements are contracts concluded between all or some shareholders, the subject of which is an obligation related to their participation in the company, in particular an obligation to behave in a certain way in the exercise of rights and obligations arising from participation in the company. The obligation under a shareholders' agreement is only of a contractual nature, not of a corporate nature. This is reflected not only in their different effects, but also in their different interpretations. Obligations under shareholders' agreements are not part of the shareholding, and therefore, do not pass on to the acquirer of the shareholding without further consideration.

The BCA does not provide any explicit rules for the conclusion of shareholders' agreements. It indirectly provides for the existence of shareholders' agreements, as it regulates, for example, the actions of shareholders in concert when exercising voting rights. The limit for the content of shareholders' agreements is, thus, the general correctives for the validity of legal actions, in particular, good morals and public order.

Shareholders' agreements are characterised by their parallel existence alongside the memorandum or the articles of association.³⁶ Czech and Slovak researchers suggest that the reason for such a conclusion may be the rigidity or insufficiency of the legal regulation.³⁷ However, the reason could also be that shareholders want certain agreements to remain hidden from the public, even if the legal regulation would not prevent them from being included with corporate effects in the articles of association.

Usually, shareholders' agreements focus on the exercise of voting rights in certain cases (e.g. election or removal of directors) or the regulation of rights and obligations in the event of deadlocks or other cases allowing for the termination of participation in the company (e.g. negotiation of mutual option rights to buy back shares).

The courts have not had many opportunities to assess the compliance of shareholders' agreements with the law, as most shareholders' agreements contain an arbitration clause and disputes arising from them do not reach the general courts. It is worth mentioning a single case pending before the Czech courts.

In the shareholders' agreement, which has come before the Czech courts for review, it was agreed, among other things, that the board of directors of the JSC would be composed of three members, with B as a shareholder entitled to nominate two members and the remaining shareholders one member. The chairman of the board of directors shall always be a member nominated by company B. It was further agreed in the shareholders' agreement that the parties to the shareholders' agreement were

³⁵ Cileček and Ruban, 2017, p. 53; Judgment of the Supreme Court case No. 27 Cdo 2805/2021.

³⁶ Csach and Havel, 2017, p. 273.

³⁷ Ibid.

obliged to ensure that the members of the board of directors nominated by them would agree, if necessary, to enter into an agreement with the shareholders to grant a loan to the company on the terms agreed in the shareholders' agreement. This obligation was reinforced by a contractual penalty.

The courts were considering the validity of a shareholders' agreement on the financing of a company because a dispute had come before them over the payment of a contractual penalty for breach of a duty to ensure certain conduct by directors in this matter.³⁸ The Regional Court and High Court concluded that the decision as to how the company is to be financed is part of the management of the company's business, that is, its business management, which is, without more, for the board of directors to ensure. The courts found that the shareholders' agreement's provisions concerning the financing of the company were invalid because the law prohibits anyone (including shareholders) from giving instructions to the board of directors concerning the business management of the company.

The Supreme Court overturned the decision of the High Court in Prague.³⁹ It held that the conclusion of the court was premature, because it did not subject the provisions of the shareholders' agreement to an interpretation 'in the spirit of the principle of priority of interpretation which does not lead to the invalidity of the juridical act, and did not consider whether the contested article of the shareholders' agreement could be assessed as a commitment to directing or – as the procedural submissions of all the parties to the proceedings seem to indicate – as a "guarantee of the result".'

The Supreme Court further stated that even if it was an instruction, it would be necessary to distinguish whether the instruction was really about business management or strategic management. Operational financing belongs to business management, whereas, for example, acquisition financing belongs to strategic management, which is not covered by the statutory prohibition on giving instructions.

Thus, it can be concluded that the Supreme Court regards such an agreement of shareholders as invalid, by which they undertook to give instructions to the directors on matters falling within the scope of business management and at the same time undertook to ensure that those instructions would be respected by the directors without further delay (notwithstanding the duty of the directors to act with due care), as it would contradict the meaning and purpose of the statutory prohibition on giving instructions in business management and would be void for initial (legal) impossibility of performance.

However, the Supreme Court has acknowledged that shareholders may agree to intercede with directors for a particular resolution of a particular matter within the scope of business management. In other words, by putting their views or arguments before the board (its members), which, although the board shall not be bound by, may be taken into account in its decision-making. Similarly, the Supreme Court has accepted that it is possible for shareholders to commit to a particular outcome,

38 Judgment of the High Court in Prague case No. 14 Cmo 23/2018.

39 Judgment of the Supreme Court case No. 27 Cdo 1873/2019.

for example, that the board of directors make a particular decision on a particular matter. In such a case, the commitment is not one of intercession, but of assuming responsibility for a particular outcome. Even such an arrangement cannot automatically be considered contrary to law. It is not a commitment to act (conduct) contrary to the law (here, to give instructions to business management), but a ‘guarantee’ of a certain (agreed) result, which may be secured by a contractual penalty.

3. Croatia

3.1. Decision-Making in General Meetings

Persons who are considered shareholders have acquired this status based on their contribution to the company. Shareholders act in the company through a special body, through which they are primarily authorised to make the most important decisions for the status and fate of the company, such as those on changing the company’s business and economic purpose, on status changes, as well as those on the termination of the company. As a rule, they do not have direct authority to manage affairs and management in the company, and they can exercise their management rights only in the body of the company in which they operate. That body is the general meeting. The reason for such a solution is that the shareholders are not necessarily experts in the management of the company, and there are often and usually a large number of them, making participation by all of them in the management of the company’s affairs not only impractical but almost impossible.

As far as shareholders are concerned, the principle of equality of shareholders is a fundamental rule in public limited companies (PLCs). This means that shareholders, under equal conditions, must have equal rights and obligations in a JSC. The position of the shareholder must not be influenced by the circumstances of who the shareholder is and what his personal characteristics are, but must be determined by the amount of the shareholder’s stake in the company. The body of the JSC in which the shareholders act is the general meeting. As a rule, all shareholders of the company have the right to participate in the general meeting, even those who are holders of shares without the right to vote, although they cannot participate in the decision-making of the general meeting.

The participation of shareholders in the general meeting, as well as the exercise of the voting rights of those who have them, can still be conditioned if so provided by the statute. The law allows that the use of these rights (participation in the general meeting, i.e. voting) is subject to the condition that shareholders register their participation in the general meeting in advance, which is fulfilled if the application reaches the company at the address specified in the invitation no later than 6 days before the general meeting is held (Article 279, paragraphs 2–4 CA). According to Article 290 of the CA, shareholder resolutions in general meetings of shareholders require a simple majority of the votes polled unless the law or statute requires a greater majority or other requirements exist. The general meeting can only decide on matters expressly

provided for by the law and the statute of the company (Article 275, paragraph 1, CA). These are, in particular: a) the election and dismissal of members of the supervisory or management board; b) the appointment of the company's auditors; c) the adoption of a decision on the dismissal of members of the management board and the supervisory board; d) the adoption of annual financial reports, but only in cases in which this possibility is provided by law; e) policy and reports on benefits for members of the management board and members of the supervisory board, that is, executive directors and members of the board of directors of companies whose shares are listed on the regulated market for trading; f) use of profits, amendments to the statutes, listing of company shares on the regulated market for trading and withdrawal of shares from that listing; g) increase and decrease of share capital; and h) termination of the company.

Although the shareholders' meeting is a mandatory body of the LLC, members of the company may make decisions within their competence outside the meeting (assembly) in two cases:

- a) if all shareholders agree in writing on the decision to be made (therefore, unanimity is required for the decision to be made); and
- b) if all shareholders declare in writing that they agree to vote on the decision.

Matters falling within the competence of the shareholders' meeting are determined by law and include, for example (Article 441, paragraph 1, CA):

- a) deciding on the company's financial reports, management reports on the state of the company, if the company is required to prepare them, the use of realised profits and the covering of losses;
- b) deciding on the request for contribution payments;
- c) deciding on the return of additional payments to shareholders;
- d) appointment and recall of members of boards of directors;
- e) election and recall of supervisory board members, if the company has such a board;
- f) division and withdrawal of business contributions (shares);
- g) deciding on measures for examination and supervision of company management;
- h) amendment of the memorandum of association;
- i) setting claims for damages that the company has against members of the boards of directors and the supervisory board and deputy members of the management board; and
- j) appointment of company representatives in court proceedings if the company cannot be represented by members of the boards of directors or the supervisory board.

These provisions are partly of a dispositive nature, which enables the internal structure of the company to be more easily adapted to the needs of each individual case. The memorandum of association can expand or reduce the scope of the shareholders

meeting powers, but some powers cannot be removed. In view of these rules, as well as the possibility of members of the company influencing the board of directors in the management of the company, it can be said that the rules on the division of responsibilities between the bodies of an LLC are much less strict than those of a JSC.⁴⁰

Each share gives its holder the right to vote in the general meeting of the company. The CA does not allow plural voting, that is, it prohibits the issuance of shares that give different voting rights for the same amount of the share capital that belongs to them (Article 169, paragraphs 1 and 3, CA). At the same time, this provision respects the principle that shareholders have an equal position in the company under equal conditions (Article 211, CA), because the number of votes from a share must correspond to its nominal value, that is, the amount of the share capital that belongs to it (Article 291, paragraph 1, CA). Therefore, if a shareholder contributed a larger amount to the company's share capital, he should also have a greater voting right. A shareholder's right to vote can be limited by statute, stipulating that no shareholder can have more than a certain number of votes or more than a certain percentage of votes (Article 291, paragraph 1, CA).

The exclusion of the right to vote should be distinguished from the restriction of the voting rights. While the restriction must be expressly provided for by law, the rules on exclusion are provided for by law (Article 293, CA). They determine that no one can exercise the right to vote for himself or another when it is decided to give him a discharge, to release him from liability or from the claims which the company has against him. In practice, this means that a member of the management board or the supervisory board who is also a shareholder of the company would not have the right to vote on whether to grant discharge. Such persons would also not have the right to vote when the general meeting decides whether to exonerate them from responsibility for the damage caused to the company by their actions.

The right to vote is acquired, as a rule, by full payment of the share. The statute, however, may stipulate that the right to one vote is already acquired when a certain minimum contribution amount is paid for the share. This means that, for example, one-quarter of the nominal value of the share, which is paid in cash, would already give the shareholder the right to one vote. In this case, a greater number of votes is acquired in proportion to the size of the paid stake, so the person who paid half of the nominal value of the share would have two votes, and the person who paid the full amount would have four votes. The provisions of the statute on the calculation of voting rights before the full payment of contributions must not favour individual shareholders, that is, it must not be possible to determine that only certain shareholders acquire voting rights before their contributions have been paid in full (Article 291, CA).

The right to vote in the general meeting can also be exercised through a proxy. The proxy establishes their authority vis-à-vis the company by presenting a written power of attorney, which is handed over to the company for safekeeping.

40 Petrović and Ceronja, 2019, p. 240.

The intermediary is obliged to clearly inform the shareholder each year that the power of attorney can be revoked at any time and that the proxy can be changed (Article 292, paragraph 1, CA).

In business practice, shares are sometimes registered in the name of an intermediary instead of the shareholder who actually owns them. In this case, the intermediary can only exercise the right to vote in respect of registered shares which do not belong to him, but which are registered in his name in the share register, based on the power of attorney granted to him. The rules applicable to the granting of proxies also apply in cases in which the intermediary is not registered as a shareholder in the share register.

When it comes to decision-making in the general meeting, the concept of a quorum should be distinguished from the majority required for decisions to be taken. A quorum is generally a prescribed number of members of a collegial body who must be present at the meeting of that body for it to function and take valid decisions. In a specific case, a quorum means a certain number of the total number of shareholders, that is, shareholders representing a certain proportion of the share capital in relation to the total amount, whose presence is required for the general meeting to be held and for valid resolutions to be taken. The law does not prescribe a quorum (Article 289, CA). This means that a duly convened general meeting can act and take decisions in the manner described above, regardless of the number of shareholders present, that is, how much of the share capital they represent. This rule prevents certain shareholders from repeatedly failing to attend the meeting in order to prevent the adoption of a resolution. However, the quorum can also be determined by the articles of association, and thus, it ultimately depends on the will of the shareholders of each company. If the quorum is determined by the articles of association and there is no quorum at the general meeting convened, the next general meeting may validly pass resolutions regardless of whether the quorum requirement is met, unless the articles of association provide for a special quorum.

The CA provides for different majorities for decisions to be taken at the general meeting, with a simple majority being the basic rule (Article 290, CA). This means that for a resolution to be adopted, it is sufficient for there to be more votes in favour than against. At the same time, abstentions are not counted and are considered not to have been cast. The law allows the statutes to modify the simple majority rule to require a larger majority or the fulfilment of additional conditions, such as a certain quorum. The law requires a qualified majority for the adoption of certain resolutions. Thus, for example, a majority of at least three-quarters of the share capital represented at the general meeting of the company when making a resolution is required when deciding on the amendment of the statutes (Article 301, paragraph 2, CA), when increasing the share capital (Article 304, paragraph 1, Article 314, paragraph 1, Article 323, paragraph 2, and Article 328, paragraph 2, CA) and reduction of share capital (Article 342, paragraph 1, Article 349, paragraph 3, and Article 352, paragraph 2, CA), exclusion or limitation of the right of priority when registering new shares (Article 308, paragraph 4, CA), termination of the company (Article 367, paragraph 1, CA), etc.

In the mentioned cases, the majority required for the resolution is determined according to the share capital.

A majority of three-quarters of the votes cast is required for the adoption of a resolution to recall the members of the supervisory board (Article 259, paragraph 1, CA) and for the adoption of a resolution by which the general meeting gives approval for the management to undertake tasks for which the supervisory board refused its consent which the administration had to request according to the statute (Article 263, paragraph 5, CA). In the aforementioned cases, when the resolution is made by a qualified majority, the statute may, as a rule, stipulate that a different majority is required for the adoption of some resolutions of the general meeting or the satisfaction of additional conditions may be required. As a rule, the statute can require only that a greater majority than that prescribed by the CA is absolutely necessary for the adoption of a decision. However, when it comes to the resolution to increase the share capital by contributions (Article 304, paragraph 1, CA), it is permissible for the statute to provide for the adoption of a resolution with a majority smaller than that prescribed by the CA (three-quarters of the share capital represented at the general meeting when making a decision). However, this second majority must certainly be at least two-thirds of the share capital represented at the general meeting. The simple majority rule is always applied if the CA or the statute does not specify another majority.

All of the above is particularly important in cases in which various intermediaries (custodians, advisers, etc.) are interposed between the shareholders and the company, whose task is to look after the interests of the shareholders in the exercise of their rights deriving from the shares. Article 297a–297f of the CA details the rights and obligations of the company, shareholders, and intermediaries when transferring information important for exercising rights from shares. If the company does not transmit the information concerning the convening of the general meeting or the rights to convert convertible bonds into shares, the right of priority in the subscription of new shares, the payment, for example, in connection with the reduction of the share capital by withdrawal of shares, the subscription of new shares in the event of an increase of the share capital, and the choice of the direct payment of dividends to the shareholders, it must transmit this information electronically to the intermediaries so that they can transmit it to the shareholders. In addition, each intermediary in the chain is obliged to immediately transmit the information received from another intermediary or from the company to the next intermediary in the chain, unless it knows that the company has already transmitted this information to the next intermediary. This also applies to information from a company whose shares are listed on a regulated market and whose registered office is in another EU Member State (Article 297a paragraphs 1 and 3, CA). Intermediaries are also subject to certain information requirements. Thus, they are obliged to transmit the information given to them by the shareholder about exercising their rights from the shares directly to the company or intermediary in the chain without delay. Furthermore, the intermediary in the chain is obliged to transmit this information without delay to the next intermediary until

the information reaches the company. The intermediary is obliged to immediately provide the shareholder, upon request, with a written confirmation of his shares or to forward it to the company (Article 297c, CA).

3.2. Shareholders' Agreements

The Companies Act does not explicitly mention shareholders' agreements, but they are allowed in JSCs and LLCs. As a means of coordinated action, the shareholders' agreement provides contracting parties with increased protection in relation to the autonomous law of the company itself (statutes, rules of procedure on the work of the management or supervisory board, etc.) or the dispositive provisions of heteronomous law. The content of the provisions of the shareholders' agreement must be harmonised with public order. Nullity is a sanction in case of violation of some compulsory legal provisions. As a rule, the shareholders' agreement is a confidential and unique document that the contracting parties do not want to share with other shareholders who are not contracting parties, nor with the public. As a reflection of the contracting parties' economic and commercial goals, the contract reflects their will for coordinated action at the company's general meeting. If a contracting party does not respect the contract, that is, does not perform the assumed obligations or does not act in accordance with its provisions, the other contracting party or contracting parties can request legal protection before the specialised Commercial Court, and if the contracting parties exclude regular court protection with an arbitration clause, legal protection can be obtained before by the agreed arbitration court. The shareholders' agreement must not encroach on the provisions of the statute, nor can it impose any obligation on shareholders who are not contracting parties, future shareholders or the company, and it is not allowed to restrict or violate one's membership right in the company. It must not encroach on the imperative provision of Article 169 of the CA that each share under equal conditions gives equal voting rights. The members of both capital companies can sign contracts between themselves by which they commit themselves to vote at the company's meeting. The aim of such contracts may be to achieve the closure of the company by agreements on decision-making when the shareholders belong to a certain circle of persons. The shareholders thereby commit themselves on a mandatory legal basis and can freely contract anything that is not contrary to the general limitation of the autonomy of the contracting parties. The contract is effective only among the shareholders who concluded it and does not impact other persons, or companies, and transfer of the share does not occur to a new shareholder, unless it is done by the rules of law of obligations.

3.3. Control of Legality of General Meeting Resolutions

Decisions of the general meeting can be invalidated, by being declared null or voidable. Which of the two forms of invalidity applies depends on the ground of invalidity. The reasons for such consequences are determined by the law. In principle, it can be said that nullity is a more severe form of invalidity.

Null decisions of the general meeting do not produce any legal effect. Nullity emerges on the basis of the law, already at the moment of making the decision. The court should not enter null and voidable decisions in the court register, because nullity is considered *ex officio*. In addition, any interested person can invoke nullity. This can also be seen as a lawsuit to declare the decision null or voided. The court ruling only establishes that some decision of the general meeting was null or is voided from the beginning. Decisions of the general meeting that are voidable can be challenged by an action. If the authorised person succeeds in bringing the case, the decision shall be declared as nulled. This judgment has an *erga omnes* effect. A decision that has been declared as nulled owing to a lawsuit is considered as null from the outset (*ex tunc*). Depending on whether the decision of the general meeting is null or voidable, the circle of persons with standing for a lawsuit differs. Consequently, the time limits in which lawsuits can be filed (owing to certain reasons of nullity or voidability of the decisions of the general meeting) are also different. Reasons for the invalidity of the decisions of the general meeting are, for example, failures in convening it, violation of the rules on the operation of the general meeting and decision-making and the announcement of the decisions made, failures in connection with the minutes of the general meeting, decisions contrary to morals and violations of regulations on the protection of company creditors.

The rules on nullity and voidability of decisions of the general meeting are contained in Articles 355–366 of the CA.

The decisions of the general meeting are null in the following cases:

- a) if the decision was made at a general meeting that was not convened by the authorised persons to convene the general meeting or if they did not make a valid decision on convening it (Article 277, paragraph 2, CA);
- b) if the decision was made at the general meeting but during the convening process the provisions of the CA on the content of the decision on convening the general meeting and the invitation to the general meeting, were not taken into consideration (Article 277, paragraph 3, CA);
- c) if the decision was made at the general meeting but the convening notice was not published in the company's official gazette, or sent by registered letter if the shareholders are known to the company by their names (Article 277, paragraph 6, CA);
- d) if the decision of the general meeting is not specified in the minutes composed by a notary public, or if the notary public does not sign the minutes or if the minutes do not contain the place and time of the general meeting, the name and surname of the notary public, the method and result of the voting process and the president's declarations of the decisions made (Article 286, paragraphs 1, 2, and 4, CA);
- e) if the decision is not in accordance with the aim of the company or if its content constitutes a violation of regulations that exclusively or predominantly protect the interests of the company's creditors or were adopted to protect the public interest (Article 355, item 3, CA);

- f) if the decision of the general meeting is contrary to public morals (Article 355, item 4, CA);
- g) if it was declared null or voided by a final judgment issued on the occasion of a lawsuit to challenge the decision (Article 355, item 5, CA);
- h) the decision of the general meeting of the company that is contrary to the decision on the conditional increase of the company's share capital (Article 313, paragraph 4, CA);
- i) the decision on participation in the profit of new shares already in the business year that expires before the decision on the increase of the share capital and the decision on the use of the profit from the previous year when increasing the share capital from the company's funds, if they are not entered in the court register within 3 months of having been adopted (Article 338, paragraph 2, CA);
- j) decisions on the reduction and increase of the share capital when it is reduced below the lowest prescribed amount, if they are not entered in the court register within 6 months of the adoption of the decisions (Article 348, paragraph 2, CA);
- k) the decision of the general meeting amending the annual financial report examined by the auditor and the decision on the use of profits if they are not examined by the auditor and the report is not submitted without reservation within 2 weeks of the date of their adoption (Article 300.e, paragraph 3, CA).

Article 358 of the CA specifically regulates the nullity of the election of members of the supervisory or management board.

Article 359 of the CA specifically regulates the nullity of the decision on the adoption of annual financial reports.

The usual way of asserting nullity is through a lawsuit (to establish nullity). In addition, nullity can be asserted in any other way. A lawsuit can be brought by anyone who has a legal interest without a time limit, and the CA specifically mentions shareholders, management or board members, executive directors and members of the supervisory or management board of a JSC as authorised persons, which means that the aforementioned individuals do not have to prove the existence of a legal interest to file a lawsuit. The decisions of the general meeting are voidable if they are made contrary to the law or the statute of the company (Article 360, paragraph 1, CA).

The decision of the general meeting of the JSC can only be voided by a lawsuit within 30 days of the decision being made. If the plaintiff was present at the general meeting at which the decision was made, that deadline begins on the first day following the day when the general meeting at which the decision was made was concluded. If the claimant did not attend the general meeting where the decision was made, the deadline begins on the first day following the day on which he was able to find out about the decision.

The persons authorised to dispute the decision of the general meeting are (Article 362, CA):

- a) a shareholder who participated in the work of the general meeting, acquired shares before the agenda of the general meeting was published and declared his opposition to the decision in the minutes;
- b) a shareholder who did not participate in the work of the general meeting because he was (wrongly) not allowed to participate in it, if the general meeting was not properly convened or the amendment to the decision-making matter at the general meeting was not validly published, provided that he acquired shares before the agenda was published of the general meeting;
- c) each shareholder, if the decision is disputed because the shareholder tried to gain benefits for himself or for someone else by voting at the general meeting, to the detriment of the company or other shareholders, and this is achieved by the contested decision, if he acquired shares before the agenda was published;
- d) the management or the management board of the company;
- e) each member of the management or executive director and member of the supervisory or management board if by implementing the decision he would commit an action that is punishable, illegal or for which he could be liable for damages.

The decision of the general meeting cannot be challenged (even if there is a reason for challenging it) if the meeting confirms it with a new decision, and this new decision is not challenged within the period prescribed for challenging it, or if the lawsuit to challenge that decision is rejected. Then we are talking about the confirmation of a decision that can be challenged. If the plaintiff has a legal interest in having the challenged decision declared null or voided until a new decision confirming the contested decision is made, he can request that the contested decision be declared null or voided until a new decision is made (Article 361, CA).

As with the general meeting of a JSC, the decisions of the meeting of an LLC can be invalid, so they can be null or voidable (Articles 448–449, CA).

4. Hungary

4.1. Decision-Making by the Members of a Business Association in the General Meeting

The members or shareholders exercise their decision-making powers under the Civil Code and the instrument of constitution in a body comprised of all the members. The supreme body is the decision-making organ of the members of the business association. The areas of competence of the supreme body of the single-member company are exercised by the founder or the sole member who takes decisions in writing, and the written decision is communicated to the management. The supreme body of a private limited-liability company is the members' meeting. The supreme body of a limited-liability company is the general meeting. Sessions of the supreme body are

not open to the public. Only persons defined by the Civil Code may attend the meetings of the supreme body:

- a) the members or shareholders,
- b) the company's executive officers,
- c) members of the supervisory board,
- d) the auditor, and
- e) the invitees.

Non-member participants may attend the meeting in an advisory capacity. The principal duty of the supreme body of the business association is to adopt decisions on fundamental business and personnel issues. The Civil Code defines areas of which are the responsibilities of the supreme body of every business association, such as:

- a) the approval of the annual account (hereafter: financial report), as prescribed in the Accounting Act,
- b) decisions on the distribution of profits, and
- c) the decision for the enforcement of claims for damages against the company's members, executive officers, supervisory board members, etc.

Additional duties can be found at certain legal institutions (e.g. member exclusion) or at certain business associations:

- a) the members' meeting of the private limited-liability company has exclusive competence for the approval to conclude contracts which take place between the company and one of its members, its managing director, supervisory board member, auditor, or their close relatives.
- b) the general meeting of the public limited companies has exclusive jurisdiction to put the remuneration policy to an advisory vote. The general meeting is competent to have the advisory vote on the remuneration report for the previous financial year.

The decisions of the supreme body are usually taken by holding a meeting. If the members can participate in the meeting by electronic communications equipment and all members make use of this possibility, or if the meeting of the supreme body is announced as taking place by electronic communications equipment, it is called a meeting by conferencing. The supreme body may take its decisions in writing, in which case no meeting is held.

The general rule is that meetings of the supreme body are convened by the executive officer. The executive officer convenes the meeting of the supreme body by sending or publishing an invitation. The agenda is set by the executive officer. The option of adding items to the agenda is a special right granted separately to members and shareholders of a private limited-liability company under the Civil Code.

The Civil Code generally states that any legal statement pertaining to the company must be made in writing. The invitation constitutes a legal statement and must, therefore, be sent or published in writing.

According to the Civil Code, the invitation must contain:

- a) the name and registered address of the business association,
- b) the date and place of the meeting, and
- c) the agenda.

The Civil Code emphasises that the agenda must be indicated in the invitation in sufficient detail to enable the persons entitled to vote to formulate their position on the subjects to be discussed. For example, it is not sufficient to state that the articles of association are to be amended, but it must be specified for what reason and which part of the articles of association are to be amended. It is also a general rule that the general body of the business association holds its meetings at its head office. The articles of association are free to differ on this point.

If a meeting of the supreme body has not been convened in due form, the meeting may be held if all entitled persons are present, and if they unanimously agree to open the meeting. Failure to do so will render the decisions taken unlawful and any person entitled to vote may apply for judicial review. The supreme body may only be able to pass resolutions on duly notified points that are included in the agenda. An item not on the agenda may be discussed and a decision taken on it only if all entitled persons are present and they unanimously agree to discuss the matter that is not included in the agenda.

The right to convene a general meeting is a cardinal issue in the operation of business association. As a general rule, the executive officer may convene it, but the Civil Code also grants this power to others on an exceptional basis as follows.

- a) If, in the judgment of the supervisory board, the activity of the management is contrary to the law or to the instrument of constitution, opposite to the resolutions of the business association's supreme body, or otherwise infringes upon the interests of the business association, the supervisory board has the right to convene the meeting of the business association's supreme body to discuss that issue and to take the necessary decisions.
- b) If the LLC is left without a managing director, the members' meeting may be convened and the decision-making process without having to hold a meeting may be initiated by any member. If the meeting is not convened within 30 days of the change, it is to be convened at the request of any member or creditor by the court of registry, or the court shall delegate powers to convene the members' meeting or to initiate the decision-making process without having to hold a meeting upon such member.
- c) The Civil Code allows for the convening of the supreme body in the area of minority rights.

In the case of private limited-liability companies, the Civil Code requires that at least 15 days must elapse between the sending of the invitations and the date of the general meeting. The articles of association may not specify a time limit of less than 3 days.

In the case of public limited companies, the invitation to the general meeting must contain, in addition to the generally binding content elements:

- a) the procedure for holding the general meeting;
- b) the conditions for exercising voting rights, as laid down in the articles of association; and
- c) the place and time of a reconvened general meeting in the event of failure to meet quorum requirements.

In case of the closed public limited company, the general meeting must be called by means of an invitation sent to the shareholders at least 15 days prior to the first day of the general meeting. The invitation to the general meeting may be sent by way of electronic means to the shareholders who specifically requested it.

In case of the open public limited company, the invitation for the general meeting must be posted on the company's website at least 30 days prior to the first day of the meeting. The invitation for the meeting contains the conditions for exercising the right to make additions to the agenda, and indicates the place where draft resolutions and the originals of complete documents to be submitted to the general meeting are available.

For the private limited-liability company, responsibility for having minutes taken at the members' meetings lies with the executive officer. The minutes of the members' meeting are signed by the executive officer and a member present at the meeting and elected to witness the minutes.

In the case of the public limited company, the events of general meetings must be recorded in the minutes; the Civil Code specifically defines its mandatory content:

- a) the corporate name and registered office of the public limited company;
- b) the place and time as well as the procedure for holding the general meeting;
- c) the names of the chairman of the general meeting, the keeper of the minutes, the person appointed to witness the minutes and the official vote counters;
- d) key events and proposals made during the general meeting; and
- e) draft resolutions; each resolution should record at least the number of shares for which votes have been validly cast, the proportion of the share capital represented by those votes, the total number of votes validly cast as well as the number of votes cast in favour of and against each resolution, and the number of abstentions.

The minutes are signed by the keeper of the minutes and the chairman of the general meeting and are witnessed by an elected shareholder present.

In case of the open public limited company, the minutes of the general meeting (abstract) must be submitted to the court of registry. All members of the business association have the right to partake in the activities of the supreme body. The participation can happen in person or by way of a representative. A member may delegate one representative; however, a representative is allowed to represent more than one

member. The power of attorney for representation shall be fixed in an authentic instrument or in a private document with full probative force.

In the case of the public limited company, the Civil Code lays down special rules on the representation of the shareholder. Executive officers, supervisory board members, and the auditor may not function as a representative of a shareholder. A shareholder can be represented by more than one agent; however, if these agents submit contradictory votes or statements, all such votes and statements are considered null and void.

In the case of the public limited company, there is a special legal institute for representation, the institution of the *shareholder proxy*. The shareholder may appoint a proxy to exercise his rights facing the company by means of a contract of appointment, and the name of the proxy shall be entered in the share register, who shall exercise the shareholder's rights in his own name and for the benefit of the shareholder. In this case, the identity of the shareholder remains incognito.

Members may exercise their rights in meetings of the supreme body by means of electronic communications instead of attending in person, if the articles of association define such electronic communications equipment and the condition for their use to contain facilities for the identification of members and for mutual and unrestricted communication between the members.

In the case of the public limited company, the Civil Code also contains further specific provisions. If according to the articles of association shareholders are allowed to participate in the general meeting by way of electronic communications equipment, shareholders may freely decide the way to participate. The Civil Code establishes a presumption that the shareholder participates in the general meeting by means of electronic communications equipment, so if he wishes to attend in person, this must be notified to the company separately. The Civil Code expressly states that the costs arising in connection with the use of electronic communications equipment are borne by the limited company and cannot be charged to the shareholders, in accordance with 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.

A so-called general meeting by conferencing may not be held if shareholders holding at least 5% of the votes cast together object in writing and request that the general meeting be held in the conventional way. If voting in a general meeting by conferencing is held via electronic communications equipment, an electronic confirmation of receipt of the votes must be sent to the shareholders who cast their vote through electronic communications equipment. The articles of association of the public limited company provides the option to shareholders to exercise their voting right by correspondence before the general meeting. In exercising this right, the shareholder may be required to provide the information necessary to verify his identity.

The voting right of a member in the supreme body of the company is consistent with the members' capital contribution. In the case of a public limited company, the voting rights are determined by the nominal value of the share, and the shareholder

is entitled to vote in proportion to the nominal value of the share. The Civil Code expressly states that a shareholder may not exercise his voting rights until he has paid his due contribution. The Civil Code allows the limited company, according to the articles of association, to provide for the issue of shares which are granted certain preferences to their holders over other types of shares.

The articles of association of a public limited company may, therefore, provide for the issue of shares which confer a specific advantage on the shareholder, known as preference shares. Within the preference share class, the articles of association may specify the shares conferring a voting preference (prior voting right), which constitute a share class. The holders of shares conferring prior voting right may exercise multiple voting rights to the extent defined in the articles of association. In respect of public limited companies, the voting rights attached to one share may not exceed the voting rights corresponding to the nominal value of the share by a factor of 10. Thus, for public limited companies, the Civil Code limits the concentration of votes in the hands of a single shareholder. A public limited company may also issue preference shares with a so-called veto right.

A decision of the general meeting is adopted if it is approved by a simple majority of the shareholders with veto rights or, if there is only one share conferring a prior voting right in issue, such resolutions may be adopted if supported by the holder of this share. In the meeting of the decision-making body, a quorum is constituted when members representing more than half of the total votes available in the company are present. Quorum shall be considered for each decision.

The members or shareholders decide the matters at issue by voting at the meetings of supreme body. A member or shareholder who is affected by the given issue for a reason specified in the Civil Code may not participate in the decision. In the process of adopting a resolution, the following persons may not vote:

- a) any person for whom the resolution contains an exemption from any obligation or responsibility, or for whom any advantage is to be provided by the business association;
- b) any person with whom an agreement is to be concluded according to the resolution;
- c) against whom a lawsuit must be brought;
- d) a relative who is interested in the decision and who is not otherwise a member or shareholder;
- e) any person who maintains any relation based on majority control with an organisation that has a vested interest in the decision; or
- f) any person who himself has a vested interest in the decision.

The members or shareholders adopt resolutions by a majority of the votes of those present. The Civil Code distinguishes between a decision taken by a simple majority or by more than a simple majority (higher majority) which may be:

- a) a three-quarters majority, that is, when the general meeting decides by at least a three-quarters majority on the amendment of the articles of association,

on changing the company form, on the transformation, merger, or division of the business association, on its dissolution without succession, and on the reduction of its share capital.

- b) a unanimous decision, that is, when any amendment that would harm the rights of some members or make their status more onerous is to be decided by the supreme body unanimously. In voting for such issue members without the right to vote may also participate.

In connection with open public limited companies, the provisions on the requirement of unanimous decision for the amendment of the instrument of constitution do not apply.

Where the instrument of constitution allows for adopting resolutions out of session, the supreme body can initiate adopting resolutions out of session. The draft of the resolution is prepared by the management and processed by sending to the members or founders. Members or shareholders are given at least 8 days from the time of receipt of the draft to send their vote to management. The quorum and voting requirements must also be respected when decisions are made out of session. A quorum is constituted when members representing more than half of the votes cast have sent in his vote. Following the vote, the management establishes the result of the vote and communicates it to the members within 3 days.

The Civil Code provides as a rule of guarantee that any member who wishes to hold a meeting must have the meeting convened by the management. The Civil Code states that the executive officer is required to keep the members (shareholders) of the legal person (hereafter, business association), or the founders in the case of non-membership legal persons, informed concerning the legal person, and to provide access for them to the legal person's documents, records, and registers. The disclosure of information and access to documents may be made subject to a written declaration of confidentiality by the managing director. He may refuse to grant this right if this would prejudice the business secrets of the business association of the company, if the person requesting the information abuses his right, or if he or she does not make a declaration of confidentiality. If the member (shareholder) considers the refusal to be unjustified, he may apply to the commercial court for an order requiring the business association to provide the information and to grant access to the documents.

The member of the limited-liability company can have access to the minutes of members' meetings and the recordings made on members' meetings held by way of electronic means of communication, as well as the *book of resolutions*.⁴¹ The copy issued in written form shall be authenticated by the signature of the managing director.

The Civil Code grants the member the right to propose certain additions to the agenda of the general meeting. The proposal to add an item to the agenda must be

41 The managing director shall enter all resolutions adopted by the members' meeting in the book of resolutions.

communicated to the members and the managing director at least 3 days before the general meeting.

4.2. Shareholder Rights in Relation to the General Meeting

The Civil Code regulates shareholders' rights in accordance with Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007⁴² on the exercise of certain rights of shareholders in listed companies.

Shareholders have the right to participate, to request information, and to make remarks and proposals at the general meeting. Shareholders with voting rights are also entitled to vote.

The management board must provide information at the latest 3 days before the date fixed for the general meeting to all shareholders which may be deemed necessary for discussions held in connection with the items placed on the agenda of the general meeting. The management board must disclose the key data of the financial report and key data of the report of the management board and the supervisory board to the shareholders at least 15 days before the general meeting.

In a closed public limited company, the group of shareholders together controlling at least 5% of the votes have the right to propose certain additions to the agenda, which must be communicated to the members and the board of directors. Shareholders together controlling at least 1% of the votes in an open public limited company have the right to propose certain additions to the agenda, which must be communicated to the board of directors, that publishes a notice to that effect.

The invitation for the general meeting of the open public limited company contains the conditions for exercising the right to make additions to the agenda. The invitation for the general meeting of the open public limited company contains the draft resolutions and the access details of the full and original text of documents to be submitted to the general meeting may be obtained.

The public limited companies publish on their website, at least 21 days before the general meeting, the following information:

- a) the proposals relating to the items on the agenda and the related reports of the supervisory board, including the draft resolutions; and
- b) the forms to be used to vote by proxy and to vote by correspondence, unless those forms are sent directly to each shareholder.

42 Amended by: Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No. 1093/2010 and (EU) No. 648/2012, of the European Parliament and of the Council; Directive (EU) 2017/828 of the European Parliament and of the Council of 17 May 2017 amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement; Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020 on a framework for the recovery and resolution of central counterparties and amending Regulations (EU) No. 1095/2010, (EU) No. 648/2012, (EU) No. 600/2014, (EU) No. 806/2014 and (EU) 2015/2365 and Directives 2002/47/EC, 2004/25/EC, 2007/36/EC, 2014/59/EU, and (EU) 2017/1132.

Public general meeting materials may be sent by way of electronic means to the shareholders who specifically requested it. At the shareholder's request, the management board has to confirm to the shareholder or to a person the shareholder has designated that the shareholder's vote was duly recorded and adapted by the general meeting, except if the necessary information is available to the shareholder. This requirement is most relevant for voting by electronic means of communication. Any shareholder may request a copy of the minutes of general meetings or an abstract of a part of the minutes from the management board. Public limited companies shall make their general meeting resolutions available to the public on their website.

In the case of public limited companies, the Civil Code makes specific provision for shareholders' rights in relation to a general meeting resolution adversely affecting individual shareholders. Any resolution of the general meeting that discriminates against the rights attached to a certain series of shares may be passed only if, according to the procedure set out in the articles of association, the shareholders of the share series in question grant their explicit consent. In the course thereof, the provisions on the restriction or exclusion of the voting rights attached to such shares may not be applied.

4.3. Protection of Minority Stakeholders

Members of companies with few votes may be disadvantaged. Even without them, a quorum of the supreme body is required for most decisions, and a simple majority of votes is sufficient, which is the case even without their votes, as a result of which they lose their importance within the company and may become vulnerable. The Civil Code, therefore, seeks to give minority members additional rights to protect their interests. The code provides for three minority rights for all business associations:

- a) the right to convene the supreme body,
- b) the right to an individual audit, and
- c) the right to bring legal proceedings.

Not all members are entitled to the right of minority; the Civil Code requires a minimum number of votes to exercise this right. It is not required that only one member has the voting rights required by the Civil Code, several members can join together and act to exercise minority rights. Under the Civil Code, minority rights may be exercised by the member or members of the company who together control at least 5% of the voting rights.

In the case open public limited companies, a group of shareholders together controlling at least 1% of the votes in a public limited company are entitled to exercise minority rights.

The articles of association of a business association may grant minority rights to members with less than 5% of the voting rights.

The Civil Code does not specify the maximum percentage of votes at which a member or members may exercise minority rights, but, as appropriate, minority rights may be exercised at less than 50% of the votes.

Those members of the business association together controlling at least 5% of the voting rights may, at any time, request that the business association's supreme body be convened, indicating the reason and the purpose thereof, or the passing of a decision without a meeting. If management fails to comply with such request within 8 days of the date of receipt, and fails to convene the meeting of the supreme body at the earliest possible date, and fails to provide for the passing of a decision out of session, the court of registry shall convene the meeting of the supreme body at the request of the members making the proposal, or shall empower the requesting members to convene the meeting, or to carry out the procedure for the passing of a decision out of session. In such a case, the agenda of the meeting is set by the proposers.

However, the supreme body is not obliged to discuss the agenda items indicated by the petitioners or may reject the petition by decision.

The expected costs must be paid in advance by the applicants, and the supreme body decides whether the costs are to be borne by the applicants or the business association.

The member or members controlling at least 5% of the voting rights, in the cases provided for in the Civil Code, are entitled to request an individual audit. The prerequisite is that the issue of an individual audit has been put on the agenda of the general meeting of the business association, but has been rejected or not submitted for decision by the business association's general meeting. The proposal may be directed at an audit of the last annual accounts or of an economic event or commitment relating to the activities of the management for the last 2 years. The applicants may not go beyond the limits set by the Civil Code and may not request an overall examination of the management of the company. The audit must be carried out by a separate auditor and may not be carried out by the auditor of the company. The petitioners must apply for a special audit within a time limit of 30 days from the date of the meeting of the supreme body to the commercial court, which must order it. The costs of the individual audit must be advanced to the applicants. The court of registry shall refuse the request in the event of abuse of minority rights by the members presenting the request. The costs of the audit shall be covered by the company, except if the request made by the requesting members was manifestly unfounded.

The member or members holding at least 5% of the voting rights, in the cases provided for in the Civil Code, shall be entitled to bring an action for damages against the persons defined in the Civil Code. This prerequisite is that the question of the enforcement of the claim has been put on the agenda of the supreme body, but has been rejected or not submitted for decision by the business association's supreme body.

Recall that, according to the Civil Code, it is the competence of the business association's supreme body to decide on the enforcement of a claim for damages against a member, a manager, supervisory board member, and the business association's auditor.

The claim may be enforced within a 30-day preclusive period from the date of the meeting of the supreme body. The minority shareholders, therefore, bring the action, but they are entitled to enforce the claim for the benefit of the business association

and not for their own benefit. The minority members, therefore, are the plaintiffs in the action, but the claim will be for the benefit of the company (i.e. the non-party to the action). The fee will be paid by the member or members exercising minority rights, and in the event of a challenge, the costs will be borne by them.

4.4. Shareholders' Agreements (Syndicate Agreements)

Syndicate agreements are typically concluded between members in the context of the operation of a business association, between members and the business association, or between members and third parties. The syndicate contract is not regulated by law. The syndicate contract is completely separate from the company contract (the articles of association) and deals with matters that cannot be regulated in the articles of association or that the drafters did not want to be regulated in the articles of association. In a syndicate contract, members and shareholders may agree, for example, to vote in the same way on certain issues or to exercise minority rights together.

4.5. Judicial Review of Decisions

The legal institute is placed in the Civil Code under the General Rules Relating to Legal Persons, under Title IV, Guarantees for the Legal Operation of a Legal Person. The reason for this is because the review of decisions is not only relevant for business associations, but also for all legal persons governed by the Civil Code.

There are three means of safeguards for the lawful operation under the Civil Code: the Judicial Oversight of Legal Persons, the Statutory Auditor, and the Judicial Review of the Resolutions of Legal Persons.

The Civil Code uses this institution to ensure that the persons concerned can challenge unlawful decisions and take legal action. It creates the possibility of judicial review of corporate resolutions within the limits set by the Civil Code. The court can establish the infringement and, if it is serious, annul the decision, thus remedying the infringement. The court's review, therefore, is limited to determining whether the decision is contrary to the law or the articles of association, but the court may not issue a new decision or replace the offending decision by a judgment. An application for judicial review may seek the annulment of a *decision* taken by any body of the business association (e.g. the supreme body, supervisory board, or management board). A decision can be taken not only by a body composed of several members, but also by the chief executive acting alone. The resolutions adopted in connection with the register of shareholders shall be construed as corporate decisions.⁴³ An application can

43 Limited companies keep a register of shareholders, including holders of interim shares, in which to record the name and home address or registered office of shareholders, or their proxy in the case of jointly owned shares; the name and home address or registered office of the joint representative; the number of shares or interim shares; and the percentage of control of shareholders for each series of shares. Shareholders may exercise shareholder rights in dealings with the limited company only upon being registered in the register of shareholders. Failure to enter a shareholder in the register of shareholders shall not affect the shareholder's right of ownership of his shares.

be made if the decision is unlawful or *in breach of the articles of association* (company statutes, articles of association). Infringement of the law means not only a breach of the rules of the Civil Code but also of the provisions of any other legislation. No review is possible if the decision conflicts with the so-called syndicate contract, because the syndicate contract is a background agreement between the members or part of the members, which does not become part of the company contract, and therefore, does not deserve the same protection as the company contract.

The persons entitled to initiate reviews include:

- a) members or shareholders of the business association,
- b) executive officers of the business association,
- c) members of the supervisory board of the business association, and
- d) the owner of the share in the event of refusal of entry in the share register.

Members of the legal person, or the founders in the case of non-membership legal persons, the executive officers of legal persons, and members of the supervisory board shall be entitled to bring court action seeking annulment of resolutions adopted by the members or founders, or by the bodies of the legal person, if the resolution is alleged to be unlawful or to violate the instrument of constitution.

Persons who contributed to the adoption of the resolution with their votes, are not entitled to bring proceedings except for cases of mistake, misrepresentation or duress, are not entitled to bring action.

The action must be brought against the business association, and the defendant, therefore, is the business association. As a general rule, the company is represented in the proceedings by its executive officer as its legal representative. If the decision is challenged by the executive officer and there is no other executive officer who can represent the company, the company is represented in the proceedings by the member of the supervisory board appointed by the supervisory board. If the company does not have a supervisory board or if all the members of the supervisory board are sued as plaintiffs, the court shall appoint a curator ad litem to represent the business association in the proceedings.

The action may be brought against the business association within 30 days of the time when the person entitled has become, or could be expected to have become, aware of the resolution. No action may be brought after a preclusive period of 1 year from the date of the resolution. Bringing action for the annulment of a resolution shall have no suspensory effect on the enforcement of the resolution. The court shall be entitled to suspend execution on reasonable grounds, upon the applicant's request. If a resolution is found unlawful or to violate the instrument of constitution, the court shall annul the resolution and order the passing of a new resolution if necessary. If the violation of the law or the instrument of constitution is not considered significant, and does not jeopardise the legal person's lawful operation, the court shall establish the fact of infringement.

5. Poland

5.1. *Limited Liability Companies*

In an LLC, as a rule, shareholders have equal rights and obligations in the company, unless the law or articles of association provide otherwise. Preference may concern, in particular, voting rights, the right to dividends or the manner of participating in the distribution of assets in the event of liquidation of the company. Voting rights preference may apply only to shares of equal nominal value and may not grant the holder more than three votes per share (Article 174, CCC).

Resolutions of shareholders are adopted at a shareholders' meeting, or without a shareholders' meeting, if all shareholders agree in writing to the decision to be taken or to a written vote. The general meeting may be formally convened (Article 238, CCC) or held without a formal convocation (Article 240, CCC). In a single-member company, all powers of the shareholders' meeting are exercised by the sole shareholder, with appropriate application of the provisions on the shareholders' meeting (Article 156, CCC).

As for the consequences of the lack of a shareholders' resolution, the CCC regulates this issue in Article 17 of the CCC and this provision applies to all types of companies indicated in the CCC. If a resolution of shareholders or a general meeting or a supervisory board is required by law to perform a legal transaction by a company, a juridical act performed without the required resolution is invalid. The consent may be expressed before the submission of the statement by the company or after its submission, but no later than 2 months after the date of submission of the statement by the company. The confirmation expressed after the declaration has been made has retroactive effect from the time of the juridical act. If, however, consent is required only by the statutes or articles of association, a juridical act performed without the consent of the competent organ of the company is valid, but this does not exclude the liability of directors towards the company for violation of the articles of association or articles of association.

A resolution of the shareholders of the CCC is required the following matters (Article 228, CCC):

- a) consideration and approval of the management board's report on the company's activities, financial statements for the previous financial year and granting discharge to the members of the company's governing bodies for the performance of their duties;
- b) a decision on claims for compensation for damage caused during the establishment of a company or the exercise of management or supervision;
- c) sale and lease of an enterprise or its organised part and establishment of a limited right *in rem* thereon;
- d) acquisition and disposal of real estate, perpetual usufruct, or interest in real estate, unless the articles of association provide otherwise;
- e) reimbursement of subsidies; or

- f) conclusion of the agreement referred to in Article 4 § 1 point 4 letter F of the CCC.⁴⁴

Pursuant to Article 229 of the CCC, an agreement on the purchase of real estate or a share in real estate or fixed assets for a company for a price exceeding one-quarter of the share capital, but not lower than 50,000 Polish zloty (PLN), concluded before the lapse of 2 years from the date of registration of the company, requires a resolution of the shareholders, unless the agreement was provided for in the articles of association. The purpose of this regulation is two-fold. First, it protects the company against circumvention of the provisions on making in-kind contributions (consisting in making a cash contribution and purchasing the subject of the in-kind contribution after the registration of the company instead of making a contribution in kind to cover the share capital). Second, thanks to the regulation contained in Article 229, the company in the first period of its activity is protected against overinvestment without the knowledge and consent of shareholders (freezing of excessive amounts of current assets in acquired fixed assets).⁴⁵

Pursuant to Article 230 of the CCC, the disposal of the right or incurring an obligation to provide a value twice as high as the share capital requires a resolution of the shareholders, unless the articles of association provide otherwise. That provision is based on the mistaken premise that the value of the share capital is of any relevance to determining whether it is a contract which is essential for the company. Such a criterion could be a fraction (e.g. 10%) of the value of equity (net assets according to the last balance sheet), rather than the amount of share capital, which may be relatively low (how the company shapes its equity structure is an internal matter). The provision of Article 17 § 1 does not apply then, which means that the violation of Article 230 sentence 1 no longer leads to the invalidity of a legal transaction, but only justifies intra-corporate sanctions against members of the management board.⁴⁶ Similarly, Article 15 of the CCC is to protect shareholders, according to its content, the conclusion by a capital company of a credit, loan, surety or other similar agreement with a member of the management board, supervisory board, audit committee, proxy, liquidator or for the benefit of any of these persons requires the consent of the shareholders' meeting or the general meeting, unless the law provides otherwise.

An ordinary shareholders' meeting in an LLC should be held within 6 months of the end of each financial year. It should concern at least:

- a) consideration and approval of the management board's report on the company's activities and the financial statements for the previous financial year;

44 Article 228 point 6 was amended by Article 1 point 17 of the Act of 9 February 2022 (Journal of Laws 2022 item 807), with effect from 13 October 2022. This change is related to the introduction of regulations concerning the law of groups of companies into the CCC. It is the conclusion of an agreement between a parent company and a subsidiary providing for the management of the subsidiary or the transfer of profits by such a company.

45 See Rodzyńkiewicz, 2018.

46 Ibid.

- b) adoption of a resolution on the distribution of profit or coverage of loss, if, pursuant to Article 191 § 2 of the CCC, these matters have not been excluded from the competence of the shareholders' meeting;
- c) granting a vote of approval to the members of the company's governing bodies for the performance of their duties.

In an LLC. Extraordinary shareholders' meetings may also be held, which are convened in the cases specified by law⁴⁷ or articles of association, and when the bodies or persons empowered to convene meetings deem it advisable. Participation in the shareholders' meeting may also be taken by means of electronic communication, unless the articles of association provide otherwise. A member or members representing at least one-tenth of the share capital may request that an extraordinary general meeting be convened and that certain matters be placed on the agenda of that general meeting. Such a request must be submitted in writing to the management board no later than 1 month before the proposed date of the shareholders' meeting. A shareholder or shareholders representing at least one-twentieth of the share capital may request that certain matters be placed on the agenda of the next shareholders' meeting, and they should submit them in writing to the management board no later than 3 weeks before the date of the shareholders' meeting. The articles of association may grant such rights to members representing a lower share in the share capital. If the management board fails to take action at the request of the shareholders, the registry court may, after calling the management board to submit a statement, authorise the requesting shareholder or shareholders to convene an extraordinary meeting. The court appoints the chairman of this meeting (Articles 236 and 237, CCC).

The shareholders' meeting is traditionally convened by registered letters or courier mail, sent at least 2 weeks before the date of the shareholders' meeting, the notice may be sent to the shareholder at the address for electronic service or by e-mail, if he has previously agreed to it in writing, giving the address to which the notice should be sent.

Resolutions may be adopted despite the lack of a formal convening of the shareholders' meeting if the entire share capital is represented and no one present has objected to holding the meeting or putting individual matters on the agenda (Article 240, CCC). The presence of all capital, the lack of objection to the holding of the meeting and to the introduction of individual matters to the agenda does not mean the need for unanimous voting for resolutions.⁴⁸ As a rule, shareholders may be represented by proxies.⁴⁹ A shareholder may not, either personally or by proxy, or as a proxy of another person, vote on the adoption of resolutions concerning his liability

47 For example, in the case referred to in Article 202 § 6 of the CCC (resignation of a member of the management board resulting in no mandate in the management board being filled), a member of the management board is obliged to convene a shareholders' meeting.

48 See Chomiuk, 2023.

49 A member of the management board and an employee of the company may not be proxies at the shareholders' meeting (Article 243 § 3, CCC).

to the company on any account, including the granting of discharge, release from the obligation towards the company and the dispute between him and the company.

Resolutions are adopted by an absolute majority of votes, unless the provisions of the CCC or the articles of association provide otherwise (Article 245, CCC). There are many exceptions to this rule already in the CCC itself. For example, pursuant to Article 246 of the CCC, resolutions concerning amendments to the articles of association, dissolution of the company or sale of an enterprise or its organised part are adopted by a two-thirds majority of votes. A resolution concerning a material change in the company's business requires a three-quarters majority of votes. The articles of association may lay down stricter conditions for the adoption of such resolutions.

In addition, the glory of amending the articles of association, increasing the benefits of shareholders or reducing the shareholding rights or rights granted personally to individual shareholders, requires the consent of all shareholders concerned. A reduction in shareholding rights means a reduction in the rights arising from shares. These are both rights vested in each shareholder (e.g. the right to participate in profit) and rights arising from preferential shares, such as voting rights granted in accordance with Article 174 of the CCC.⁵⁰

Voting on resolutions, depending on the subject, is open or secret. In addition, a secret ballot must be ordered at the request of at least one of the shareholders present or represented at the shareholders' meeting (Article 247, CCC). The minutes should state the correctness of convening the shareholders' meeting and its ability to adopt resolutions, list the resolutions adopted, the number of votes cast for each resolution and objections raised. Shareholders may browse the book of minutes and request copies of resolutions certified by the management board (Article 248, CCC).

The CCC also regulates the conditions for filing an action to set aside a resolution (Article 250, CCC) and to declare a resolution invalid (Article 252, CCC). Shareholders also have the right of control based on Article 212 of the CCC. For this purpose, a shareholder with a person authorised by him may at any time inspect the books and documents of the company, draw up a balance sheet for his use or request explanations from the management board. As a last resort, a shareholder who has been refused explanations or access to the company's documents or books may apply to the registry court to oblige the management board to provide explanations or make available for inspection documents or books of the company.

5.2. Simple Joint-Stock Companies

In a simple JSC, pursuant to Article 300(80) of the CCC, shareholders' resolutions are adopted at the general meeting either outside the general meeting in writing or using electronic means of communication. Shareholders may vote using electronic means of communication if they have been indicated in the articles of association or all shareholders have agreed in documentary form to such a voting procedure.

⁵⁰ Strzępka and Zielińska, 2009, p. 497.

Shareholders may vote in writing if all shareholders have expressed their consent to this voting procedure in documentary form.

As in other capital companies, the CCC indicates situations where the adoption of a shareholders' resolution is obligatory (e.g. purchase and sale of real estate, issue of convertible or pre-emptive bonds and issue of subscription warrants referred to in Article 300(119), CCC). As in other companies, the ordinary general meeting should be held within 6 months of the end of each financial year. Shareholders representing a certain number of votes may convene an extraordinary general meeting or request that specific matters be placed on the agenda of the next general meeting (Articles 300(85) and 300(86), CCC). Resolutions may be taken despite the lack of a formal convening of the general meeting, if all shares are represented, and no one present has objected to holding a general meeting or placing individual matters on the agenda (Article 300(90), CCC).

The articles of association may not limit the rights of minority shareholders specified in the provisions of this branch, but may grant these rights to shareholders representing a smaller fraction of the total number of votes or the total number of shares.⁵¹ As in an LLC, it is possible to adopt a resolution without a formal convocation if all shares are represented and no one present has objected to holding a general meeting or placing individual matters on the agenda (Article 300(90), CCC).

A person entitled to participate in the general meeting is a person entered in the register of shareholders on the day falling 3 days before the date of the general meeting (Article 300(91), CCC). The articles of association may allow participation in the general meeting by means of electronic communication.

Unless the provisions of the CCC or the articles of association provide otherwise, the general meeting is valid regardless of the number of shares represented therein. The general meeting may adjourn the session by a two-thirds majority. In total, breaks may not last more than 30 days. The commented regulation refers in part to the provision of Article 241 of the CCC concerning the shareholders' meeting in an LLC (which, however, does not refer to the issue of adjournments and changes in the agenda), as well as to the very similar provisions of Articles 408 and 409 § 2 of the CCC relating to the general meeting in a JSC.⁵²

In accordance with the assumption of limiting the formalities related to the establishment and operation of a simple JSC, the document form was reserved for the power of attorney referred to in the commented provision, while maintaining the rigor of nullity and the obligation to attach the power of attorney to the book of protocols (cf. Article 243 § 2, CCC).⁵³

During the general meeting, the management board is obliged to provide the shareholder, at his request, with information about the company, if it is justified for

51 For example, the articles of association may introduce lower requirements for convening an extraordinary general meeting (Article 300(85) § 1, CCC).

52 Koziół, 2020.

53 Modzelewska and Reszczyk-Król, 2023.

the assessment of the matter included in the agenda. Articles 428 § 27– and 429 of the CCC shall apply accordingly to the manner of providing information.

Resolutions of the general meeting are generally adopted by an absolute majority of votes (Article 300(98) § 1, CCC), but there are many exceptions to this rule both in the CCC itself, as well as modified by the articles of association. Resolutions of the general meeting shall be recorded in the minutes. The minutes shall state the correctness of convening the general meeting and its ability to adopt resolutions and shall list the resolutions adopted and, in respect of each resolution, the number of shares from which valid votes were cast, the percentage share of these shares in the total number of shares, the total number of valid votes, the number of votes ‘for’, ‘against’, and ‘abstaining’ and objections raised. The minutes shall be accompanied by evidence of convening the general meeting, an attendance list with signatures of the participants of the general meeting and a list of shareholders voting by means of electronic communication (Article 300(100) § 1, CCC).

Article 300(101) of the CCC introduces the principle that the provisions of Articles 422–427 shall apply *mutatis mutandis* to shareholders’ resolutions. By reference to Articles 422 to 427 of the CCC, this provision regulates the procedure for appealing against defective or unlawful resolutions of shareholders. These provisions shall be applied accordingly after taking into account the specificity of a simple JSC. A shareholders’ resolution is subject to appeal as part of an action to set aside a resolution and an action to declare the resolution invalid. The defendant company in the dispute is represented by either the management board or the board of directors, respectively, depending on the structure of the company’s governing bodies.⁵⁴

5.3. Joint-Stock Companies

In a JSC, shares of a company that is not a public company are subject to registration in the register of shareholders. The register of shareholders is public for the company and each shareholder (Article 328(5) § 1, CCC). Preference shares, with the exception of silent shares, should be registered.

No more than two votes may be granted per share. If such shares are converted into bearer shares or if they are sold contrary to the stipulated conditions, the preference expires (Article 352, CCC). Pursuant to Article 351 § 4 of the CCC, a shareholder may exercise the special rights granted to him related to the preferred share after the end of the financial year in which he made his full contribution to cover the share capital. Pursuant to Article 354 § 1 of the CCC, the articles of association may grant personal rights to an individually designated shareholder. In particular, they may concern the right to appoint or dismiss members of the management board or supervisory board, and the right to receive designated benefits from the company.

The CCC also provides for cases in which it is obligatory to adopt a resolution by the general meeting. Resolutions of the general meeting, pursuant to Article 393 of the CCC, for example, requires:

⁵⁴ Ibid.

- a) consideration and approval of the management board's report on the company's activities and the financial statements for the previous financial year and granting discharge to the members of the company's governing bodies for the performance of their duties;
- b) a decision on claims for compensation for damage caused during the establishment of the company or the exercise of management or supervision;
- c) sale and lease of an enterprise or its organised part and establishment of a limited right *in rem* thereon;
- d) acquisition and disposal of real estate, perpetual usufruct, or interest in real estate, unless the statute provides otherwise;
- e) issue of convertible or pre-emptive bonds and issue of subscription warrants referred to in Article 453 § 2 of the CCC;
- f) acquisition of own shares in the case referred to in Article 362 § 1 point 2 and authorisation to acquire them in the case specified in Article 362 § 1 point 8 of the CCC; and
- g) conclusion of the agreement referred to in Article 4 § 1 point 4 letter f of the CCC.

Pursuant to Article 394 § 1 of the CCC, agreements for the acquisition of any property for a company, for a price exceeding one-tenth of the paid-up share capital, from the founder or shareholder or for a company or cooperative dependent on the founder or shareholder of the company, concluded before the expiry of 2 years from the date of registration of the company, require a resolution of the general meeting, adopted by a majority of two thirds of votes. The protective functions of Article 394 of the CCC are based on the assumption adopted by the legislator to ensure protection of the company in its initial phase of activity (2 years from the date of registration of the company) against potential depletion of its assets as a result of the withdrawal of part of the contributions made by the founder or shareholder, which may occur as a result of the founder or shareholder concluding agreements for the sale of property of significant value to the company.⁵⁵

Article 395 § 1 of the CCC provides that an ordinary general meeting should be held within 6 months of the end of each financial year. Pursuant to article 395 § 2 of the CCC, the subject of the ordinary general meeting should be:

- a) consideration and approval of the management board's report on the company's activities and the financial statements for the previous financial year;
- b) adoption of a resolution on the distribution of profit or on covering the loss; and
- c) granting a vote of approval to the members of the company's governing bodies for the performance of their duties.

⁵⁵ Zapadka, 2014, p. 15.

Pursuant to Article 397 of the CCC, the management board is obliged to immediately convene a general meeting to adopt a resolution regarding the continued existence of the company if the balance sheet prepared by the management board shows a loss exceeding the sum of supplementary and reserve capital and one third of the share capital. The purpose of the provision is to protect the assets of the company, or to terminate its operation at the stage when it still has any assets. The purpose of the commented provision is mainly to protect shareholders (including the company's creditors) against incurring a larger loss. The purpose of the provision is to apply remedial measures as early as possible or to terminate the functioning of the company.⁵⁶ A similar provision applies in an LLC (pursuant to Article 233 § 1 of the CCC, if the balance sheet prepared by the management board shows a loss exceeding the sum of supplementary and reserve capital and half of the share capital, the management board is obliged to immediately convene a shareholders' meeting in order to adopt a resolution regarding the continued existence of the company).

To secure the continuity of the functioning of the governing bodies in a JSC, in the case referred to in Article 369 § 5(2) of the CCC (no supervisory board in the event of the resignation of the last member of the management board), a member of the management board is obliged to convene a general meeting. As a rule, the general meeting in a JSC is convened by the management board (Article 399 § 1, CCC), but further paragraphs of this provision state that it may also be done by the supervisory board, shareholders representing at least half of the share capital or half of the votes in the company, they may also be other persons if the articles of association so provide. Potential entities authorised by the statute to convene an extraordinary general meeting may be, for example, groups of employees, trade unions, proxies, and state or local government bodies.⁵⁷

Article 400 of the CCC provides for the right to request that minority shareholders convene an extraordinary general meeting. Minority shareholders or a shareholder representing at least one-twentieth of the share capital may request that an extraordinary general meeting be convened and that certain matters be placed on the agenda of that meeting; the statutes may authorise the convening of an extraordinary general meeting of shareholders representing less than one-twentieth of the share capital.

If an extraordinary general meeting is not convened within 2 weeks of the date of submission of the request to the management board, the registry court may authorise the requesting shareholders to convene an extraordinary general meeting. The court shall appoint the chairman of that meeting. Meanwhile, pursuant to Article 401 of the CCC, a shareholder or shareholders representing at least one-twentieth of the share capital may request that certain matters be placed on the agenda of the next general meeting (§ 1), or may, before the date of the general meeting, submit to the company draft resolutions on matters introduced into the agenda of the general meeting or matters to be introduced into the agenda (§ 4).

⁵⁶ Naworski, 2003, p. 682.

⁵⁷ Kidyba, 2023.

A general meeting in a non-public JSC is convened by announcement, which should be made at least 3 weeks before the date of the general meeting. The General Meeting in a non-public company is convened by means of an announcement made through a nationwide publication, which is *Monitor Sądowy i Gospodarczy* (Article 5 § 34–, CCC). *Monitor Sądowy i Gospodarczy* is an obligatory publication for non-public companies.⁵⁸ The general meeting may be convened by registered letters or courier mail, sent at least 2 weeks before the date of the general meeting. The day on which letters or parcels are sent shall be deemed to be the day of publication. Instead of a letter or parcel, the notification may be sent to the shareholder to the address for electronic service, by e-mail to the address indicated in the register of shareholders or with the written consent of the shareholder to another e-mail address indicated by the shareholder (Article 402 § 3, CCC).

Resolutions may be adopted, despite the lack of a formal convening of the general meeting, if the entire share capital is represented, and no one present has objected to the holding of the general meeting or bringing individual matters to the agenda (Article 405, CCC) and in matters not included in the agenda no resolution may be adopted, unless the entire share capital is represented at the general meeting, and none of those present objected to the adoption of the resolution (Article 404 § 1, CCC). Participation in the general meeting may also be taken by means of electronic communication, unless the company's articles of association provide otherwise (Article 406(5) § 1, first sentence, CCC). The attendance list shall be drawn up immediately after the election of the chairman and presented during the proceedings of that meeting. At the request of shareholders holding one-tenth of the share capital represented at that general meeting, the attendance list should be checked by a committee elected for that purpose, consisting of at least three persons. Applicants have the right to elect one member of the committee (Article 410, CCC). A shareholder may participate in the general meeting and exercise the right to vote in person or by proxy (Article 412 § 1, CCC). The CCC limits this right subjectively, also introducing significant differences between a public and a private company (e.g. a member of the management board and an employee of the company may not be proxies at the general meeting of a non-public JSC),⁵⁹ A shareholder may not vote either personally or by proxy, or as a proxy of another person in the adoption of resolutions concerning his liability towards the company on any account, including granting a discharge, release from the obligation towards the company and a dispute between him and the company (Article 413 § 1, CCC).⁶⁰

The statutes of a JSC may modify the voting right, such as provide for the accumulation of votes belonging to shareholders between whom there is a relationship

58 Oplustil and Sokołowski, 2003, p. 14.

59 This exclusion does not apply to a public company (Article 412(2) § 2, CCC).

60 A shareholder of a public company may vote as a proxy when adopting resolutions concerning his person referred to in § 1. The provisions of Article 412(2) § 3 and 4 shall apply *mutatis mutandis*.

of dominance or dependence within the meaning of this or a separate act, as well as specify the rules for reducing votes (Article 411 § 4, CCC).

The CCC in certain matters requires a qualified majority, for example, a resolution on the issue of convertible bonds and bonds with pre-emptive rights to subscribe for shares, change the articles of association, redemption of shares, reduction of share capital, sale of an enterprise or its organised part and dissolution of the company is adopted by a three-quarters majority of votes (Article 415 § 1, CCC), a two-thirds majority of votes is required to adopt a resolution on a material change in the company's business (Article 416, paragraph 1, CCC).⁶¹

The CCC also introduces the possibility of compulsory buyout of shareholders representing no more than 5% of the share capital (Article 418, CCC) and compulsory repurchase of shares (Article 418(1), CCC). In a group of companies, the rights of minority shareholders are regulated by Articles 21(10) (right of a minority shareholder of a subsidiary to repurchase his shares by the parent company) and 21(11) (compulsory buyout of shares held by minority shareholders of a subsidiary by the parent company) of the CCC.

The CCC also regulates the conditions and conditions for filing an action to set aside a resolution (Article 422, CCC) and to declare a resolution invalid (Article 425, CCC).

Pursuant to Article 429 of the CCC, a shareholder who was refused to disclose the requested information during the general meeting and who objected to the minutes may apply to the registry court to oblige the management board to provide information.

6. Romania

6.1. *Decision-Making in General Meetings*

The highest decision-making body in a company is the general meeting of members or shareholders, where they exercise collectively their specific rights.⁶² This governing body serves as a deliberative and decision-making forum, comprising the totality of the company's members or shareholders. It can be described as the central point for forming the company's will, a space where each member or shareholder is entitled to participate, present proposals, nominate candidates, speak, request information, and, importantly, cast votes, unless their voting rights are excluded or restricted.⁶³

In an LLC, members make decisions at the general meetings of the company. The founding document of the company may provide that voting rights exercisable at the general meeting can also be expressed in writing. In the case of a single-member

61 The effectiveness of the resolution depends on the purchase of shares of those shareholders who do not agree to the change (Article 416 § 4, CCC).

62 Angheni, 2013, p. 211.

63 Duțescu, 2010, pp. 163–164; Cărpenaru, 2016, p. 200; Tuleașcă, 2016, pp. 218–219; Susanu, 2018, p. 92.

LLC, the sole member assumes all the rights and obligations typically allocated to the general meeting under the law.

The general meeting must be convened by the company's executive officer (*administrator*) at least once a year. As a general rule, these meetings are held at the company's registered office unless the founding document specifies another location. Beyond the annual general meeting, executive officers are obligated to convene additional meetings whenever necessary. The process for calling a general meeting is generally governed by the provisions of the founding document. In the absence of specific provisions, the meeting must be convened by sending a registered letter to the members at least 10 days before the scheduled date. This notice must include the agenda for the meeting. While the procedural requirements for convening and holding general meetings might appear straightforward, their observance is crucial for the validity of the resolutions passed.

The general meeting has several critical responsibilities, as outlined in the law, although this list is not exhaustive.⁶⁴ Among its primary duties are approving the annual financial statements and determining the distribution of net profits. The general meeting also appoints, dismisses, and discharges executive officers and auditors. If not legally mandated, it may also decide on contracting an external financial auditor. The body holds the authority to pursue liability claims against managers and auditors for damages caused to the company, including designating the individual responsible for filing such claims. The general meeting has the power to amend the founding document of the company. The outlined duties of the general meeting also highlight the harmonising act between oversight and management. By approving financial statements, deciding profit distribution, and appointing or dismissing key officials, the general meeting exercises direct control over the company's trajectory. At the same time, the ability to hold managers and auditors accountable ensures that the company's leadership remains aligned with the interests of its members.

In single-member LLCs, the sole member's assumption of general meeting rights and obligations emphasises the unique governance structure of such entities.

Romanian company law articulates a full architecture for how the general meeting operates in a JSC, not only naming the forms a meeting can take but also tying each form to specific corporate decisions, safeguards, and shareholder prerogatives. The legal regime starts from a functional premise: what matters is the substance of the business put before the shareholders. A meeting is "ordinary", "extraordinary", "founding/constitutive", or "special"⁶⁵ because of the matters on its agenda, not because of when it is held or how it is labelled in the notice. That classification then drives who can decide what, which quorum and majority thresholds apply, what preparatory disclosures are required, and which minority protections are triggered.⁶⁶

64 Angheni, 2013, p. 212.

65 Fegyveresi, 2024, p. 127.

66 Georgescu, 1948, p. 309.

Within this framework, the ordinary general meeting is the forum for the company's recurring, cyclical business: the locus of the mandatory annual governance cycle.⁶⁷ It receives and votes the financial statements, allocates profits and losses, sets or approves compensation frameworks, appoints or renews directors and auditors, and, where applicable, grants discharge. These items under the authority of the ordinary general meeting are routine in the sense that they repeat each financial year, but they are not trivial; they are the levers through which shareholders exercise ongoing oversight of performance and accountability. Its procedures are optimised for recurrence and continuity: notice periods, quorum rules and majorities are set so that a representative shareholder body can carry on the company's business year after year without undue friction. Ordinary general meeting must be convened at least once annually, within 5 months of the close of the fiscal year. This 5-month deadline is neither a statute of limitations nor a forfeiture period, but rather an administrative time-frame meant to ensure timely oversight of the company's affairs.⁶⁸ Failure to convene the ordinary general meeting within this period can result in penalties for the company's executives, typically in the form of fines imposed by the fiscal authorities. Furthermore, shareholders attending such delayed meetings may exercise their rights to initiate liability claims against executives for damages caused by administrative delays. It is worth noting that even if the financial statements for the preceding fiscal year are approved at the meeting, this does not preclude shareholders from pursuing claims against executives for financial misconduct or negligence.⁶⁹

The extraordinary general meeting is the venue for structural or foundational changes to the company,⁷⁰ therefore, is reserved for decisions that alter the corporate setting or the company's economic perimeter: amendments to the constitutive act, changes to the capital structure, creation or modification of share classes, mergers, divisions, transformations, and voluntary winding-up. These meetings can be called whenever necessary.⁷¹ Because these resolutions reshape the company's allocative baseline, the statute overlays enhanced safeguards: tighter disclosure obligations *ex ante*, supermajority voting or quorum requirements, and, in defined cases, ancillary individual rights, such as pre-emption, withdrawal, or appraisal. Treating these topics as "extraordinary" by substance ensures that a board cannot slide a transformative transaction through under the guise of an ordinary meeting agenda.

In incorporations by public subscription, the constitutive meeting appears as a one-time deliberation at which the subscribers validate the formation, confirm the constitutive act, appoint the initial management and control bodies, approve

67 Angheni, 2013, p. 159.

68 David, 2014, p. 353.

69 Fegyveresi, 2024, p. 127.

70 David, 2014, p. 365.

71 Angheni, 2013, p. 160; Fegyveresi, 2024, p. 127.

incorporation expenses, and ratify any in-kind subscriptions based on expert assessments.⁷²

Finally, when only one class of shares is affected by a proposed alteration, a special meeting of that class operates as a class-specific consent mechanism;⁷³ it is not a second legislature but a mandatory filter that prevents the majority in another class from rewriting the bargain embodied in class rights. However, special meetings are not empowered to issue resolutions binding on the company as a whole.⁷⁴ Instead, their decisions must be presented to the appropriate general meeting for ratification.⁷⁵

The Romanian Companies Act outlines the competencies of ordinary and extraordinary general meetings in Articles 111 and 113, respectively.⁷⁶ Ordinary general meetings are entrusted with matters crucial for the company's lawful operation and internal governance. These include approving the annual financial statements, determining the distribution of dividends, appointing and dismissing executive officers, financial auditors, and controllers, and addressing remuneration and oversight of management. Additionally, ordinary meetings deliberate on the company's budget, operational programs, and decisions regarding the sale, lease, or closure of business units. These functions highlight the centrality of ordinary general meetings in ensuring the company's financial and administrative stability and everyday functioning.

Extraordinary general meetings, meanwhile, are reserved for decisions that require amendments to the company's foundational structure or governance framework. These meetings handle such matters as increasing or reducing share capital, merging or dividing the company, dissolving the company, and approving bond issuances or share conversions. Additionally, extraordinary meetings may decide on relocating the company's headquarters, altering its business activities, and extending its operational duration. Such decisions often necessitate broader consultation and consensus among shareholders owing to their potential to fundamentally alter the company's trajectory.

The law also provides for the delegation of certain competencies from extraordinary general meetings to the board of directors or the management board in a two-tier system.⁷⁷ For example, decisions on relocating the company's headquarters, modifying secondary business activities, and establishing or closing secondary offices can be delegated. Similarly, share capital increases may fall under this category, provided they adhere to guidelines established in the articles of incorporation or a

72 However, if resolutions adopted at the founding meeting are invalidated by court proceedings, the meeting may need to be reconvened, demonstrating the potential for such assemblies to have ongoing relevance beyond their initial convening. See Fegyveresi, 2024, p. 127.

73 Angheni, 2013, p. 162.

74 Săuleanu, 2008, pp. 86–87.

75 Fegyveresi, 2024, p. 127.

76 Angheni, 2013, pp. 159–160; Fegyveresi, 2024, pp. 128–129.

77 Angheni, 2013, p. 161; David, 2014, pp. 367–370; Gheorghe, 2020, pp. 393–394; Fegyveresi, 2024, p. 129.

prior resolution of the extraordinary general meeting (the institution of the authorised capital). This delegation mechanism allows for greater operational flexibility, meanwhile ensuring that strategic decisions remain subject to shareholder oversight. A distinction has to be made between delegable and non-delegable powers. Delegable powers include operational decisions, such as modifying secondary business activities or establishing branch offices. Non-delegable powers, by contrast, involve decisions of a structural nature, such as merging the company, dissolving it, or amending the articles of incorporation. By delineating these categories, the law safeguards the managerial efficiency and the collective decision-making authority of shareholders.

Under the Romanian Companies Act, the convocation of a general meeting of a JSC is governed by both statutory provisions and the company's articles of incorporation.⁷⁸ Within the standard architecture of corporate governance, the competence to convene the shareholders' general meeting (*ius convocandi*) is allocated to the executive organ that directs the company's current affairs, namely, to the board of directors in a unitary system or to the management board in a dualistic system.⁷⁹ This allocation follows a functional logic. The organ entrusted with business planning, resource allocation, and risk surveillance possesses the most immediate epistemic access to the company's operational and financial condition. Because it is uniquely placed to discern when shareholder deliberation is necessary to legitimate or enable corporate action, the law vests the convening initiative in that organ and, simultaneously, burdens it with a duty to exercise the initiative in a timely and informed manner. This duty is a standing obligation to convoke the general meeting whenever the state of the company's affairs reasonably requires shareholder intervention or oversight. The applicable standard is deliberately open-textured: it captures both routine corporate running and exceptional situations in which the company proposes to undertake transactions of constitutive significance.

At a more determinate level, the duty hardens into specific statutory mandates. Chief among these is the annual accountability cycle: after the close of each financial year, the executive organ must convene an ordinary general meeting within the legally

78 Fegyveresi, 2024, p. 129.

79 In addition, shareholders can trigger a convocation pathway. Holders of at least 5% of the share capital may require the executive organ to convene the meeting; if the request is ignored or refused, the tribunal can authorise those shareholders (or a designated person) to convene the meeting and set the agenda. Separately, if all shareholders are present and no one objects, they may validly meet and deliberate without any prior formal convocation. Oversight bodies have limited convening powers. Statutory censors must immediately convene the general meeting when a shareholder complaint they investigate is both justified and urgent. By contrast, an internal auditor reports to the board/supervisory board, which must then convene; the internal auditor does not convene directly. The supervisory board in a dualist system has also the *ius convocandi* when it identifies major issues regarding company management or financial integrity. Courts may intervene to ensure convocation in governance-failure scenarios. For example, if the supervisory board's headcount drops below the legal minimum in a dualist system and the directorate does not promptly call a meeting to fill vacancies, any interested party may ask the court to appoint a person to convene the meeting. Similar court assistance is permitted when administrators fail to convene as required.

prescribed window (as shown earlier, no later than 5 months after year-end) to present the (audited, when mandatory) financial statements, to propose the appropriation of results (including any distributions), and to submit reports on management's conduct and, in a dualistic system, the supervisory board's oversight.⁸⁰ Because these matters delimit the distribution constraint, inform the market, and structure the next business cycle, the ordinary general meeting is not a matter of managerial discretion; it is a compulsory forum. The legal consequences attached to this allocation are equally clear. The power to convene is fiduciary in character: it must be exercised with due care, in good faith, and for proper corporate purposes. Unwarranted delay or omission in summoning the shareholders' forum when the company's circumstances call for it may distort the allocation of decision rights between management and owners, impede the exercise of statutory or constitutional prerogatives by the shareholders, and expose the company to enforcement risks in respect of actions that require prior shareholder authorisation. Conversely, timely convocation within the statutory period for the annual general meeting sustains the chain of corporate authorisation, preserves the integrity of the financial reporting cycle, and anchors dividend discipline in lawfully approved accounts.

The Romanian regime on mandatory convocation embeds a capital-maintenance early-warning system into the governance of JSCs. When the approved annual accounts reveal that net assets have eroded below one half of the subscribed share capital, Article 153/24 of Act No. 31/1990 shifts the initiative from managerial discretion to managerial obligation: the board of directors in a unitary structure, or the management board in a dualistic structure, must promptly summon an extraordinary general meeting and, in advance of that meeting, circulate a reasoned report on the company's financial condition so that shareholders are not asked to deliberate in informational darkness. The purpose of this compulsory forum is not merely diagnostic. It is a decision-forcing device designed to restore the equilibrium between the company's asset base and the level of legally "tied" capital or, failing that, to channel the firm toward an orderly exit. Orthodox doctrine treats the agenda of such a meeting as oriented toward reconstitution of equity through fresh capital or reserves, toward nominal adjustment through a lawful reduction of share capital,⁸¹ or toward dissolution and liquidation where viability cannot be credibly re-established.⁸² A minority view reads the statute more narrowly, based on the theory that only a resolution on dissolution is strictly mandated while recapitalisation or reduction remain optional.⁸³ Even on that reading, the meeting cannot be an formal ritual: where dissolution is rejected, the company must regularise its position by the close of the financial year

80 Duțescu, 2010, p. 189.

81 This measure is possible only if the amount of the company's capital allows it, that is, if the reduction does not cause the capital to fall below the minimum level prescribed by law. See Fegyveresi, 2024, p. 130.

82 Schiau and Prescure, 2009, p. 463; Cărpenu, Piperea, and David, 2014, p. 576; Duțescu, 2010, p. 189.

83 Oroviceanu, 2010, pp. 18–19.

either by replenishing equity or by reducing the legal capital to align with the diminished net assets. Shareholders retain the capacity, by exercise of their statutory right to supplement the agenda, to place alternatives to dissolution before the meeting, including structural measures, such as conversion into an LLC.⁸⁴

A separate, governance-integrity trigger concerns the lawful composition of the administrative organs. Articles 137/2 and 153/7(2) address the situation in which the board falls below the statutory floor. In a unitary system the remaining directors⁸⁵ must immediately convene an ordinary general meeting to restore the board to legality; if they do not act, any interested party may seek judicial assistance to appoint a convener, thereby preventing a vacuum of corporate agency from ossifying. In a dualistic system, the supervisory board exercises oversight over the management board but itself must be constituted within a corridor of 3 to 11 members, with no requirement that the headcount be odd. Should the supervisory board's membership drop beneath the minimum, the obligation to summon an ordinary general meeting shifts to the management board; persistent inaction again unlocks the same judicial convocation mechanism. These rules protect the continuity and the legitimacy of corporate decision-making by ensuring that shareholder authority can be mobilised to restore the administrative architecture whenever either capital adequacy or organ composition ceases to satisfy the statutory baseline.

Additionally, the law recognises a narrow but important safety valve (functional especially in the case of smaller, closed JSCs): the “universal” or “spontaneous” general meeting.⁸⁶ Where the entirety of the voting capital is present or represented and every shareholder consents to deliberate, the protective function of convocation formalities is fulfilled by unanimity itself. In that configuration, the shareholders may validly waive defects in notice and may even constitute the agenda *in medias res*, provided that all participants expressly accept to debate and vote the items proposed. The universal meeting does not, however, transubstantiate the meeting into an omnipotent organ. Unanimous presence and consent can cure defects of convocation and agenda-setting, but they cannot extend the material competence of the general meeting beyond what the statute or the articles permit. Nor does unanimity relieve the company of post-meeting formalities, such as minute-taking, and registrations or publications needed for opposability. Properly understood, the doctrine of the universal meeting is a functional substitute for notice, not a license to disregard the remainder of corporate law's mandatory rules.

In Romanian company law, the convocation formalities for general meetings are constitutive of the deliberative power of the meeting. Accordingly, jurisprudence and doctrine converge on the proposition that resolutions adopted at a meeting called in breach of the statutory and constitutional rules on notice, timing, form,

⁸⁴ Fegyveresi, 2024, p. 130.

⁸⁵ The law does not impose a maximum number of directors in a unitary system, but their number must be odd to facilitate decision-making.

⁸⁶ Fegyveresi, 2024, pp. 132–133.

or agenda-setting are sanctioned by nullity. Absent a law-compliant convocation, shareholders' participatory and informational rights are structurally impaired, and any subsequent vote lacks the procedural predicate that legitimises collective will-formation. This is not a simple irregularity to be remedied *post hoc* by majority approval; it goes to the existence of the meeting as a lawful decision-making forum.

The Romanian Companies Act requires that invitations for general meetings be published in both Part IV of Romania's Official Gazette and a widely circulated newspaper.⁸⁷ The meeting cannot take place sooner than 30 days after the invitation's publication in the Official Gazette. This rule ensures shareholders have sufficient time to prepare for the meeting. Special circumstances require immediate action. If the number of board members falls below the statutory minimum, the remaining board members must promptly convene a general meeting. However, the obligation for immediate convening refers only to the issuance of the invitation and not to bypassing the mandatory 30-day notice period. This period, stipulated in Article 117(2) of the Romanian Companies Act, is a binding and non-derogable rule.⁸⁸

If the first general meeting fails to achieve a quorum, the invitation may include a date for a repeated meeting.⁸⁹ This repeated meeting cannot take place sooner than the day following the initial meeting. The courts have ruled that any decision adopted during a repeated meeting held on the same day as the original meeting is invalid.⁹⁰ If the initial invitation does not specify a date for the repeated meeting, a new invitation must be issued. The mandatory notice period for this second invitation may be reduced to 8 days.

Romanian company law accommodates several individualised modes of convening the general meeting, reflecting the fact that, since the 2019 reform, all shares in a JSC are registered in nominative form. Because every shareholder is identifiable in the register of shares, the company may validly replace newspaper notices with targeted dispatches, most commonly letters sent by registered post to the address recorded in the register.⁹¹ Where the articles of association so provide, electronic

87 Angheni, 2013, p. 163; David, 2014, pp. 378–379. The question of which type of newspaper should be used for publication has been a subject of debate. Some argue that it must be a local or regional newspaper available in the area of the company's headquarters. Others consider that any widely circulated newspaper could suffice. The prevailing opinion supports publication in a local or regional newspaper. However, if such a newspaper does not exist in the area of the company's headquarters, a newspaper from the nearest locality should be chosen. National newspapers are seen by some as a better alternative, because they ensure wider circulation and broader territorial coverage, which can help inform shareholders who do not reside near the company's headquarters.

88 Fegyveresi, 2024, p. 133.

89 Angheni, 2013, p. 164.

90 Fegyveresi, 2024, p. 134.

91 The courts held that the company's convening of the meeting solely by registered letter was lawful. This is because, where all shares are registered (nominative), notice may be given exclusively by registered letter, provided this method is not prohibited by the articles of association, and in the company's articles there is no express prohibition of this convening method. High Court of Cassation and Justice, Commercial Section, Decision No. 2741 of 15 September 2010.

communication may also be employed: the convocation and supporting documents can be transmitted by e-mail bearing a qualified electronic signature, on condition that the message reaches the shareholder not less than 30 days before the meeting. The use of a qualified signature serves the evidentiary and integrity functions that traditional registered mail performs, authenticating the sender, fixing the content and the date of dispatch, and enabling the company to prove timely delivery. For issuers that maintain an official website, publication of the notice and agenda online is an additional transparency obligation; it does not displace individualised notice but operates in parallel to facilitate equal access to information.

The convocation must contain all information necessary for shareholders to organise their participation and to understand the matters to be decided.⁹² In practice this requires an unambiguous indication of the date, hour, and venue; the reference date used to determine entitlement to attend and vote; and a statement of the agenda drafted in clear, intelligible terms that allow shareholders to anticipate the legal and economic implications of each item. Unless the articles specify a different arrangement, the meeting takes place either at the company's registered office or at the location stated in the notice. Deliberations held outside the time, date, or place announced are procedurally defective and the resolutions adopted there are in principle void, because the convocation has a constitutive function: it defines the procedural framework within which the collective will of the company may lawfully be formed.

Enhanced information duties apply where structural decisions are proposed. If amendments to the articles of association are on the agenda, shareholders must receive the full text of the proposed clauses with the convocation so that they can assess the precise drafting and seek advice if necessary; a generic indication that "amendments" will be discussed does not suffice. Where appointments to the board of directors or to the supervisory board are to be made, the notice should inform shareholders that the list of candidates and their files are available for inspection at the company's headquarters. Sensitive personal data contained in those files should not be reproduced in the convocation itself; the combination of an on-site inspection right and website publication of the notice strikes a balance between corporate transparency and data-protection compliance.

Romanian law adheres to a strict agenda discipline: as a rule, the general meeting may not adopt resolutions on matters that were not previously included in the published agenda.⁹³ This rule secures the shareholder's right to be informed in advance and to decide (by attending, appointing a proxy, or divesting) how to respond to the proposed corporate action. Two narrow pathways permit deviation. First, when all shareholders are present or represented and no one objects, the meeting may add and decide new items; the unanimity requirement is intentionally demanding and is met solely in smaller closely held companies. Second, when the annual financial statements are submitted for approval, the meeting may, as an accessory decision,

⁹² Angheni, 2013, pp. 163–164.

⁹³ For the rights of minority shareholders to amend the agenda, see Section 6.3.

rule on the discharge or liability of directors or supervisory board members and on the initiation of actions against them, even if these measures are not expressly listed in the notice. Beyond these situations, attempts to extend deliberations beyond the agenda expose the resolutions to annulment. Shareholders who have consented to the inclusion of an additional item but later vote against it cannot subsequently invoke the initial omission as grounds to challenge the decision; their prior consent cures the procedural defect.

The conduct of the meeting must be memorialised in minutes that record the constitution of the meeting, the identity and holdings of those present or represented, the substance of the debates, and the text and outcome of each resolution. The minutes must be signed by the chair and secretary, and they should annex the convocation documents and attendance lists so that a complete procedural file exists. To render the resolutions enforceable *erga omnes* and to ensure commercial publicity, the JSC must file them with the Trade Registry and procure their publication in the Official Gazette within 15 days of adoption; if the issuer maintains a website, posting the results there is also required. Individual shareholders may request confirmed extracts or notifications of the resolutions and voting outcomes, which operate both as a transparency device and as a trigger for litigation time-limits.

In current Romanian law, the position of holders of dividend-preference shares illustrates the interaction between participation and voting rights in Romanian corporate governance. Before the 2006 amendments, these shareholders were not only excluded from voting but could even be barred from attending the general meeting. The legislature retained the voting limitation but abolished the participation ban, recognising that informed attendance is a cornerstone of minority protection and market discipline. On a principled reading of the amended framework, the correlative right to request the convocation of a meeting should also extend to dividend-preference shareholders.

6.2. Voting Rights

In corporate law, the vote is the instrument through which private ownership positions are translated into collective authority. The general meeting furnishes the institutional setting for that translation: it constitutes the company's supreme deliberative forum and provides the procedural safeguards within which individual preferences are aggregated into binding corporate decisions. As a baseline, every member or shareholder participates in that process; disenfranchisement is exceptional and justified only to protect capital integrity, procedural fairness, or the company's interest. Thus, a shareholder who has not paid a due contribution is temporarily disabled from voting until performance cures the default, because voting power is premised on fully assumed proprietary risk.⁹⁴

The act of voting expresses a personal position, but it acquires corporate effect only when the thresholds fixed by statute or the constitutive documents are satisfied.

94 Fegyveresi, 2024, p. 134.

Therefore, majority formations perform a constitutive function: they convert dispersed, individual choices into the company's will. The normative rationale is democratic in form yet prudential in content. Individual votes reflect heterogeneous interests; the majority rules define when those interests legitimately speak for the enterprise as a whole, ensuring both decisional legitimacy and legal certainty.

In LLCs, the general meeting remains the principal arena for decision-making, but Romanian law accommodates participation beyond physical attendance. The constitutive instrument may authorise voting in writing, enabling members who cannot be present to contribute to the formation of the corporate will.

Unless the founding document provides otherwise, each LLC-share carries a single vote, which aligns decisional weight with the economic stake. Substantively, decisions are ordinarily subject to a dual approval logic (double majority rule): they must secure an absolute majority measured both by headcount of members and by the proportion of corporate shares they collectively hold.⁹⁵ This double filter prevents domination either by a numerically small but economically powerful bloc or by a numerical majority that lacks a commensurate capital commitment, thereby preserving the hybrid, personal-capital character of the LLC. Where a regularly convened meeting fails at the threshold stage, the law authorises reconvening; at the subsequent session, the items on the original agenda may be resolved by a majority of votes actually cast, allowing the company to overcome persistent coordination failures without sacrificing minority protections embedded in notice and agenda discipline.

Amendments to the constitutive instrument historically demanded unanimity (except for cases in which the statute or the charter had different rules), an imperative that underscored the contractual and personal substratum of the LLC.⁹⁶ In one case, the highest court stated that the manner in which the general meeting operates and reaches decisions demonstrates the predominance of this company's *intuitu personae* character. Accordingly, any amendment to the articles of association must be adopted with the vote of all members, save for the exceptions provided in the articles or by statute. It follows indisputably that the legislature intended resolutions amending the articles of an LLC to be adopted only with the unanimous consent of the members concerned. Had the norm been meant merely to require the presence/participation of all members at the general meeting, rather than the expression of a common will as a deliberative act, the legislature would not have referred to the general adoption of general-meeting resolutions by absolute majority, a formulation that clearly indicates the requirement is the common will of one-half plus one of the members; otherwise, it would have spoken of presence, not of "the vote of all members". Thus, if the legislature had not envisaged the common will of all members as a precondition for

95 Gheorghe, 2020, p. 332.

96 The courts decided that 'an increase of the share capital entails an amendment to the articles of association, which requires the unanimous vote of the members, since neither the law nor the articles of association provide any exception to the unanimity rule' (High Court of Cassation and Justice, Commercial Section, Decision No. 3017 of 29 September 2010).

amending the articles, but only their attendance, the purpose of such a requirement would be devoid of rationale.⁹⁷

Legislative reform in 2022 recast this rigidity. The current regulation states: the general meeting decides by a vote representing the absolute majority of the associates and the shareholdings, except when the articles of association provide otherwise. If the company wishes to require a qualified majority (larger than simple majority, e.g. two-thirds) or unanimity (all associates agree) for certain or all decisions, this must be explicitly stated in the articles of association. Companies that want extra safeguards for important decisions, such as changes to the constitutive documents, can raise the decision-making threshold only through clear language in their articles. If the articles are silent, the law's default applies. The calibration of voting power is thus shifted, as a matter of policy, from unanimity in case of charter reform to party autonomy bounded by good faith, creditor protection, and publicity rules.

Even where voting rights subsist in principle, they are curtailed to neutralise conflicts of interest that would undermine the integrity of deliberation. A member whose own in-kind contribution is at issue, or who stands on both sides of a contemplated transaction with the company, must refrain from voting on the matter. The prohibition removes the structural temptation to adjudicate a private claim under the cloak of corporate decision-making and aligns with the broader maxim that no one should be judge in their own cause.

In JSCs, the framework is more detailed. The starting point is proportionality: each fully paid share generally confers one vote,⁹⁸ although the articles may deviate within the limits of mandatory law, including by capping the number of votes exercisable by a large shareholder. Where shares are pledged, the voting entitlement follows ownership and remains with the pledgor unless and until the enforcement process culminates in a transfer. Parties may, however, organise representation contractually during the pledge period, so that the creditor acts as proxy while the legal titleholder retains the underlying right. If enforcement proceedings are initiated regarding the shares, the shareholder retains voting rights until the shares are sold or auctioned.⁹⁹ Once the sale is perfected, the acquirer steps into the full panoply of shareholder rights, voting included.

The manner of casting votes is ordinarily open, but secrecy is required for personal matters, such as the appointment or dismissal of directors, auditors, or supervisory board members, and for decisions regarding their liability.¹⁰⁰ Provisions that attempt to substitute publicity for secrecy in these contexts, or resolutions adopted in defiance of the secrecy requirement, are invalid because the protection of independence and freedom from retaliation would otherwise be illusory. Where correspondence voting is permitted, ballots relating to secret-vote items are counted only after in-person

97 High Court of Cassation and Justice, Commercial Section, Decision No. 2765 of 22 September 2011.

98 Angheni, 2013, p. 164.

99 Săuleanu, 2008, p. 170.

100 Angheni, 2013, p. 167.

votes have been tallied, and the identity of mail-in voters is confined to the tellers to preserve confidentiality. Public issuers may not conduct general meetings exclusively by correspondence; a physical or virtual session must be held, though postal or electronic voting can complement the meeting for both listed and unlisted companies.¹⁰¹

Quorum and majority rules reflect a compromise between decisional efficiency and minority protection. For ordinary general meetings, the presence of shareholders holding at least one-quarter of the voting rights suffices to constitute the meeting, and resolutions pass by a simple majority of votes cast. If that threshold proves unattainable, a second call may proceed without any quorum requirement and may adopt resolutions, again by a majority of votes actually expressed, but only on matters included in the initial agenda.¹⁰² The unanimity exception persists in another guise: if all shareholders are present and consent, the meeting may decide on any issue, whether or not announced.¹⁰³ The flexibility of the second-call regime cannot be neutralised by private ordering; the articles cannot reimpose stricter quorum or majority rules for repeated meetings, which is why, in extreme dispersion scenarios, a single attending shareholder may adopt valid decisions so long as the agenda discipline is respected.

Extraordinary general meetings follow a similar architecture but with enhanced thresholds when the legal or economic identity of the company is at stake. The presence of at least one-quarter of the voting rights is typically required, with the threshold reduced at a second call to one fifth.¹⁰⁴ Routine extraordinary matters pass by a simple majority of votes cast, but structural transactions (alterations to the company's main object, capital changes, mergers, divisions, or dissolution) demand supermajority support measured, as a default, at two-thirds of the votes present or represented. The articles may raise, but not lower, these safeguards.

Not every share counts toward the arithmetic of constitution and decision. Financial instruments that do not carry voting rights are excluded from quorum computations, as are shares whose voting power is suspended or restricted at the time of the meeting.¹⁰⁵ The founding meeting of a company created by public subscription is treated differently to reflect the pre-corporate, contractual nature of that stage. Each subscriber has one vote irrespective of the number of subscribed shares, and more than half of the subscribers must attend; while this equal-vote model has been criticised for undervaluing larger risk bearers, it responds to the need to police the formation process rather than to measure capital power.¹⁰⁶ Subscribers who fail to meet their financial obligations or pay at least half of their cash contribution are excluded from voting.

101 Fegyveresi, 2024, pp. 141–143.

102 David, 2014, pp. 363–364.

103 Fegyveresi, 2024, p. 143.

104 David, 2014, p. 370.

105 *Ibid.*, pp. 362–363.

106 Georgescu, 1948, p. 239.

Romanian law specifies both the occasions for disabling the vote in JSCs and the conditions for its reactivation. Directors, members of the executive or supervisory board, and comparable insiders may not participate in decisions regarding their own discharge from management or in matters that directly implicate their personal interests; resolutions adopted with their decisive participation are susceptible to challenge. Legal doctrine suggests that this principle should apply to all company types.¹⁰⁷

Nonetheless, the law contains a safety valve. First, where the approval of the annual financial statements cannot otherwise attract the requisite majority, the restriction may be lifted for that vote. Second, the restriction does not apply if the resolution could have been passed also without the vote of the restricted shareholder.¹⁰⁸ This “last resort” mechanism is generally interpreted as relating to the vote threshold rather than to meeting constitution, and it loses salience in the setting of a second-call ordinary meeting for which neither quorum nor enhanced majority requirements apply and the articles cannot stipulate stricter conditions.

A distinct but related discipline governs shareholders who face a conflict of interest. They must abstain, and if their decisive vote tips the balance, they are exposed to damages liability. Because the statute does not exhaustively define conflict, the analysis is context-sensitive; when a conflict is manifest and the shareholder nonetheless votes, best practice excludes that vote from both quorum and majority counts and bars the conflicted shareholder from participating in the associated debates.¹⁰⁹

Founding meetings in public subscriptions are further constrained by fairness concerns. A subscriber who transfers a non-cash contribution may not vote on resolutions dealing with that contribution, thereby protecting cash contributors from dilution by valuations that the contributor would otherwise help to ratify.¹¹⁰ Preference shares that ordinarily lack voting rights regain the vote if the promised preference, typically a dividend privilege, is delayed or denied, and the vote persists until the preference is satisfied, which restores parity with ordinary shareholders for the duration of the default. Shares are indivisible for corporate purposes; co-owners must appoint a common representative, failing which a court may do so, and the company is entitled to ignore a putative transfer until the representative is designated. Treasury shares, as repurchased but not cancelled equity, are neutralised for governance: their voting rights are suspended and they do not count toward quorum until they are alienated again.

When corporate action would vary the rights attached to a particular class, the logic of class autonomy controls. The affected class must approve the change in a separate meeting before the decision becomes effective for the company as a whole. Preference shareholders, even when ordinarily disenfranchised, recover the vote for the purpose of protecting their class prerogatives; thus, class consent operates

107 Căpățină, 1991, pp. 186–187; Cărpenu, Piperea, and David, 2014, p. 415.

108 Georgescu, 1948, p. 348.

109 Săuleanu, 2008, pp. 189–190.

110 David, 2014, p. 159.

as a constitutional check on majoritarian opportunism at the level of the general meeting.

In Romanian law voting is a property right, a governance tool, and a liability-control device.

6.3. Minority Shareholders

Romanian company law does not establish a unified system for minority protection but contains various provisions that safeguard minority shareholders' rights. Article 119 of the Romanian Company Law is a key legal provision designed to protect the interests of minority shareholders. However, its applicability is not exclusive to them, as shareholders holding at least 5% of the company's share capital, whether individually or collectively, may invoke it. This threshold allows both minority and majority shareholders to exercise the right to request the convocation of a general meeting, reflecting a mechanism for ensuring corporate oversight.¹¹¹

Under Article 119(1), shareholders who meet the 5% threshold can request the board of directors (in a unitary management system) or the management board (in a dualistic system) to convene the general meeting to deliberate on matters within its competence. The company's articles of incorporation may lower this threshold but cannot set it higher than 5%. Once such a request is made, the directors or management board must convene the general meeting within 30 days and hold it within 60 days of the request.

Scholars debate whether shareholders need to justify their request for convening the general meeting. One perspective suggests that shareholders are not required to provide reasons for their request.¹¹² Another view argues that the request must specify the purpose, agenda, and rationale to ensure that the proposed matters fall within the general meeting's scope of authority.¹¹³ A third perspective adds that the request should indicate the type of meeting being called, whether ordinary or extraordinary. However, it is generally agreed that the purpose and type of meeting can be inferred from the proposed agenda items, making explicit inclusion of these details optional rather than mandatory.¹¹⁴

If the directors or management board fail to convene the meeting in response to a valid request, shareholders may petition the court where the company is headquartered to order the convocation. Importantly, the High Court of Cassation and Justice has ruled that without judicial approval, shareholders themselves cannot convene the general meeting.¹¹⁵ Once the court intervenes, it determines the meeting's date, agenda, record date for shareholder identification, and appoints a presiding officer for the meeting from among the shareholders.

111 Cărpenu, Piperea, and David, 2014, p. 398; Duțescu, 2010, p. 451.

112 Duțescu, 2010, p. 190.

113 Pascu and Pârnu, 2005, pp. 63–64.

114 Săuleanu, 2008, pp. 103–104.

115 High Court of Cassation and Justice, II. Civil College, Decision No. 2690/2006.

Legal doctrine diverges on whether the judicial process for authorising the general meeting is contentious or non-contentious. Until the 2006 amendment of the Romanian Company Law, Article 119(3) explicitly provided that such proceedings were governed by the non-contentious procedure rules of the Code of Civil Procedure. Following the amendment, this provision was repealed, leading to differing interpretations. Some argue that the process has since become contentious, involving adversarial proceedings. Others maintain that it remains non-contentious, focusing on supplementing the executive body's inaction rather than resolving disputes between corporate organs. The latter view is supported by the High Court of Cassation and Justice's Decision 2015/1037, which clarified that proceedings initiated under Article 119(3) are non-contentious. The court emphasised that the process does not aim to resolve a conflict between opposing parties but to ensure the convocation of the general meeting when the management body has failed to act. The decision further argued that the non-contentious nature of the proceedings allows for an efficient and expedited resolution, which aligns with the need for prompt corporate governance interventions. By providing a mechanism for minority shareholders to convene general meetings and requiring judicial oversight in cases of managerial inaction, Romanian company law ensures that corporate decision-making remains inclusive and adheres to legal and procedural standards.

For minority shareholders, the right to information is both a tool for oversight and a safeguard against potential abuses by the majority. This right enables them to challenge unfair resolutions, monitor corporate governance, and advocate for transparency. By ensuring access to critical company information, Romanian law strengthens minority shareholders' ability to protect their interests and contribute meaningfully to corporate decision-making processes. The right to information is an inherent non-monetary right derived from a shareholder's ownership of shares. It is crucial for ensuring the effective exercise of other shareholder rights, such as oversight and participation in the company's business management. This right obligates the company to provide access to essential documents and information, enabling shareholders to make informed decisions, particularly at general meetings. Minority shareholders benefit significantly from this right, as access to information can provide a defence against the dominance of majority shareholders and serve as the foundation for legal remedies, such as challenging invalid corporate resolutions. The Romanian Companies Act explicitly grants the right to information in the context of JSCs but does not exclude members of other corporate forms from similar rights. Minority shareholders can use this right to ensure transparency and accountability, fostering fairness in corporate governance.

The Romanian Companies Act requires that specific documents (e.g. annual financial statements, directors' reports, supervisory board reports, and dividend proposals) be made available to shareholders at the company's registered office from the date of the meeting's convening notice. Shareholders must be granted access to these documents for at least 30 days before the meeting. In cases in which the notice specifies a meeting date beyond this minimum period, shareholders retain their

right to access documents throughout the extended period. If notices are delivered by registered mail or electronically with a qualified electronic signature, the right to access documents must be upheld from the receipt of the notice until the meeting date. Shareholders may request copies of these documents, and companies are prohibited from charging fees beyond the administrative costs of producing them. For companies with websites, these materials must also be published online to ensure broader access.

Shareholders are entitled to address written questions to company executives about past and future company operations following the convening of the general meeting. Executives must respond to these questions during the meeting, and answers may be provided orally, as general meeting proceedings are recorded and accessible to shareholders. If written responses are specifically requested, especially for complex queries, executives are obligated to comply unless disclosure would significantly harm the company's interests, such as in cases involving trade secrets or confidential information.

Failure to fulfil the obligation to provide information is not directly sanctioned by the Romanian Companies Act but may serve as a basis for legal action to annul general meeting resolutions. Additionally, knowingly providing false or misleading information about the company's financial situation constitutes a criminal offense, punishable by imprisonment or fines.

Shareholders representing at least 5% of the company's capital may request additions to the agenda. These requests must be submitted within 15 days of the invitation's publication. The supplemented agenda must be published at least 10 days before the meeting.

A shareholder has the inherent right to lodge complaints with the company's internal auditors or internal financial controllers regarding actions they believe should be subject to audit. The auditors and internal controllers are required to consider these complaints when preparing their report for the general meeting. If the complaint is raised by one or more shareholders who collectively represent at least 5% of the company's share capital (or a smaller percentage if allowed by the company's articles of association) the internal auditors or controllers are obliged to investigate. If they determine that the complaint is well-founded and urgent, the internal auditors must immediately convene a general meeting and present their findings. Otherwise, the complaint must be addressed at the next general meeting. The general meeting is required to adopt a resolution on the complaint. Internal controllers do not have the right or obligation to directly convene the general meeting. However, they are required to notify the board of directors, or the supervisory board in a dual management system, who will then convene the general meeting.

The Romanian Companies Act mandates that JSCs maintain specific records, including the shareholder register, meeting minutes, resolutions, and bond registers. These records are accessible to shareholders and, in some cases, to third parties. For instance, the shareholder register must include details about shareholders' identities and shareholdings, and it is publicly accessible.

The minutes of general meetings record resolutions, votes cast, abstentions, and dissenting opinions. Shareholders have the right to request and receive copies of these records at their own expense. While the law does not explicitly require disclosure of board meeting minutes, shareholders may access these records if the company's articles of association permit it. If access is denied, shareholders may seek a resolution from the general meeting or a court order to enforce their rights.

In the case of an LLC, a shareholder or a group of shareholders representing at least one-quarter of the share capital may request the convening of the general meeting, specifying the purpose of the convening.

A specific tool of minority protection in the Romanian legal system is cumulative voting, which was first introduced into Romanian corporate law in 2000, and currently is regulated by Act No. 24/2017 on issuers of financial instruments and market operations. Article 85(3) prohibits any corporate charter provisions from invalidating, altering, or limiting shareholders' rights to request cumulative voting during board elections. Any charter clause intended to restrict these rights is declared null and void. By safeguarding this voting system, the law seeks to balance corporate governance by providing minority shareholders a meaningful opportunity to influence board composition.

The cumulative voting method is one of the most effective mechanisms for ensuring minority shareholders are represented on a company's board of directors (in a unitary management system) or supervisory board (in a dual management system). Although the cumulative voting method is primarily designed to ensure the representation of minority shareholders in corporate bodies, it does not violate the principle of equality of rights attached to shares. Unlike traditional vote multiplication, where a single share can carry multiple votes, cumulative voting adheres to the proportionality principle, as each share still represents one vote. The key feature of this system is that a shareholder's total voting rights are multiplied by the number of seats to be filled on the board. The shareholder can then allocate their votes across candidates in any manner they choose, either concentrating all votes on a single candidate or distributing them among several candidates. For example, if five board seats are to be filled and a minority shareholder owns 1,000 shares (each granting 1 vote), they have a total of 5,000 votes under cumulative voting. Instead of casting a maximum of 1,000 votes for any one candidate under a majority voting system, the shareholder can allocate all 5,000 votes to one candidate or distribute them among multiple candidates, such as 3,000 votes for one and 2,000 votes for another, depending on their preferences or strategy. The cumulative voting system offers an equitable approach to corporate governance, fostering minority shareholder representation without disrupting the proportionality of voting rights.

To understand the mechanism, here is a simplified model. Consider a company with five board seats to fill and 1,000 shares issued. The shareholders are divided into two groups: majority shareholders who hold 800 shares and minority shareholders who hold 200 shares. Each share represents 1 vote, and the cumulative voting system allows shareholders to multiply their votes by the number of board seats, giving each

group more flexibility in allocating their votes. The majority shareholders, with 800 shares, have a total of 4,000 votes (800 multiplied by 5). They can distribute these votes among their preferred candidates, typically spreading them strategically to ensure control of most board seats. For example, they might allocate their votes evenly across four candidates, giving each candidate 1,000 votes. This strategy maximises their influence while leaving one seat potentially open for competition. The minority shareholders, with 200 shares, have 1,000 votes (200 multiplied by 5). By concentrating all their votes on a single candidate, they can compete effectively for one of the board seats. With 1,000 votes focused on one candidate, the minority representative can match the votes of any single majority-backed candidate, assuming the majority's votes are distributed as described. When the votes are tallied, four candidates backed by the majority receive 1,000 votes each, while the minority candidate also receives 1,000 votes. This results in the minority candidate securing the fifth board seat. The cumulative system ensures that the minority, despite holding only 20% of the shares, can achieve proportional representation by focusing their votes strategically. Without cumulative voting, the majority would likely dominate all five board seats, leaving the minority without representation.

6.4. Shareholders' Agreements

Shareholders' agreements in Romanian law occupy a marginal role, primarily due to historical and cultural factors that have shaped the perception and utility of this legal tool.¹¹⁶ Unlike jurisdictions where such agreements are widely recognised and utilised as effective mechanisms for governing shareholder relationships, their use in Romania remains rare and underdeveloped. This limited adoption can be attributed to several interrelated factors.

Romanian legal culture has traditionally placed significant emphasis on the corporate founding documents, such as the articles of association or the statutes of a company. These documents are viewed as the primary source of governance rules and shareholder obligations. Any arrangement that seeks to supplement or deviate from these formalised agreements is often regarded with suspicion, as it may be seen as undermining the principles enshrined in the foundational legal framework of the company and the requirement for transparency in company law.

Additionally, there is a perception within Romanian legal tradition that shareholders' agreements serve primarily as instruments to circumvent the articles of association, creating informal arrangements that might conflict with or overshadow the corporate governance rules established by law. This perception is further reinforced by a conservative legal approach that values the predictability and transparency of formal corporate structures over the flexibility offered by private agreements.

The limited prevalence of shareholders' agreements in Romania may also be linked to the lack of a legal framework explicitly regulating these agreements.

¹¹⁶ For an analysis on shareholders' agreements in Romania, see Catană and Șumandea-Simionescu, 2018, pp. 509–538.

In jurisdictions where shareholders' agreements are common, there is often if not a regulation, but at least hints to recognition of these contracts, which provides confidence to shareholders in using them. By contrast, Romanian law does not offer provisions or established jurisprudence on the subject, which contributes to uncertainty about their legal standing and practical enforceability.

Moreover, the business culture in Romania has historically prioritised informal negotiations and personal relationships over formalised private agreements among shareholders. This cultural inclination may reduce the perceived necessity of entering into shareholders' agreements, as stakeholders often rely on trust and verbal understandings.

The result of these factors is that shareholders' agreements are not commonly integrated into Romanian corporate practice. However, this does not mean that they are entirely absent or without utility. In certain complex or international business contexts, particularly where foreign investors are involved, shareholders' agreements are increasingly used to supplement the provisions of the articles of association. They can provide additional flexibility and clarity on such issues as voting arrangements, dividend policies, transfer of shares, and dispute resolution, which may not be adequately addressed in the founding documents.

From a legal viewpoint, the reality of these agreements is acknowledged through the provisions of Act no. 297/2004 on the capital market. This act implicitly acknowledges the significance of such agreements in shaping corporate governance, especially in scenarios involving joint control or strategic collaboration among shareholders. For instance, it refers to persons who directly or indirectly participate in the conclusion of agreements aimed at obtaining or jointly exercising voting rights if the shares that are the object of the agreement may confer a position of control. Act no. 297/2004 addresses situations where individuals or entities enter into agreements that impact voting rights. Such agreements often aim to consolidate influence or exercise joint decision-making power within a company. This provision demonstrates an acceptance that shareholders' agreements can play a role in structuring relationships among stakeholders and in achieving specific objectives, such as consolidating control or facilitating coordinated actions.

6.5. Control of Legality of General Meeting Resolutions

Judicial control over general-meeting resolutions operates as a constitutional feature of Romanian corporate law rather than an exceptional remedy. It disciplines the exercise of majority power by insisting that the company's will be articulated only within the limits traced by statute and by the constitutive documents. The validity inquiry, therefore, is legal and not economic: a resolution must comply with mandatory legislation and must not contradict the articles of association. Where either condition fails, the resolution is open to judicial censure at the suit of a qualified claimant, and the claimant need not prove loss to the company or to any investor. Unlawfulness in itself, whether sourced in a statutory breach or a conflict with the charter, provides a sufficient ground for annulment.

The Constitutional Court of Romania held that it cannot be maintained that the abusive filing of actions to annul resolutions of the general meeting of shareholders has the effect of blocking the company's activity. Under Act No. 31/1990, bringing an annulment action does not suspend the enforcement of the challenged resolution; suspension may be ordered only by way of a presidential ordinance (an interim order), with the claimant potentially required to post security. These rules operate as procedural safeguards designed to deter vexatious annulment actions against general meeting resolutions.¹¹⁷

The right to invoke this control belongs to each shareholder as a non-pecuniary membership entitlement, inseparable from the status of member and unavailable to *ex ante* waiver through private ordering.¹¹⁸ The articles cannot validly strip shareholders of the challenge right, and private undertakings to forgo litigation are similarly ineffective where they would neuter the legality review. As a matter of standing, the law privileges those who were absent from the meeting and those who attended but voted against the impugned resolution, on condition that dissent was captured in the minutes. Abstention is ordinarily treated as acquiescence and will not sustain an action. Even this scheme yields for cases in which consent was vitiated; a shareholder who supported the resolution may still obtain annulment by establishing coercion, fraud, material mistake, or other defects that taint will-formation. However, this ground is necessary to control if the vitiated vote was necessary to obtain the majority.¹¹⁹ Secret ballots pose a well-known friction between the value of confidentiality and the evidentiary burden of dissent.¹²⁰ A coherent solution, consistent with the rationale for secrecy on sensitive agenda items, recognises the sufficiency of the tellers' report showing at least one negative or dissenting vote while forgoing identification of the voter.

The court's mandate is confined to legality. It does not substitute its economic judgment for that of the corporate organs, and it will not reassess expediency, profitability, or business strategy when the decision lies within the board's or the meeting's substantive competence. Remedial power tracks that narrow mandate: the court annuls what is unlawful but does not replace it with an alternative corporate decision. Legality review nonetheless ranges across both procedure and substance.¹²¹ On the procedural side, the convocation must meet statutory and charter requirements concerning the competent convening organ, the form and content of notice, and the specification of date, time, and place; material departures can vitiate the ensuing resolution. On the substantive side, the decision's content must respect mandatory norms and the charter's constraints. Measures that trespass on capital maintenance rules, disregard class-rights protections or exceed the general meeting's or board's powers are *ultra vires* and unlawful.

117 Decision No. 904/2006, Official Gazette No. 55 of 24 January 2007.

118 Fegyveresi, 2024, p. 152.

119 Angheni, 2013, pp. 169–170.

120 Georgescu, 1948, p. 367; Cârpenaru, Piperea, and David, 2014, pp. 438–439.

121 Turcu, 1998, p. 318.

Romanian doctrine and jurisprudence distinguish between invalidity protecting public interests and invalidity protecting private interests.¹²² The former, usually styled as nullity, is engaged when rules serving the integrity of the corporate constitution or the legality of convocation and competence are broken. In such circumstances any person with a legitimate interest, including creditors and other affected third parties, may pursue an action in nullity.¹²³ The latter, voidability, protects private interests and is triggered by such infringements as vitiated consent or breaches of charter-based procedural accommodations; it may be pursued only by those directly affected. Because the Companies Act largely articulates mandatory, public-interest norms, their violation typically grounds nullity; conversely, contraventions limited to contractual provisions of the articles generally have found claims in avoidance at the instance of interested shareholders. The line between the two is not purely taxonomic, as it also dictates consequences. Partial invalidity is conceptually available where the unlawful element can be severed without distorting the remainder; the courts will prefer to preserve the balance of the resolution if the illicit component is separable and if the residual decision continues to make legal and practical sense.

Article 132 of Act No. 31/1990 captures the validity test for JSCs by tying binding force to compliance with law and charter. A resolution that surpasses this threshold binds all shareholders, dissenters, and absentees alike; disagreement is not illegality. Similarly, a resolution that fails the test is vulnerable to annulment, and courts consistently resist invitations to police business merits once legality is satisfied. This solution aligns Romanian law with the broader European model in which judicial review of corporate decisions secures legality while leaving business judgment to corporate actors.

Temporal discipline is rigorous and must be observed with precision. In JSCs, the action to annul a resolution ordinarily must be filed within 15 days of the resolution's publication in Part IV of the Official Gazette.¹²⁴ In LLCs, which do not rely on that publication channel, the relevant period is 15 days from the date on which the member became, or reasonably should have become, aware of the decision.¹²⁵ Romanian courts generally treat these periods as limitation periods: the abstract right to seek legality control subsists, but the courts will refuse enforcement after expiry. By contrast, actions that assert nullity for breaches of public-interest norms are not time-barred;¹²⁶ they remain available at any time in deference to the systemic weight of the infringed rule. Attention to these deadlines is not merely formalistic, because

122 David, 2014, pp. 434–437.

123 For example, creditors may challenge amendments to the articles of association that jeopardise their claims. However, shareholders cannot use the specific opposition mechanism available to creditors, as they have a dedicated right to challenge resolutions under Article 132 of Act No. 31/1990. For details, see David, 2014, pp. 439–440.

124 Ibid., pp. 440–441.

125 Fegyveresi, 2024, p. 161.

126 Angheni, 2013, p. 173.

they mediate the tension between legal certainty in corporate affairs and the protection of minority and third-party interests.

The procedural posture of such disputes preserves adversarial structure by placing the company in the defendant's role. Where a unitary board collectively contests the resolution, the ordinary representation of the company cannot stand; the court appoints a shareholder to act for the company, and in a dualistic system the supervisory board may assume this function. Parallel or overlapping suits arising from the same resolution may be consolidated to avoid inconsistent outcomes and advance procedural economy. Appeal routes remain open under the ordinary hierarchy, thereby harmonising the need for rapid certainty with the demands of accuracy and fairness.

The highest court has decided that from the interpretation of the statutory provisions, there emerge the categories of persons to whom the legislature has accorded active standing to bring actions for the annulment of general meeting resolutions. Thus, in addition to shareholders who voted in person or by proxy against the resolution and requested that this be recorded in the minutes, and shareholders who did not attend the meeting, there may also be other persons who, although not shareholders, can demonstrate a legitimate, personal interest that has arisen and is current where absolute nullity is alleged. That the legislature did not intend to include the company itself among the holders of the right to seek annulment is supported by two textual arguments. First, where a resolution is challenged by all members of the board of directors or all members of the management board, the company is to be represented in court by a person designated under the applicable rules – an arrangement consistent with the company's position as defendant. Second, the law provides that the action be adjudicated in contradiction with (i.e. against) the company. Finally, it must not be overlooked that a resolution, even if unlawful, remains the company's own juridical act, embodying its will. Accordingly, the phrase "any other interested person" does not confer standing on the company to promote actions for the nullity of general meeting resolutions – a conclusion correctly reached by the court of appeal, rendering the appellant's grounds of recourse unfounded.¹²⁷

Because filing a claim does not suspend the effects of a resolution, Romanian law couples the annulment remedy with interim relief.¹²⁸ A claimant may ask for suspension pending judgment on the merits. This request is processed summarily and typically hinges on a credible showing of a serious issue to be tried and a risk of harm that would be difficult to repair later, together with the posting of security calibrated to deter frivolous applications while not pricing out meritorious claims. The preventive function of suspension is central in practice, as it forestalls the entrenchment of unlawful decisions and diminishes the risk of irreversible effects for the company or third parties.

127 High Court of Cassation and Justice, Commercial Section, Decision No. 3402 of 20 October 2010.

128 Angheni, 2013, pp. 174–175; David, 2014, pp. 445–446.

Standing is not confined to shareholders in every case. Creditors and other third parties who can demonstrate a legitimate interest may bring actions in nullity, for example to contest amendments to the articles that endanger creditor protections or to challenge structural operations adopted despite convocation defects. Extending access in this way renders the governance system permeable to the concerns of stakeholders beyond the shareholder body while leaving claims in avoidance to those whose private interests are directly impaired. At the same time, the system guards against opportunism. Abuse of the challenge right, such as strategic litigation aimed to paralyze governance rather than vindicate legality, can be mitigated through security for costs in suspension proceedings, consolidation of duplicative claims and, where appropriate, cost-shifting against unsuccessful plaintiffs.

Two further features round out the remedial rules. First, subsequent ratification may cure certain procedural defects, provided the ratifying meeting is itself lawfully convened, fully informed and competent, and provided ratification does not trench on mandatory norms or the rights of absent or dissenting shareholders in ways the law does not permit. Ratification cannot sanitise violations of public-interest rules, nor can it affect rights already crystallised in favour of bona fide third parties. Second, the external effects of invalidity are mediated by publicity and reliance. Annulment of an internal resolution does not automatically unravel transactions already concluded with third parties who reasonably relied on corporate disclosures and registry entries; instead, the fallout is managed through internal liability, restitution between company and counterparties where possible, and director or officer responsibility where breach of duty has led the company into unlawful acts.

The challenge mechanism can be seen for what it is: a device that marks the boundary between legitimate majority rule and unlawful corporate power. The distinction between nullity and voidability structures both who may sue and what consequences follow; short and precisely defined filing periods promote certainty without disabling public-interest review; judicial scrutiny is restricted to legality to respect corporate autonomy; and interim suspension prevents fait accompli harms while the merits are adjudicated.

7. Serbia

7.1. Limited Liability Companies

The rules that affect decision-making in the general meeting concern:

- a) the competencies of the general meeting,
- b) the formalities concerning the process of decision-making, and
- c) the rules on quorum and requested majorities for adopting different decisions.

The first issue substantially determines the position of the general meeting, the relationship between the general meeting and directors, as well as the overall shaping of powers between the organs of the LLC. It is worth bearing in mind that the general

meeting holds the most prominent role among the companies' organs. This role entails that, as a representative body of the shareholders, the general meeting brings the most significant decisions for the company.¹²⁹ While this is certainly true, and unanimously adopted in Serbian legal scholarship, it remains ambiguous whether the general meeting is also the omnipotent body that may take over the responsibilities of the directors, as understood, for example, in Nordic company laws. Two issues are to be addressed to determine the role of the general meeting: its relationship with the directors, and the extent to which the general meeting's competencies are subject to mandatory provisions.

Serbian law does not have an explicit provision allowing shareholders to give mandatory instructions to the directors (comparable to Section 11.01, EMCA). The directors are, however, obliged to manage the company following the resolutions of the general meeting.¹³⁰ It follows that the question of which resolutions the general meeting may bring has decisive importance. The Act on Obligations (CA) prescribes 24 issues assigned to the general meeting as its competencies. These specific competencies may be divided into several groups depending on the subject matter (issues concerning the status of the company, its finances, appointments and dismissals, etc.).¹³¹ Serbian legal literature usually understands the items on this list as the general meetings' exclusive competencies.¹³² The amendments of the CA, which omitted the formulation – unless the articles of association provide otherwise – that indicated a default nature of the rule that enumerated the competencies, support this understanding. There is nonetheless another provision of the CA that creates the full picture. The company's bodies have competencies provided by the CA only if the articles of association do not specify those competencies.¹³³ It seems that the CA still presumes that the competencies of the LLC's organs are to be primarily determined by the shareholders in the articles of association. In that line, it may be possible to confer certain decisions that normally are for the directors (business decisions) to the general meeting. This follows the common understanding that the ultimate power to decide on all important company matters should belong to the shareholders. Nevertheless, the legislator's intent on this issue remains hard to ascertain.

Regarding the formalities that concern the process of decision-making at the general meeting, one may distinguish between

- a) formalities related to the convocation, and
- b) formalities related to the holding of the meeting. In general, these formalities are established to enable shareholders to make informed decisions when casting their votes, as well as to secure the legality of the entire process.

129 See, for example, Arsić, 2008, pp. 133–134.

130 Article 224, paragraph 1, CA.

131 Article 200, CA.

132 Vasiljević, Jevremović Petrović, and Lepetić, 2022, p. 181; Jovanović, Radović, and Radović, 2021, pp. 399–400.

133 Article 141, paragraph 2, CA.

The formalities required to be respected before the meeting are related to the convocation of ordinary and extraordinary general meetings. An ordinary general meeting is held once a year, no later than within 6 months of the end of a business year,¹³⁴ while extraordinary general meetings are held as needed, as well as when so prescribed by the CA or the articles of association.¹³⁵ In summary, the requested formalities imply convening the meeting and preparing the agenda by the competent body, timely notification to the shareholders about the meeting and its agenda, determining the adequate mode of notice, as well as the legally specified content of such notice, provision of necessary documents prior to the meeting, etc. The directors, or the supervisory board in the two-tier management system, must take care of these formalities and make sure that all preparatory steps for the general meeting have been conducted according to law and articles of association. However, in LLCs, a general meeting may be held even without the implementation of mentioned rules if it is attended by all shareholders, unless otherwise provided in the articles of association (the so-called universal meeting).¹³⁶ This exception is due to the need for less formalistic and bureaucratic decision-making in small private companies. In that line, every resolution may be also passed without a formal meeting, if it is signed by all shareholders entitled to vote thereon.¹³⁷ This means that, for example, a company's lawyer may prepare the draft text of the decision and circulate it to the shareholders for signature.

When it comes to the formalities present during the general meeting, the general meeting may adopt its rules of procedure to lay down in detail the manner of work and decision-making.¹³⁸ The general meeting has a chairman. Shareholders may participate in general meetings through their rights to speak, vote, make proposals, ask questions, etc. The general meeting may be held by using a conference call or other audio and visual conference equipment, enabling all persons participating in the work may communicate among themselves at the same time.¹³⁹

The CA prescribes a quorum as a prerequisite for the general meeting's decision-making, which is a simple majority of the total number of shareholders' votes, unless the articles of association provide for a larger number of votes.¹⁴⁰ If the general meeting cannot be held owing to a lack of quorum, a meeting is reconvened with the same proposed agenda shortly within the timeline prescribed by law (repeated session). A quorum for the repeated session is one-third of the total number of shareholders' votes, unless the articles of association provide for a larger number of votes.¹⁴¹

134 Article 364, Section 1 in relation to Article 201, Section 2, CA.

135 Article 371, Section 1 in relation to Article 201, Section 3, CA.

136 Article 206, CA.

137 Article 212, Section 4, CA.

138 Article 209, Section 1, CA.

139 Article 212, Section 1, CA.

140 Article 208, Section 1, CA.

141 Article 208, Section 3, CA.

A general meeting adopts resolutions by a simple majority of votes of the present shareholders entitled to vote on a specific issue, unless the law or the articles of association provides for a higher number of votes for some issues.¹⁴² The general meeting decides by a qualified, two-thirds majority of the total number of votes all shareholders on the following:

- a) increase or reduction of legal capital;
- b) status changes and changes of legal form;
- c) voluntary liquidation of the company or filing a motion for initiating insolvency proceedings;
- d) profit distribution and the manner in which losses are covered;
- e) acquisition of company's own shares; and
- f) acquisition of company's reserved own shares.¹⁴³

The company's articles of association may also determine another majority for making decisions listed above, but not smaller than the simple majority of the total number of votes of shareholders entitled to vote on a given issue.

The Serbian legislator explicitly provides that every shareholder has a voting right in the general meeting in proportion to his share or the articles of association (if they set a different proportion), provided that articles of association may not stipulate that a shareholder has no voting right.¹⁴⁴ Therefore, non-voting shares are prohibited in Serbian law, but technically, there are no statutory limitations on the extent to which shareholders' rights may be restricted. For instance, it seems that even 0.01% of votes would be enough for complying with this provision. It remains to be seen whether and how the abovementioned concept of *clause léonine* could affect the application of this rule.

The shareholders may perform their voting rights in person or through a proxy.¹⁴⁵ In general, shareholders may perform their voting rights in their own interest, that is, they are not obliged to take care of the interests of the company or other shareholders. A shareholder may not exercise his voting rights only in a case of an actual or potential conflict of interest. The CA enumerates these cases, and among others, excludes the shareholder's voting rights for the resolution of his withdrawal or expulsion, initiating or withdrawing from a lawsuit against him, reduction or exclusion of his obligations to the company, etc.¹⁴⁶

Serbian law does not contain a general clause on the protection of minority shareholders. The rules on minority rights are spread across the entire CA and for purposes of systematisation may be divided into several groups:

- a) rules related to the convening of the general meeting,
- b) rules on super-majority for adopting certain decisions,

142 Article 211, Section 1, CA.

143 Article 211, Section 2, CA.

144 Article 199, Section 2, CA.

145 Article 207, CA.

146 Article 214, CA.

- c) rules on shareholders' right to exit,
- d) rules on derivative suits,
- e) rules on the shareholders' right to require company's dissolution,
- f) rules on protection in specific situations that entail a substantial change of company' business, and
- g) rules on shareholder information rights.

Regarding the convening of the general meeting, minority shareholders have the right to convene the meeting, and the right to put an item to the agenda. The former right has been assigned to the shareholders holding or representing at least 10% of the voting rights.¹⁴⁷ The director or supervisory board has no discretion regarding shareholders' request to convene the meeting. They are obliged to fulfil the request. The same applies to the right to put an item on the agenda. This right belongs to the shareholders who hold or represent at least 5% of the legal capital.¹⁴⁸ It should be underlined that the Serbian legislator uses not only different percentage thresholds for the performance of the two rights but also different benchmarks (voting rights vs. legal capital).

Regarding the rules on the super-majority for certain issues, the most important rule of such kind deals with the changes of the articles of association. As a general rule, the articles of association are amended by a simple majority of votes of all shareholders, unless the articles of association provide a higher qualified majority.¹⁴⁹ However, a special rule exists concerning the changes that reduce the rights of a shareholder. Such changes may be adopted only with the consent of the shareholder whose rights are to be reduced. The CA enlists cases considered as the most common situations that would reduce shareholders' rights (e.g. abolishing or restricting the pre-emptive right to subscribe or purchase shares, change of majority required for decision-making in the general meeting, and introduction or increase of the obligation of additional payments).¹⁵⁰

The shareholders of LLCs have a universal right to exit the company if there are justified reasons. The withdrawal procedure entails submitting the request to the general meeting with the reasons for exit and the amount of compensation for the share required.¹⁵¹ The general meeting may adopt or decline the exit request in its entirety (partial adoption is not possible). If the request is declined, the shareholder is entitled to seek judicial protection, that is, the court gives the final word on the existence of justified reasons for leaving the company, and/or on the fair market compensation for the share in LLC.¹⁵² A shareholder may leave the company even without a justified reason but only if she does not request compensation for the share,

147 Article 202, Section 3, CA.

148 Article 205, Section 1, CA.

149 Article 142, Section 1, CA.

150 Article 142, Section 2, CA.

151 Article 189, CA.

152 Article 192, CA.

provided that she fully paid up her share.¹⁵³ Another situation in which a shareholder may exit the company relates to the exercise of the special rights of dissenting shareholders. These rules are tailored for the JSCs but also apply to LLCs. A shareholder may require the company to repurchase his share if he votes against or abstains from voting for a decision: a) on a status change; b) on a change of legal form; c) on a change of company duration; or d) on approving the acquisition, that is, disposal of high-value assets.¹⁵⁴ Importantly, the rights of dissenting shareholders in LLCs are not mandatory, and therefore, it is possible to exclude the application of these rights in the articles of association.

Derivative suits are considered one of the most important procedural instruments of protection of minority shareholders in comparative company law.¹⁵⁵ Serbian law allows minority shareholders to bring derivative suits in two situations:

- a) in case of breach of special (fiduciary) duties, and
- b) in a case of the general meeting's decline of the proposal for bringing a claim for shareholder's expulsion, or when it remains silent on that proposal.¹⁵⁶

Shareholders, who represent a minimum of 20% of the company's legal capital may bring the action before the competent court for the imposition of the liquidation of a company or other related measures. The reasons for bringing such action include different instances of deadlock and abuses conducted by the majority shareholders or by the management (e.g. the deadlock in decision-making either at the level of the directors or shareholders owing to which the company's business may no longer be conducted in the interest of shareholders, abuse of powers by the directors or supervisory board, and dissipation or decrease of the company's assets).¹⁵⁷ If the court finds that the minority shareholders' allegations are justified, it may either liquidate the company or impose other measures predicted by the law (e.g. dismissal of a director or a member of the supervisory board, imposition of receivership on the company until the appointment of new directors, i.e. members of the supervisory board, and conducting an extraordinary audit of the company's financial statements).¹⁵⁸

On top of the exit right arising from the "right to disagree" in instances of substantial company transformations (rights of dissenting shareholders), the shareholders also have specific rights to additional payment upon the company's status change. Specifically, the shareholder of the transferring company who deems that he is damaged by the determined ratio of the exchange of shares in the transferring company for the shares in the recipient company may file an action with the competent court against the recipient company and seek an additional payment.¹⁵⁹

153 Article 187, Section 1, CA.

154 Article 474, Section 1, CA.

155 Veličković, 2019, pp. 140–151.

156 Article 196, Section 6, CA.

157 Article 469, Section 1 in relation to Article 239, CA.

158 Article 469, Section 3 in relation to Article 239, CA.

159 Article 507, Section 1, CA.

Finally, shareholders' information rights are secured in two ways. On the one hand, there is a general obligation of the directors to promptly notify each shareholder of the important facts regarding the company's business or the exercise of the rights of shareholders.¹⁶⁰ This way of informing shareholders does not presuppose any action for the shareholders to effectuate the right. It is the positive statutory obligation of directors. On the other hand, each shareholder is entitled to inspect and copy (at his own expense) all the relevant company documents, during working hours.¹⁶¹ Similarly to this, each shareholder may request to be provided by the directors with a copy of each resolution passed by the general meeting. These rights may be denied if:

- a) there is a justified concern that this right could be used for purposes that are contrary to the interests of the company, that is, for a purpose that is not related to his membership in the company;
- b) the exercise of such right might inflict considerable damage to the company or its affiliated company.¹⁶²

If the right to information was unlawfully denied to a shareholder, the former is entitled to seek judicial protection to exercise his rights.¹⁶³

The CA dedicates only one special provision to the shareholders' agreements. This provision makes clear that shareholders' agreements are allowed in Serbian law, and that shareholders may stipulate the issues of importance for their mutual relations with the company.¹⁶⁴ The CA's regulation of the shareholders' agreements may be the consequence of the legislator's intent to leave specific issues concerning these agreements to the shareholders' will. Shareholders' agreements are still not too often used instrument of regulation in LLCs. However, in business practice, especially in the case of LLCs with foreign ownership, there has been an increased presence of legal instruments originating from Anglo-Saxon law. Among them, shareholders' agreements are the most common. The clear advantage of shareholders' agreements lies in the fact that, contrary to the articles of associations, they do not have to be registered and published. This makes them a particularly used tool when the parties involved wish to conceal certain clauses and/or parts of their agreements. In that regard, certain issues specifically left to the articles of associations become part of the clauses of the shareholders' agreements. Even though case law has not had many opportunities to decide on the enforceability of such clauses, it seems that their judicial enforcement may be difficult.

Serbian company law doctrine traditionally distinguishes between void (i.e. null) and voidable general meeting resolutions. The former implies more serious inconsistency with the mandatory provisions, while the latter relates to all other possible breaches of law and companies' internal acts. The CA does not have any specific rules

160 Article 242, Section 1, CA.

161 Article 241, CA.

162 Article 243, CA.

163 Article 81, Section 4, CA.

164 Article 15, Section 1, CA.

on void resolutions. This means that in this regard general civil law rules are to be applied.¹⁶⁵ Therefore, any shareholder, as a person with a clear legal interest in the matter, is entitled to bring an action for nullity of the specific resolution. Serbian law specifies several decisions that are null and void.¹⁶⁶ The rules on void decisions are not systematised but spread through different sections of the CA. An example of a void resolution is one that grants certain shareholders priority over other shareholders from the same class with regard to the payment of dividends. Another example refers to the decision on the capital reduction that has not been registered within the specified deadline. However, the CA contains rather detailed provisions on voidable resolutions. These provisions cover reasons for voidability and exemptions, the standing to sue, the consequences of initiating the proceedings, and the consequences of annulment of the resolution. Briefly, the reasons for voidability are broadly defined, and they encompass many cases of material and procedural breaches that ensued before and during the general meeting.¹⁶⁷ Given the latitude of the reasons, the law prescribes several exemptions (e.g. minor breaches are exempted). The right to bring an action belongs to every shareholder entitled to participate in the general meeting. Therefore, the right to participate is a decisive factor. The law does not require the shareholders to possess either the right to vote or the shares of certain classes. A part of the ruling that annuls the resolution affects the company, shareholders, directors, and members of the supervisory board.¹⁶⁸ It may be unclear whether the annulment has effects on third parties.¹⁶⁹ In general, it has such effects, unless the affected third party in its dealings with the company acted in good faith.¹⁷⁰

7.2. Joint-Stock Companies

The main challenge in contemporary company law regarding decision-making in the general meeting of JSCs is to secure active shareholders' participation and more possibilities to oversee the work of the management body. This is particularly true in large listed companies. As the Serbian capital market is still not developed, the significance of this problem is arguably lower compared to some of the EU member states. In any case, recent changes of CA implemented the provisions of Directive EU 2017/828 on the encouragement of long-term shareholder engagement.¹⁷¹ These provisions may be found in Articles 469a–469k of CA. After these short general observations, we proceed to analyse the three types of rules which are important for decision-making in the general meeting, as already discussed in the context of LLCs:

- a) competencies,
- b) formalities, and

¹⁶⁵ Arsić, 2007, p. 11.

¹⁶⁶ Jovanović, Radović, and Radović, 2021, p. 536.

¹⁶⁷ Article 376, Section 1, CA.

¹⁶⁸ Article 379, Section 1, CA.

¹⁶⁹ Jovanović, Radović, and Radović, 2021, p. 539.

¹⁷⁰ Article 379, Section 3, CA.

¹⁷¹ See Mićović, 2018, pp. 5–18; Radović, 2022, pp. 9–29.

c) quorum and majority.

Regardless of the type of management structure, the general meeting is the highest governing body of the company and makes the most important decisions in the corporate governance system, such as the appointment and dismissal of directors and members of the supervisory board, approval of the financial statements, decisions on the capital increase and reduction, and decisions on the disposal of assets of great value. When it comes to the relationship between the general meeting and other corporate bodies, the general meeting must not take over any of the operational and managerial responsibilities performed by the directors or board of directors, unless the law explicitly allows it. The competencies of the general meeting are defined by the mandatory provision, and therefore, they may not be limited or expanded.¹⁷² The same applies, in principle, to the competencies of other bodies of JSCs, as discussed in the following chapter.

When it comes to the formalities that follow ordinary and extraordinary meetings in JSC they mainly resemble the rules already exposed for LLCs. Certain rules, however, are stricter. In general, the obligation to notify shareholders before the general meeting has more elements intended to favour their informed choice (e.g. the shareholders are to be informed about their main rights before and during the meeting and the manners in which those rights may be achieved).¹⁷³ The possibility of holding a meeting without formalities is quite narrower in JSCs. The so-called universal meeting may be held in private JSCs, and it applies only to extraordinary meetings. Moreover, the universal meeting may be held if all shareholders entitled to vote on all items of the agenda are present and if no shareholders object to that.¹⁷⁴ Finally, the statute of a JSC may entirely exclude the option of having the universal meeting.

Voting of special classes of shareholders (e.g. preferred shareholders) may take place either at the general meeting or at a specially convened session of the general meeting of the shareholders belonging to that class. The latter option exists only if: a) shareholders holding the special class of shares, which represent at least 10% of the total number of votes of the shares, are entitled to vote on the matter concerned, and b) such option is not excluded by the company's statute.¹⁷⁵

Overall, the rules on the quorum are the same for LLCs and JSCs. There is an initially required quorum (simple majority calculated of the total number of votes of the class of shares carrying a right of vote on a question at issue), and decreased quorum for the reconvened session, if any (one-third of the total number of votes).¹⁷⁶ The general meeting renders decisions by a simple majority of the votes of the present shareholders entitled to vote on a certain matter unless the CA or articles of association

172 Jovanović, Radović, and Radović, 2021, p. 512.

173 Article 335, Sections 1 and 2, CA.

174 Article 375, CA.

175 Article 357, Section 1, CA.

176 Articles 352–353, CA.

require a larger number of votes for certain matters.¹⁷⁷ The resolutions which require a larger number of votes are discussed in the section on minority rights.

The voting rights of the shareholders depend on the class of shares they own. The difference between classes of shares and the rights attached to them has been already explained in Chapter 4. The right to vote at the specific meeting belongs only to the shareholders who have that status on the record date (in terms of Serbian law, shareholders' day). The record date falls on the tenth day before the day when the meeting takes place.¹⁷⁸ The list of shareholders is made by the company based on the extract from the single records of shareholders kept with the Central Registry.¹⁷⁹ This means that shareholders who transfer their shares within the period of the 10 days before the general meeting are still enabled to vote, while the new owners of the shares do not have such a right.

Generally, the pre-condition for a shareholder's right to vote is the right to participate. Every shareholder, in principle, is entitled to participate in the general meeting. This right encompasses the right to participate in the debate about the issues on the agenda of the general meeting, which includes the right to file motions, ask questions related to the agenda of the general meeting, and receive answers. The statute of the JSC may, however, restrict the right to participate for certain minority shareholders. In other words, the statute may prescribe a certain threshold for participation at the meeting (minimum number of shares that a shareholder must possess), which cannot be higher than 0,1% of the total number of shares of the relevant class.¹⁸⁰

The right to participate does not imply only physical presence. This is accordance in with contemporary tendencies to facilitate the shareholders' participation in the general meetings. The statute or the rules of procedure of the general meeting may allow participation in the work of the general meeting via electronic means. There are two possibilities for such participation:

- a) by the real-time transmission of the general meeting, or
- b) by the real-time, two-way transmission of the general meeting through which the shareholders may address the general meeting from a different location.¹⁸¹

It follows that completely virtual general meetings are still not allowed in Serbian law.¹⁸² In addition, a shareholder may exercise her right to participate through a proxy.

The shareholders' voting right may be exercised in several ways:

- a) directly by the shareholder who is physically present at the meeting;

177 Article 358, Section 1, CA.

178 Article 331, Section 1, CA.

179 Article 331, Section 2, CA.

180 Article 328, Section 3, CA.

181 Article 341, Section 1, CA.

182 Jovanović, Radović, and Radović, 2021, p. 525.

- b) in writing, without attending a session, provided that shareholders' signatures on the ballot sheets are certified in compliance with the law regulating signature certification;
- c) by a mechanism for electronic voting, either before or during the session; or
- d) through a proxy.

The CA enlists resolutions on which the shareholders may not vote. These are resolutions on:

- a) eliminating or reducing the shareholder's obligations towards the company;
- b) initiating or terminating a civil action against him; and
- c) approving the transactions in which that shareholder has a personal interest.¹⁸³ The exclusion equally applies to the related parties of that shareholder.

The main subject of the following analysis concerns seven types of rules, already explained in the case of LLCs, and discussed here in the context of JSCs. Furthermore, we address the specific rules on squeeze-out and sell-out rights that are not available in LLCs.

Regarding the rights that concern convening the general meeting, shareholders that hold a minimum of 5% of the legal capital of the company, that is, shareholders that hold a minimum of 5% of the shares within the class entitled to vote on the items of the proposed agenda, have the right to propose convening the general meeting.¹⁸⁴ In addition, shareholders possessing at least 5% of shares carrying voting rights have two specific rights regarding the agenda of the general meeting: a) the right to expand the agenda (to put a new item on the agenda); and b) the right to propose resolutions, that is, to oppose the proposed content of the resolutions.¹⁸⁵ In case of a breach of any of these rights, the shareholder(s) may seek judicial protection.

Regarding the decisions that require a qualified or super majority, similar to the LLCs, but adjusted to the different nature of JSCs, there are specific rules that concern a change of a company's statute. The decision to change the statute is brought by a majority of the overall number of shares.¹⁸⁶ Any change of statute that diminishes the voting and profit rights of a shareholder triggers her right to require the company to repurchase her shares. The qualified (three-quarter majority) is requested for the following decisions: status changes, change of legal form, capital reduction, exclusion or limitation of the shareholder's pre-emptive right, approval of certain agreements with shareholders upon the company's registration, and approval of the agreement on control and management.

183 Article 362, Section 1, CA.

184 Article 372, Section 1(2), CA.

185 Article 337, Section 1, CA.

186 Article 247, Section 1, CA.

The shareholders' right to exit exists in case of the exercise of the special rights of dissenting shareholders. Here, the rules are the same as those for the LLCs with one important difference. The rules provided for JSCs are mandatory.¹⁸⁷

The right to bring a derivative suit exists regarding the special duties of directors (as briefly discussed in the following chapter).

The rules on shareholders' right to bring an action before the competent court for the imposition of the dissolution of a company or other related measures, analysed in the context of LLCs, are entirely the same as those for JSCs.

Specific situations that brought a significant change in the company's business are, first, covered by the shareholder's right to exit in case of her dissent. Additionally, if the shareholder does not intend to leave the company, he may have certain rights depending on the circumstances. In case of status changes, the shareholder may sue the recipient company for an additional payment (as in the LLC).¹⁸⁸ After the conclusion of the agreement on control and management, the external shareholders (each shareholder of a controlled company who is neither a controlling company nor a shareholder of the controlling company) are entitled to appropriate compensation per share which the controlling company shall pay on an annual basis.¹⁸⁹ If those shareholders consider the proposed compensation unfair, they may ask the court to assess the amount of compensation.¹⁹⁰

Regarding the shareholder's right to access the company's acts and documents, he may use this right either for purely informational purposes or to bring a judicial procedure against the company.¹⁹¹ The shareholder's right to access may be limited only to the extent necessary for the regular identification of the shareholder.¹⁹²

Finally, the CA recognises both the squeeze-out rights of the controlling shareholder and the sell-out rights of the minority shareholder. These rights are not conditional upon the abusive conduct of the controlling shareholder. Both rights may be considered as means of minority protection, although the former has also many other purposes.¹⁹³ Both rights are triggered when the controlling shareholder acquires 90% of the share capital and 90% of the votes of all shareholders holding common shares.¹⁹⁴ The CA assigns sell-out rights to the external shareholders as well in case of the conclusion of the agreement on control and management.¹⁹⁵

The CA's rule on shareholders' agreements is equally applicable to all legal forms of companies in Serbian law.

187 See Vasiljević and Radović, 2017, pp. 7–27.

188 Article 507, Section 1, CA.

189 Article 562, Section 2, CA.

190 Article 563, Section 1, CA.

191 Article 465, Section 1, CA.

192 Article 465, Section 3, CA.

193 EMCA, Section 11.34 (comments).

194 Articles 515 and 522, CA.

195 Article 564, Section 1, CA.

The rules on voidable resolutions of the general meeting analysed above are primarily intended for JSCs, as they apply *mutatis mutandis* to LLCs.

8. Slovenia

8.1. Decision Making in General Meetings

8.1.1. Limited Liability Companies

In an LLC, the shareholders are the holders of management rights, which they exercise within the framework of the general meeting of shareholders (Article 507 (1), ZGD-1). The general meeting of shareholders decides on the following matters:

- a) adoption of the annual report and the use of the balance sheet profit;
- b) requests for the payment of initial contributions;
- c) repayment of additional contributions;
- d) distribution and termination of business shares;
- e) appointment and dismissal of directors;
- f) measures for reviewing and supervising the work of directors;
- g) appointment of a procurator and a business representative;
- h) enforcement of claims by the company against directors or shareholders regarding reimbursement of damages incurred during establishment or management;
- i) representation of the company in legal proceedings against directors; and
- j) other matters specified in the ZGD-1 or the company's articles of association.

At the general meeting of shareholders, as the highest authority of the company, shareholders decide on all matters related to the company's management through resolutions.

The manager is responsible for convening the general meeting of shareholders and must do so in the following cases:

- a) when shareholders are to decide on matters within their competence (as listed above)'
- b) when it is necessary for the interests of the company; and
- c) when the annual balance sheet or the balance sheet during the business year shows that half of the share capital is lost.¹⁹⁶

The manager convenes the general meeting of shareholders by sending a registered letter to all shareholders registered in the register on the day of convening the meeting. The notice must also include the agenda of the meeting, which must be sent at least 25 days before the date of the meeting (Article 509 (1), ZGD-1). In the case of an

196 Ivanjko, Kocbek, and Prelič, 2009, p. 930.

improper convening of the general meeting, valid resolutions can only be adopted if all shareholders are present (Article 509 (2), ZGD-1).

Regarding the requirement for the quorum of the general meeting of shareholders, the law stipulates that it can validly decide if there are enough shareholders present who have the majority of votes (Article 510 (1), ZGD-1). The general rule in Article 510 (2) of the ZGD-1 states that shareholders decide at the general meeting by a majority of the votes cast, although the law or the articles of association may prescribe a different majority.

8.1.2. Joint-Stock Companies

The general meeting of a JSC is the highest hierarchical body within the company, where shareholders exercise their rights on various matters. The general meeting decides on fundamental issues of the company that do not relate to regular operations or day-to-day management but rather to developmental and certain organisational and status-related matters concerning the structure and functioning of the company.¹⁹⁷

The general meeting of shareholders decides on the following:

- a) Adoption of the annual report, but only if it has not been approved by the supervisory board or management board, that is, if the governing or supervisory bodies leave the decision on the adoption of the annual report to the general meeting, or if it is determined so in the company's articles of association, which has chosen a one-tier management system. In this case, the report submitted to the general meeting by the supervisory board or management board must include the relevant resolutions of the governing or supervisory bodies.
- b) Appropriation of retained earnings.
- c) Appointment and dismissal of members of the supervisory board and management board.
- d) Granting discharge¹⁹⁸ to the members of the management or supervisory bodies.
- e) Amendments to the articles of association.
- f) Measures to increase or decrease the share capital.
- g) Termination of the company and changes to its legal form.
- h) Appointment of an auditor.
- i) Other matters as specified in the articles of association or as prescribed by law (Article 293 (1), ZGD-1).

The management, acting by a simple majority, may be requested in writing to convene a general meeting by shareholders whose aggregate holdings amount to 5% of the

¹⁹⁷ Bohinc, 2008, pp. 501–502.

¹⁹⁸ By granting a discharge, the general meeting shall confirm and approve the work of the management or supervisory bodies for the financial year (Article 294(2), ZGD-1). If no discharge is granted to the management board or any of its members by the general meeting, this shall not imply a motion of no confidence (Article 294(4), ZGD-1).

share capital, of which the request must be accompanied in writing by the agenda, a draft resolution for each proposed agenda item on which the general meeting is to take a decision, or, if the general meeting does not take a decision on a particular agenda item, by a statement of the reasons for the agenda item. The articles of association may link the right to request the convening of a general meeting to a lower proportion of the share capital (Article 295 (2, 3), ZGD-1).

If shareholders request the convening of the general meeting, it must be held as soon as possible but no later than 2 months from the receipt of the request. Otherwise, the court may authorise the shareholders who made the request or their representatives to convene the general meeting (Article 295 (4), ZGD-1).

The general meeting is usually held at the company's registered office unless the articles of association specify otherwise (Article 295 (6), ZGD-1). The convening of the general meeting must be published at least 30 days before the meeting (Article 297 (1), ZGD-1). The notice of the general meeting must contain the information prescribed by law, such as the company's name and registered office, time and place of the meeting, proposed agenda, and other information specified in Article 296 (1) of the ZGD-1. If it is a general meeting of a JSC whose securities are traded on an organised market, the notice of the general meeting must also include additional information specified in Article 296 (2) of the ZGD-1. The law further specifies the manner and place of publication of the notice of the general meeting and imposes additional requirements if it is a JSC whose securities are traded on an organised market (Article 296 (4, 5), ZGD-1).

The articles of association of a JSC may require shareholders to register their participation in the general meeting or exercise their voting rights by submitting a prior notification. In this case, it is sufficient for shareholders to register no later than the end of the fourth day before the general meeting (Article 297 (2), ZGD-1). Moreover, the law allows participation and voting by electronic means without physical presence (Article 297 (4), ZGD-1).

The law also stipulates the obligation to publish shareholders' proposals that include prior objections from shareholders against the proposal of the management or supervisory body, which are communicated to the company within 7 days of the announcement of the general meeting. The management is not required to publish the shareholder's proposal and its justification if:

- a) publishing the proposal would constitute a criminal offense or an offense;
- b) the proposal could lead to a resolution by the general meeting that would be contrary to the law or the company's articles of association;
- c) the justification of the proposal contains obviously incorrect or misleading information or insults;
- d) the shareholder's proposal with the same content has already been communicated to the company's general meeting;
- e) the same shareholder's proposal with substantially the same justification has already been communicated at least twice in the last 5 years at different general meetings of the company, and if less than one-fifth of the represented share capital voted in favour of it;

- f) the shareholder indicates that they will not attend or be represented at the general meeting;
- g) the shareholder has not submitted or requested their proposal to be submitted at the general meeting in the last 2 years (Article 300 (3), ZGD-1).
- h) the justification of the proposal also does not need to be published if it exceeds 3000 characters (Article 300 (4), ZGD-1).

At the general meeting, a list of attending or represented shareholders and their representatives is compiled, including their names, surnames, places of residence, and for each shareholder, the number of shares and class, and for shares with a nominal amount, their nominal amount (Article 303 (1), ZGD-1). The list is then signed by the chairman of the general meeting and made available for inspection by the participants before the voting (Article 303 (4), ZGD-1).

Every resolution of the general meeting must be confirmed by a notary public in a notarial record, which includes the location and date of the meeting, the notary's name and surname, the voting results, and the chairman's findings regarding the adoption of resolutions (Article 304 (1, 2), ZGD-1). The list of participants and evidence of the convening must be attached to the record. If the content of the evidence of the convening is stated in the record, it does not need to be attached (Article 304 (4), ZGD-1). Within 24 hours of the end of the general meeting, the management must send a notarised copy of the record and attachments to the registry (Article 304 (5), ZGD-1). Furthermore, a shareholder has the right to request a certificate from the company within 30 days of the voting day at the general meeting, confirming whether and how their vote was counted (Article 304 (7), ZGD-1).

The general meeting makes its decisions through resolutions (Article 307, ZGD-1). Resolutions of the general meeting can be regular or extraordinary. Extraordinary resolutions are mainly related to different classes of shares.¹⁹⁹ An extraordinary resolution is adopted when required by law or when autonomously defined in the company's articles of association. The same requirements as for regular resolutions apply to the adoption of extraordinary resolutions. The difference is that they are adopted through separate voting, which can be technically conducted either at a joint meeting of the general meeting or at a separate meeting of shareholders (Article 313 (1), ZGD-1). Only holders of a specific class of shares decide at the meeting of a particular class of shareholders. The ZGD-1 stipulates that shareholders participating in the voting on an extraordinary resolution can request the convening of a separate meeting or the publication of the subject of separate voting if their combined shares, through which they can exercise voting rights on the extraordinary resolution, reach 10% of the shares from which the voting right can be exercised (Article 313 (1), ZGD-1).

For the adoption of resolutions at the general meeting, a majority of the votes cast by shareholders ("simple majority") is required, unless the law or the articles of association prescribe a higher majority or other requirements (Article 307, ZGD-1).

199 Ivanjko, Kocbek, and Prelič, 2009, p. 632.

In certain cases, the law already requires a higher majority or other requirements. A higher majority of votes is required, for example, for the removal of members of the supervisory board, where at least three-quarters of the votes cast are required (Article 275(1), ZGD-1). Other requirements apply to specific resolutions concerning, for example, share capital and changes in status, where a three-quarters majority is required for the approval of the represented share capital (“capital majority”) (Article 329(2), ZGD-1).

8.2. Voting Rights

8.2.1. Limited Liability Companies

Voting rights enable shareholders to participate in the formation of the company’s will at the general meeting. Each full 50 euro (EUR) of the share capital gives the shareholder one vote, although the articles of association may specify that certain shareholders have multiple votes for each 50 EUR of the share capital or that the voting rights of certain shareholders are limited (Article 506 (1), ZGD-1). A shareholder can also vote through an authorised representative with a written power of attorney (Article 506 (3), ZGD-1). Similar to Article 311(1) of the ZGD-1, a shareholder’s exercise of voting rights can be restricted in deciding on the shareholder’s exemption from individual obligations or the enforcement of the company’s claim against them. Similarly, Article 506 (3) of the ZGD-1 prohibits a shareholder in an LLC from voting in such cases in which the shareholder is exempted from obligations by a resolution of the general meeting or where the resolution of the general meeting relates to a legal transaction, initiation, or termination of a dispute with that shareholder, and also prohibits the exercise of voting rights on behalf of others. It should be emphasised that the company cannot exercise rights from its own shares (Article 506 (4), ZGD-1).

8.2.2. Joint-Stock Companies

Voting rights, as the fundamental rights of shareholders participating in the management of the JSC, are exercised in proportion to their shareholding in the share capital, with each share having one vote. The articles of association can specify limitations on voting rights so that the number of votes an individual has based on the number of shares cannot exceed a certain number or percentage. The articles of association can also stipulate that shares belonging to another entity are attributed to the shareholder’s shares. If a shareholder is a company, the articles of association can provide that shares belonging to a subsidiary, parent company, affiliated company, or shares held on behalf of such companies by a third party are attributed to its shares. Limitations on voting rights cannot be determined for individual shareholders or for voting rights from shares traded on an organised market (Article 308 (1), ZGD-1).

Unpaid shares do not have voting rights, as voting rights are generally acquired only upon full payment of the contribution. However, the articles of association can determine that voting rights are acquired when the legal minimum or higher contribution is paid for the shares. In this case, the payment of the minimum contribution

guarantees one vote. In the case of higher contributions, the voting ratio is determined based on the amount of contributions paid (Article 308 (2), ZGD-1).

If the articles of association do not specify that voting rights are acquired before full payment of the contribution, and if no contribution has been fully paid for any share, the voting ratio is determined based on the amount of contributions paid. In this case, the payment of the minimum contribution guarantees one vote. Partial votes are considered only if shareholders with voting rights cast full votes (Article 308 (3), ZGD-1).

Every shareholder entitled to attend the general meeting has the right to authorise a legally capable natural or legal person in writing to attend the general meeting on their behalf and exercise their voting rights, speak, and ask questions as a shareholder they represent (Article 308 (6), ZGD-1).

If a person, without being authorised by them, offers to represent shareholders at the general meeting of the company, the person must disclose in writing to the shareholders all circumstances that may be relevant to the shareholders in assessing the risk that the authorised representative may act in a manner contrary to the shareholders' interests. Conflict of interest can occur primarily in situations where the authorised representative is a majority shareholder of the JSC, a member of the management or supervisory body, or their close family member (Article 308a, ZGD-1).

The voting rights of a shareholder cannot be excluded except in the case of shares which grant a priority right in the distribution of the profit (non-voting priority shares).²⁰⁰ However, a shareholder's voting rights can be denied when deciding on the shareholder's exemption from individual obligations or the enforcement of the company's claim against them (Article 311(1), ZGD-1).

8.3. Majority And Minority Shareholders, Minority Rights, And Shareholders' Information Rights

8.3.1. Limited Liability Companies

According to Article 511 of the ZGD-1, minority shareholders have certain rights that are tied to shareholders whose business shares represent at least 10% of the share capital. They are entitled to:

- a) request the convening of a general meeting; in doing so, they must specify the matters on which the general meeting should decide and provide reasons for convening the meeting;
- b) demand that a particular matter be included on the agenda of an already convened general meeting; and
- c) convene a general meeting or include a matter on the agenda themselves if their request under the previous paragraphs has been rejected or if the persons to whom the request should have been addressed are absent.²⁰¹

²⁰⁰ See Articles 314–317, ZGD-1.

²⁰¹ Ivanjko, Kocbek, and Prelič, 2009, p. 936.

The law provides for a minimum level of protection for shareholders, which can be supplemented by the company's articles of association to expand the protection of minority shareholders in their favour, such as by setting a lower ownership threshold in the share capital as a condition for exercising minority shareholder rights.²⁰²

Shareholders have a right to information. Article 512 (1) of the ZGD-1 stipulates that the company's management must immediately inform the shareholder, upon their request, about the company's matters and allow them access to the company's books and records. However, if the management determines that it is likely that the shareholder would use such information in a manner contrary to the company's interests, resulting in substantial harm to the company or its affiliated entities, the management may refuse the shareholder's request for information or access. The management's decision to refuse is only temporary, as the final decision on refusal is made by the shareholders (Article 512 (2), ZGD-1). A shareholder who has not obtained the requested information or whose request has been unjustifiably refused may request a court order to allow the provision of information or access (Article 513, ZGD-1).

Shareholders may exit the company or move to exclude other shareholders from the company. Exiting the company is not a statutory right for a shareholder, except when there are justified reasons. A shareholder may file a lawsuit against the company to demand an exit, particularly:

- a) if other shareholders or the management cause harm to the shareholder;
- b) if the company or shareholders hinder or prevent the exercise of the shareholder's right to exit;
- c) if the shareholder is hindered in exercising rights provided by law or contract;
- or
- d) if the general meeting or the management impose disproportionate obligations on the shareholder (Article 501 (2), ZGD-1).

To protect the principle that shareholders are not obliged to tolerate a shareholder who obstructs the realisation of common goals or harms the company, Article 501 (3) of the ZGD-1 grants the right to any shareholder to file a lawsuit demanding the exclusion of another shareholder from the company if there are justified reasons, especially:

- a) if the other shareholder causes harm to the company or other shareholders;
- b) if the other shareholder acts contrary to the resolutions of the general meeting;
- c) if the other shareholder fails to participate in management and thereby hinders the regular operation of the company or the exercise of rights by other shareholders; or
- d) if the other shareholder grossly violates the contract.

A shareholder cannot waive in advance the rights to exit or demand the exclusion of another shareholder (Article 501 (4), ZGD-1).

8.3.2. *Joint-Stock Companies*

Minority rights are those rights specifically addressed to minority shareholders. They mainly concern resolutions of the general meeting, on which shareholders directly decide. The ZGD-1 regulates the following minority rights.²⁰³

- a) Minority shareholders (10% of share capital) can propose to the court the removal of a member of the supervisory board for well-founded reasons (Article 276 (2), ZGD-1).
- b) Minority shareholders (5% of share capital) can demand the convening of a general meeting and, if the demand is not met, they can convene it themselves via the help of court (Article 295 (3), ZGD-1).
- c) Minority shareholders (5% of share capital) can, for well-founded reasons, file a lawsuit to request the court to order the company's dissolution (Article 402 (3), ZGD-1).
- d) Minority shareholders (5% of share capital) can, for well-founded reasons, propose the appointment of a liquidator through the court (Article 408 (3), ZGD-1).
- e) Minority shareholders (10% of share capital) must consent to or can object to the termination or offsetting of compensation claims held by the company regarding breaches of care and liability by members of management or supervisory bodies (Article 263 (3), ZGD-1).
- f) In the successive establishment of a JSC, the minority of subscribers and acquirers of shares (20% of all shares paid in cash) can demand a reassessment of the founding general report (Article 220 (1), ZGD-1).
- g) Shareholders whose combined interests represent at least 10% of the share capital or whose combined minimum issue price amounts to at least 400,000 EUR can enforce the company's claim against shareholders owing to unlawfully received payments, either in case of impermissible return of contributions or concealed distribution of profits (Article 233 (1), ZGD-1).
- h) Shareholders whose combined interests represent at least 10% of the share capital or whose combined minimum issue price amounts to at least 400,000 EUR can file a lawsuit on behalf of the company to seek compensation from founders or members of management or supervisory bodies for damages resulting from the merger (Article 328 (1), ZGD-1).
- i) Shareholders whose combined interests represent at least 10% of the share capital or whose combined minimum issue price amounts to at least 400,000 EUR can request the appointment of a special auditor through the court, based on the minority shareholders' proposal, if there is reason to suspect

203 Ibid., pp. 632–642.

- misconduct or serious violations of the law or the statute in conducting procedures and operations (Article 322 (1), ZGD-1).
- j) Minority shareholders (10% of share capital) can request that the discharge of an individual member of a management or supervisory body be voted on separately (Article 294 (1), ZGD-1).
 - k) Minority shareholders (10% of share capital) have the right to demand that the election proposals of shareholders relating to the election of members of the supervisory board or management board be decided upon before the proposal of the supervisory board or management board, regardless of whether they have submitted the proposal in advance or at the general meeting (Article 312, ZGD-1).
 - l) Minority shareholders (10% of share capital) can request the convening of a separate meeting or the publication of a matter for separate voting in extraordinary resolutions (Article 313 (2), ZGD-1).
 - m) Shareholders whose combined interests represent at least 10% of the share capital or whose combined minimum issue price amounts to at least 400,000 EUR can file a lawsuit challenging the resolution of the general meeting regarding the use of retained earnings (Article 399 (2), ZGD-1).
 - n) Shareholders of the acquiring company whose holdings reach at least 1% of the share capital of the acquired company or whose value of the combined minimum issuance amount reaches at least 25,000 EUR can propose the appointment of a special representative to the court. The special representative can file a lawsuit to enforce claims for damages against the members of the management or supervisory bodies of the acquired company for losses incurred through the merger (Article 595 (3), ZGD-1).
 - o) Shareholders whose combined holdings reach at least 5% of the share capital can request the convening of a general meeting to decide on the consent for a simplified merger or division, regardless of the provision that the consent of the general meeting of the acquiring company is not required for the validity of the merger and division agreement (Article 599 (3), ZGD-1).
 - p) Shareholders in the transforming participating company whose holdings reach at least 1% of the share capital of the participating company or whose value of the combined minimum issue price reaches at least 25,000 EUR can propose a judicial review of the amount of cash compensation in status transformations and in the transformation of a JSC into an LLC and vice versa (Articles 603, 651 (3), 656 (3), ZGD-1).
 - q) Shareholders in the transforming participating company whose holdings reach at least 1% of the share capital of the participating company or whose value of the combined minimum issuance amount reaches at least 25,000 EUR can propose a judicial review of the exchange ratio in status transformations (Article 605 (3), ZGD-1).

Shareholders have the right to reliable and accurate information about the company's affairs that are necessary for the assessment of the agenda items at the general meeting. The obligation to provide such information lies with the management, which may provide the information in a collective response to shareholders' questions with the same content. This right to information also applies to legal and business relationships between the company and related companies (Article 305 (1), ZGD-1).

However, the management is not required to provide information to shareholders in the following cases:

- a) if providing the information could cause harm to the company or a related company, based on reasonable business judgment;
- b) regarding methods of balancing and valuation, if the disclosure of these methods in the annex is sufficient for assessing the company's financial, asset, and profitability position, provided that it corresponds to the actual circumstances;
- c) if providing the information would constitute a criminal offense, an administrative offense, or a violation of good business practices; or
- d) if the information is already published on the company's website in a question-and-answer format at least 7 days before the general meeting (Article 305 (2), ZGD-1).

If information has been provided to a shareholder outside the general meeting, it must be provided to any other shareholder upon their request, even if it is not necessary for the assessment of the agenda item (Article 305 (3), ZGD-1). In case of a dispute regarding the obligation of the management to provide information, the court may decide on this obligation upon the shareholder's request (Article 306, ZGD-1).

Corporate legislation provides a special procedure for excluding minority shareholders, which ensures transparency, particularly in determining fair compensation, to protect the interests of excluded minority shareholders. The regulation of a JSC in this legal institution is aligned with the regulation of LLCs and personal companies, where it is established as a classical institution. However, there is a significant difference in two respects. On the one hand, such exclusion of shareholders is not financed by the company's assets but by the majority shareholder. On the other hand, no justified reasons, either specified in the articles of association or known as "specifically justified reasons", are required for such exclusion.²⁰⁴ The decision to exclude minority shareholders rests with the majority shareholder, who must pay appropriate compensation for it.

The exclusion of minority shareholders is not decided by the majority shareholder alone. A resolution on the transfer of shares of the remaining (minority) shareholders to the majority shareholder for payment of appropriate monetary compensation must be adopted at the general meeting of the JSC, upon the proposal of the majority

204 Ibid., p. 786.

shareholder, who is the holder of shares representing at least 90% of the company's share capital.²⁰⁵

The protection of minority shareholders is ensured by preparing and conducting a general meeting at which the transfer of shares to the majority shareholder is decided. Prior to the general meeting, each minority shareholder must be given the opportunity to inspect the draft resolution on the transfer of shares, the company's annual report for the last 3 financial years, the written report of the majority shareholder, and the auditor's report (Article 386 (2), ZGD-1). At the request of any shareholder, a copy of all these documents must be provided free of charge no later than the next working day (Article 386 (3), ZGD-1). The documents must also be submitted at the general meeting. At the beginning of the discussion at the general meeting, the majority shareholder must orally explain the proposal for the transfer of shares and the method of calculating the amount of monetary compensation. Before deciding on approval for the transfer of shares, the majority shareholder must inform minority shareholders of any significant changes in the company's assets during the period from the preparation of the draft resolution to the convening of the general meeting, particularly those that would warrant a different monetary compensation (Article 386 (5), ZGD-1).

However, the adoption of the resolution at the general meeting of the JSC alone is not sufficient for a valid exclusion of a shareholder, as the exclusion is only completed with the court registration of this resolution. Thus, the entry of the resolution on the transfer has a constitutive effect for the exclusion and transfer of shares (Article 387 (3), ZGD-1), and the management of the company is responsible for filing the application for registration.

The majority shareholder can only be a group of related companies or individuals. A consortium of shareholders or shareholders associated with a shareholders' agreement cannot be the majority shareholder.²⁰⁶ Persons associated with a shareholders' agreement are taken into consideration on the side of the majority shareholder in the procedure regulating takeovers under the ZPre-1 (Takeovers Act). In the event of a company takeover, the exclusion and withdrawal of minority shareholders generally proceeds in accordance with the provisions of the ZGD-1 (Articles 68 (1), 69 (1) of the ZPre-1). Special regulations apply only within 3 months of the publication of the outcome of the takeover bid regarding the amount and form of monetary compensation. In accordance with the ZGD-1, the majority shareholder must pay the minority shareholders an 'appropriate' monetary compensation in the event of exclusion or withdrawal, with the method and procedure for determining it also being specified (Article 385, ZGD-1), including judicial review (Article 388, ZGD-1). In the case of the exclusion or withdrawal of minority shareholders, the acquirer must offer compensation of the same kind and in the same amount as specified in the takeover bid (Article 68 (2), 69 (2), ZPre-1).

²⁰⁵ Ibid.

²⁰⁶ Ibid., p. 788.

The right of minority shareholders to sell-out represents a mirror image of the right of majority shareholders to exclude (squeeze-out) minority shareholders. The right to sell-out from the company is already known, among other things, in the case of an LLC. In an LLC, the exit of shareholders is financed by the company from its own assets, resulting in the amortisation of the business interest and a decrease in the company's assets owing to the payout to the exiting shareholders. However, the sell-out of minority shareholders from a JSC is a financially neutral operation, as the buyout must be financed by the majority shareholder.²⁰⁷

The sell-out procedure begins upon the request of one or more minority shareholders, after which the majority shareholder (holder of shares representing at least 90% of the share capital) must, within 1 month of receiving the request, offer the respective individual or multiple minority shareholders an appropriate monetary compensation for the purchase of all remaining shares held by the individual minority shareholder (Article 389 (1), ZGD-1). The determination of the amount of appropriate monetary compensation applies, by analogy, the provisions governing the monetary compensation for the exclusion of minority shareholders from the company and its judicial review (Article 389 (2), ZGD-1).

8.4. Shareholders' Agreements

8.4.1. Limited Liability Companies

Unlike a JSC, an LLC provides more flexibility and discretion in regulating governance issues in its articles of association. A plethora of mandatory provisions regarding governance in a JSC is primarily associated with securities laws and the protection of minority shareholders.²⁰⁸ JSCs are subject to stricter formalities and statutory regulations regarding their governance structure, while in an LLC, the default position is subsidiarity of statutory provisions if governance is not addressed in the articles of association. Therefore, shareholders in an LLC have more freedom to enter into agreements among themselves in compared to shareholders' agreements in a JSC, where the principle of statutory strictness (German: *Satzungsstrenge*) applies.

8.4.2. Joint-Stock Companies

Shareholders are free to exercise their voting rights. Comparative corporate laws recognise shareholders' agreements, which allow them to agree on how they will vote on specific matters. The ZGD-1 does not have specific provisions regarding such agreements, but this does not mean they are prohibited.²⁰⁹ The ZGD-1 addresses only the exercise of voting rights through shareholders' associations, which is similar to a shareholders' agreement, except that in this case, the association votes as the shareholder's representative (Article 310 (1), ZGD-1).

²⁰⁷ Ibid., p. 795.

²⁰⁸ Bohinc, 2008, p. 160.

²⁰⁹ Ivanjko, Kocbek and Prelič, 2009, p. 638.

However, the ZGD-1 explicitly prohibits a shareholder from contractually committing to exercise their voting rights according to the instructions of the company, management, or supervisory body, as well as instructions from a subsidiary. The legal consequence of such a contract is nullity. Similarly, a contract in which a shareholder commits to vote in favour of any proposals of the management or supervisory board is also void (Article 311 (2), ZGD-1).

8.5. Control of Legality of General Meeting Resolutions

8.5.1. Limited Liability Companies

Regarding the enforcement of nullity and contestability of resolutions adopted by the general meeting, Article 522 of the ZGD-1 refers, among other things, to the *mutatis mutandis* application of provisions regulating the nullity and contestability of resolutions in a JSC.²¹⁰

8.5.2. Joint-Stock Companies

Resolutions of the general meeting are corporate law transactions and not civil law transactions, and they have corporate law consequences, which is why they are specifically regulated.²¹¹ ZGD-1 recognises two types of invalidity of corporate law transactions:

A resolution of the general meeting may be null and void if there are serious errors in its adoption, which renders it void *ex tunc* (retroactively from the moment of adopting the resolution). This means that a null-and-void resolution has no legal effect.²¹² Any benefits received based on a null-and-void resolution must be returned to the company, along with any costs incurred (Article 394, ZGD-1).

The grounds for nullity under the ZGD-1 are as follows:

- a) A resolution of the general meeting is null and void if it is adopted in violation of provisions relating to the adoption of a resolution on conditional increase of share capital (Article 343 (3), ZGD-1).
- b) A resolution of the general meeting is null and void if it contradicts the statutory provision that the beneficiaries of an increase in share capital from company assets are existing shareholders in proportion to their holdings (Article 363, ZGD-1).
- c) A resolution of the general meeting on an increase in share capital and a resolution on the use of profit are null and void if the resolution on the increase in share capital is not registered in the register within 3 months of its adoption (Article 368 (2), ZGD-1).
- d) A resolution of the general meeting is null and void if the general meeting was not properly convened or the convocation of the general meeting was not

210 See below on the control of legality of general meetings' resolutions in a JSC.

211 Ivanjko, Kocbek and Prelič, 2009, p. 751.

212 Ibid., p. 754.

- correctly published, unless all shareholders attended the meeting or were validly represented (Article 390, ZGD-1).
- e) A resolution of the general meeting is null and void if it is not certified by a notary in a notarial record (Article 390, ZGD-1).
 - f) A resolution of the general meeting is null and void if it is incompatible with the essence of the company or if its content contradicts provisions of this Act that are exclusively or predominantly applicable to the protection of the company's creditors or are otherwise in the public interest (Article 390, ZGD-1).
 - g) A resolution of the general meeting is null and void if its content is contrary to morality or public order (Article 390, ZGD-1).
 - h) A resolution of the general meeting on a reduction of share capital below the legally prescribed minimum nominal amount is null and void if, within 6 months of its adoption, the resolution on the increase in share capital and the implementation of the increase in share capital are not registered (Article 390, ZGD-1).

The deadline for asserting nullity is tied to the registration of the resolution in the register. Therefore, nullity of a resolution cannot be asserted after the resolution has been registered (Article 391 (1), ZGD-1). Nullity of a resolution for reasons stated in (d), (f), (g), or (h) above cannot be asserted after 3 years have elapsed from the registration of the resolution, unless a lawsuit for the declaration of nullity of the resolution has been filed within that period (Article 391 (2), ZGD-1). Nullity is claimed through a lawsuit against the company, and the proceedings for determination must be expedited (Article 393, ZGD-1). The court must consider nullity *ex officio*, and any interested party can invoke it.²¹³

ZGD-1 also recognises two specific cases of nullity, namely nullity of the election of members of the supervisory board or management board, and nullity of the annual report. In addition to the reasons mentioned above, the election of members of the supervisory board or management board is null and void if:

- a) the supervisory board or management board is composed in violation of the law or the articles of association;
- b) the general meeting elects a person who was not proposed in accordance with the law or the articles of association; or
- c) more members are elected than prescribed by the law or the articles of association (Article 392, ZGD-1).

Regarding nullity of the annual report, there are two groups of reasons for nullity:

- a) substantive reasons, and
- b) formal irregularities in the adoption and auditing of the annual report (Article 401, ZGD-1).

213 Ibid., p. 767.

ZGD-1 also recognises a milder form of invalidity of general meeting resolutions – voidability (known as contestability). A resolution of the general meeting is contestable if:

- a) its content contradicts the law or the articles of association; or
- b) the law or the articles of association were violated during its adoption, and these violations affect the validity of the resolution (e.g. if the required majority did not vote in favour) (Article 395 (1), ZGD-1).

Contestability can also be based on the shareholder, through the exercise of voting rights for their own benefit or the benefit of a third party, attempting to obtain special benefits at the expense of the company or other shareholders, provided that the resolution allows for such harm to be compensated to other shareholders (Article 395 (3), ZGD-1).

A contested resolution of the general meeting cannot be annulled if the general meeting confirms the contested resolution with a new resolution and:

- a) no lawsuit for annulment or declaration of nullity of the new resolution has been filed within the contestation period;
- b) a lawsuit filed has been withdrawn; or
- c) the claim for annulment or declaration of nullity of the new resolution has been definitively rejected (Article 395 (5), ZGD-1).

Entitled parties to contest a resolution of the general meeting are:

- a) shareholders,
- b) management, and
- c) any member of the management or supervisory body if the members, by implementing the resolution of the general meeting, would commit a criminal offense or act in violation of the law (Article 395 (7), ZGD-1).

A lawsuit to contest a resolution of the general meeting must be filed within 1 month, starting (Article 396, ZGD-1):

- a) from the day the plaintiff attended the general meeting, if applicable;
- b) from the day the plaintiff became aware of the resolution or should have become aware of it; or
- c) from the day of the publication of the resolution, if applicable.

As a fundamental condition for contesting a resolution of the general meeting, a shareholder who attended the general meeting is obligated to announce the contestation (Article 389, ZGD-1).

Similar to specific forms of nullity, the law also recognises three specific forms of contestability. These include the contestability of a resolution on the use of retained earnings (Article 399, ZGD-1), the contestability of a resolution on the increase of share capital (Article 400, ZGD-1), and the contestability of a resolution on the adoption of the annual report (Article 401 (5), ZGD-1).

9. Slovakia

9.1. Decision-Making in General Meetings

9.1.1. Limited Liability Companies

The shareholders' general meeting is one of the mandatory corporate bodies of LLCs, where shareholders exercise their rights. It makes decisions on the most fundamental issues affecting the existence and operation of a company. The general meeting mainly decides on structural changes to the company, amendments to the articles of association, adjustments to the registered share capital, the appointment and dismissal of managing directors (or members of the optional supervisory board), and other corporate issues.²¹⁴ Furthermore, its approval is required for decisions regarding the performance agreement of managing directors, the financial statements and the distribution of profit, or granting consent for the transfer of shares. The general meeting of an LLC may, by its own decision, reserve matters that otherwise fall under the powers of other corporate bodies. Such entitlement is not allowed in JSCs. However, if the authority which lead to the restriction of the managing director's powers, is reserved to the general meeting, the decisions of the general meeting on these matters are ineffective vis-à-vis third parties.²¹⁵

A general meeting of the LLC must be convened by the managing director at least once a year.²¹⁶ In special cases, the supervisory board is entitled to convene a general meeting whenever the interests of the company so require.²¹⁷ Shareholders holding at least 10% of the registered share capital also have the right to demand the convening of the general meeting. If the demand to convene the general meeting is not fulfilled and the meeting is not held within 1 month, the concerned shareholders are authorised to convene the general meeting themselves.²¹⁸

Shareholders must be notified in advance of the date and agenda of the general meeting by means of a written invitation at least 15 days prior to the date of the general meeting. The agenda of the general meeting must be sufficiently detailed to allow shareholders to assess the importance of the items on the agenda. While default provisions on convening a general meeting apply, the articles of association may provide for different set of rules. If an invitation is not delivered to a shareholder in accordance with the requirements stated by law or the articles of association, the shareholder may express that he does not insist on the formal requirements of convening the general meeting, and thus, the formal defect of convening is remedied. However, according to a recent Supreme Court decision, the mere attendance and voting of a shareholder at the general meeting without a special expression of intent

214 Section 125(1), CC.

215 Patakyová et al., 2022, p. 613.

216 Section 128(1), CC.

217 Section 140(2), CC.

218 Section 129(2), CC.

to waive the right to a proper convening of the general meeting, does not cure the formal defect of improper convening procedure.²¹⁹ If the general meeting has not been properly convened, resolutions may still be passed if all shareholders are present and unanimously waive the formalities of the convening, thereby curing the defect of the resolution adopted at the general meeting.²²⁰

9.1.2. *Joint-Stock And Simple Joint-Stock Companies*

Similar to an LLC, the general meeting of a JSC makes decisions on matters of fundamental importance for the company, in particular the amendments to the articles of association, increase and reduction of share capital, the appointment and dismissal of board members, the winding up of the company, and other matters expressly stipulated in law or the articles of association. Shareholders of the JSC are entitled to exercise their rights only at the general meeting.

The joint-stock law provides for more detailed provisions on the convening of the general meeting than the limited liability legal framework. The general meeting is convened by the board of directors at least once a year (an ordinary general meeting). The method of informing shareholders about the convening of the general meeting depends on their form of shareholding. For registered shares, the invitation must be sent to all shareholders whose addresses are recorded in the list of shareholders not less than 30 days prior to the date of the general meeting. Meanwhile, for holders of bearer shares, a notice of the general meeting must be published in a nationwide newspaper or periodical press that provides public stock market information.²²¹ The costs associated with convening and holding the general meeting are borne by the company.

The invitation or announcement must include the agenda of the general meeting. If the general meeting is to decide on an amendment to the articles of association, the essential content of the amendment must be announced.²²² If the election of members of the company's boards is on the agenda of the general meeting, the names of the individuals nominated for each body must be made available to shareholders for inspection at the company's registered office within the period specified for convening the general meeting.²²³

Unless otherwise provided for in the articles of association, the general meeting is to be held at the registered office of the company. Provisions in the articles of association stipulating the location and date of the general meeting must not make the shareholders' attendance significantly difficult or impossible.²²⁴

The general provision on JSCs applies, with some exceptions, to simple JSCs. According to Section 220za of the Commercial Code (CC) matters not included in the

219 The Supreme Court of the Slovak Republic No. 5 Obdo/25/2021, 27 September 2022.

220 The Supreme Court of the Slovak Republic No. 3 Obdo V 30/2001, 29 October 2003.

221 Section 184(3), CC.

222 Section 184(6), CC.

223 Ibid.

224 Section 184(5), CC.

proposed agenda of the general meeting can only be decided with the participation and consent of all shareholders of the simple JSC who are entitled to vote.

9.2. Voting Rights

9.2.1. Limited Liability Companies

A quorum for the general meeting is constituted by the presence of at least one-half of all the votes of shareholders, unless the articles of association stipulate otherwise.²²⁵ As a general rule, the decisions at the general meeting are made by a simple majority of the votes of shareholders attending the meeting. However, a qualified majority of two-thirds of the votes cast is required for amendments to the articles of association, the increase and reduction of the share capital, the winding up the company, resolutions on mergers or any other expressly stated issues under the CC.²²⁶

Slovak legislation currently requires the physical participation of shareholders at a general meeting, either in person or by proxy. A shareholder has the right to attend the general meeting even if no voting rights are attached to his share.²²⁷ Managing directors and members of the supervisory board are not entitled to be proxies because of potential conflicts of interest.²²⁸ Representation by another shareholder of the company or a third party is not prohibited. The power of attorney must be in writing, but it does not have to contain instructions on how the proxy representative should vote.²²⁹ The Slovak CC currently does not stipulate the possibility of participating and voting by electronic means of communication at the general meeting of an LLC.²³⁰ However, temporary measures were introduced during the restrictions imposed as a result of the COVID-19 pandemic, enabling virtual shareholders' meetings, remote voting and the electronic casting of votes.²³¹

In general, the number of votes of each shareholder is determined by the ratio of the value of their contribution to the amount of the company's share capital. Where a resolution of the general meeting is to be passed to approve a contribution in kind pledged by the shareholder or a decision to expel the shareholder, the shareholder concerned is not entitled to exercise his voting right.²³² However, when deciding on the appointment of a shareholder as managing director or a member of the supervisory board, the shareholder retains their voting rights even when they are the one to be appointed as member of managing or supervisory board. The Slovak CC does

225 Section 127(1), CC.

226 Section 127(4), CC.

227 Patakyová et al., 2022, p. 615.

228 Section 126, CC.

229 Ovečková, Csach, and Žitňanská, 2020, p. 310.

230 Csach, 2022, p. 4.

231 Section 5 of Act No. 62/2020 Coll. on Certain Emergency Measures in Relation to the Spread of the Dangerous Contagious Human Disease COVID-19 and in the Judiciary.

232 Section 127(5), CC.

not stipulate a general prohibition against casting the vote in cases of shareholders' conflicts of interests.

Under certain circumstances, shareholders' resolutions may be taken without a physical meeting (decision-making *per rollam*). In this case, the managing director, or shareholder/shareholders whose contributions reach 10% of the share capital (or lower if stipulate by articles of association), or member of the supervisory board, if established, may send a proposal of the resolution to each shareholder, who then expresses their comments within a prescribed time period.²³³ The time period for a shareholder to express their opinion on a proposed resolution adopted outside of the general meeting must be reasonable, taking into account the content of the proposal, its significance, and the urgency of its adoption, ensuring that the shareholder is provided with adequate time to respond to the proposed resolution.²³⁴ Shareholders make decisions only on the basis of the documents provided by the managing director. If a shareholder does not submit his written comment by a specific date, it is considered that they are not in agreement with the proposed measures. The results of the voting are announced to each shareholder by the managing director.

9.2.2. Joint-Stock Companies

There are no provisions prescribing a minimum attendance quorum for the general meeting of a JSC. Resolutions of the general meeting require a simple majority of votes cast by the shareholders present at the general meeting, unless the law or the articles of association stipulate a different majority. Votes that a shareholder cannot exercise do not count towards the results. Amendments to the rights associated with certain classes of shares or decisions on restrictions on the transferability of registered shares, in addition to the majority of votes cast, require a majority of two-thirds votes of the shareholders holding the particular class of shares or affected by the amendment.²³⁵

Amendments to the articles of association and other fundamental changes to the company require a majority of two-thirds votes of the attending shareholders. In addition, such a decision must be recorded in a notarial deed. The voting results of the general meeting need to be published on the company's website, if available, within 15 days of the date of the general meeting. The minutes of the general meeting must be drawn up within 15 days of the date thereof and must include the signatures of the secretary, chairman of the general meeting, and two elected verifiers.²³⁶

Each shareholder of a JSC has a right to be present at the general meeting in person or be represented by a proxy. A proxy cannot be a member of the supervisory board. Attendance and exercise of shareholders' rights at the general meeting are conditional upon the determination of the relevant date. Present shareholders or

233 Section 130, CC.

234 The Supreme Court of the Slovak Republic No. 1 Obdo/22/2018, 12 February 2019.

235 Section 186(2), CC.

236 Section 189(1), CC.

their proxies are entered in the list of attendees. If a shareholder authorises several proxies to exercise the voting rights attached to the same share, the company only allows voting of the proxy who has been registered in the list of attendees first.²³⁷ If a shareholder is prevented from participating in the general meeting by being involuntarily expelled, it may be considered a violation of his shareholders' rights because, in principle, the shareholder is allowed to exercise his rights exclusively at the general meeting. In general, the voting rights of a shareholder are determined as a portion between the nominal value of the shares held and the share capital.

Votes attached to shares on which the shareholder is unable to exercise voting rights shall not be counted in the general meeting vote.²³⁸

The Slovak CC contains special provisions on convening, participation, and voting at the general meeting of a public JSC whose shares have been admitted to trading on a regulated market (listed companies). These provisions are the result of the implementation of EU directives. In accordance with EU law, the provisions distinguish between remote postal voting and voting by electronic means of communication. If the listed company allows shareholders to participate in general meetings and cast their votes digitally, each exercise of the shareholders' voting right must be signed by a qualified electronic signature and bear a qualified electronic time stamp.²³⁹ The company itself shall take all measures necessary to ensure the proper and uninterrupted conduct of voting by electronic means of communication. However, no provisions for electronic voting are stipulated for the private JSCs.²⁴⁰ Temporary measures were available during the restrictions imposed as a result of the COVID-19 pandemic, enabling virtual shareholders' meetings and remote voting.²⁴¹

Regarding the shareholders' voting rights, it is important to notice that when a shareholder decides to attend the general meeting, it does not constitute the duty to exercise their voting rights (if attached to the shares) or to exercise other rights, or to carry out any other activity. However, the duty of loyalty and the misuse of shareholders' rights might be the limits thereto. The articles of association may restrict the exercise of voting rights by imposing a maximum number of votes per shareholder or by sliding scale. The JSC may issue preference shares with or without voting rights. The possibility of issuing preference shares without voting rights must be specified in the articles of association.²⁴² The holders of preference shares without voting rights retains other rights, such as the right to attend the general meeting, the right to file an objection to the minutes, the right to seek the invalidity of the resolution of the general meeting, or the right to preferentially subscribe for shares. The articles of association cannot exclude the voting rights of preference shareholders in situations

237 Section 184(1), CC.

238 Section 186(3), CC.

239 Section 190d(2), CC.

240 Csach, 2022, p. 4.

241 Section 5 of Act No. 62/2020 Coll. on Certain Emergency Measures in Relation to the Spread of the Dangerous Contagious Human Disease COVID-19 and in the Judiciary.

242 Section 159, CC.

where voting is required according to the type of shares. In such cases, the consent of a two-thirds majority of the votes of the shareholders present with preference shares will always be required. Similarly, the consent of the preference shares holders is required when the general meeting decides on an increase and a reduction in share capital, and when approving the proposal for the national and cross-border transformation of the JSC.²⁴³

9.2.3. Simple Joint-Stock Companies

Regarding some specificities of simple joint-stock company, it is worth mentioning, that a decision by the general meeting to change the rights attached to a certain type of shares and to limit their transferability requires the approval of at least a two-thirds majority of the votes of shareholders who own those shares.²⁴⁴

In contrast to a JSC legal framework, which requires shareholders' decision-making to be taken at the general meeting, default provisions regulating a simple JSC provide for the possibility of taking decisions outside the general meeting (*per rollam*).²⁴⁵ This rule represents one of the fundamental organisational simplifications of this legal framework. The board of directors is obliged to send the proposal of the decision to all shareholders, including those shareholders holding shares with no voting rights attached thereto. Although the shareholders with no voting rights do not cast votes, they still have a right to be informed on the subject matter of the shareholders' decision-making.

9.3. Majority and Minority Shareholders, Minority Rights, Shareholders' Information Rights

One of the basic principles of company law is the prohibition of abuse of shareholder rights, especially abuse of the majority or minority of votes in the company. This general rule in Section 56a of the Slovak CC applies to all forms of companies.

9.3.1. Limited Liability Companies

An LLC's legal framework stipulates only a few special rights for minority shareholders. For instance, minority shareholders' rights include the possibility of convening a general meeting. Each shareholder whose contribution reaches 10% of the registered share capital may request the convening of the general meeting. If the managing director does not hold the general meeting within 1 month of receiving of such a request, the shareholders are entitled to convene the general meeting themselves.²⁴⁶ However, in practice, the protection of minority shareholders is limited. While a general meeting may be held, the adoption of resolution at the meeting depends on the will of other (the majority) shareholders. The rights of minority shareholders are

243 Sections 41 and 98(4) of Act No. 309/2023 Coll. on the Transformation of Commercial Companies and Cooperatives.

244 Section 220za(2), CC.

245 Section 220zb(1), CC.

246 Section 129(2), CC.

guaranteed even in decision-making outside of the general meeting. A proposal for a resolution may also be submitted by a shareholder whose contribution amounts to at least 10% of the registered share capital. However, the protection of the minority shareholders is limited, as the decision-making itself is again up to the majority shareholders.

In addition to the voting right, shareholders may exercise other rights, in particular, they may request information about the affairs of the company from the managing director and inspect the company's documents with the possibility of making copies. The right to information may not be restricted in the articles of association and is not reduced when a supervisory board is formed in the company.²⁴⁷ However, a recent decision of the Supreme Court of the Slovak Republic²⁴⁸ expressly limited the shareholders' right to information when it narrowed down the scope of it to the fundamental corporate decisions with substantial impact on the company's assets and excluded some information from being given to the shareholders. As a result of the court's decision, the shareholder has no right to request information regarding the ordinary operation of the company. Thus, the information rights of the supervisory board are much wider than those of shareholders, whereas shareholders do not acquire additional information rights when the supervisory board is not formed in the company. This judicial outcome, however, has been widely criticised in the Slovak doctrine.²⁴⁹

The limits of the right to information are defined specifically by the shareholders' loyalty and the principle of the prohibition of abuse of rights. Another reason for denying to provide information to shareholders is that when disclosing, it would lead to a breach of confidential information regarding the company or interference with the company's trade secrets.²⁵⁰ If shareholders are denied information, they may bring action against the company to enforce their right to information.

9.3.2. *Joint-Stock Companies*

According to Section 176b of the CC, shareholders may not exercise their rights to the detriment of the rights and legitimate interests of other shareholders. Furthermore, the company must provide for equal treatment for all shareholders. In contrast to JSCs in common law countries, where dispersed ownership of shares prevails, in Slovakia most JSCs are established with a dominant shareholder. Enshrining the rights of minority shareholders should ensure a balance between the will of the majority and the minority in the company. According to Section 181 (1) of the CC, a shareholder or shareholders holding shares with a nominal value of at least 5% of the registered share capital may request in writing the convening of an extraordinary general meeting to discuss the proposed matters. The articles of association may provide for a lower

247 Ovečková et al., 2022, p. 1131.

248 The Supreme Court of the Slovak Republic No. 3 Obdo 21/2019, 29 May 2019.

249 Ovečková et al., 2022, p. 1134; Csach, 2021, p. 137; Patakyová, 2022, p. 594.

250 Buhala, 2022, p. 60.

percentage. In contrast to the law governing an LLC, a shareholder who requests the convening of a general meeting must formulate the reasons for its convenience and items on the agenda. The board of directors is not allowed to change the proposed agenda and adding more items to the agenda is possible only with the consent of the shareholders requesting the convening of the meeting. The extraordinary general meeting must be held no later than 40 days from the receipt of the request. In case the request is not fulfilled, a shareholder may initiate a court proceeding, and if successful, he will become entitled to take all the actions regarding the convocation of the extraordinary meeting.²⁵¹ In addition to abovementioned right, minority shareholders are entitled to request the inclusion of an item in the agenda of the general meeting.

In relation to the board of directors, minority shareholders have a right to request that the company exercises its claim against shareholders for repayment of the issue price or the return of repayment provided in violation of the law.²⁵² Furthermore, they can demand that the supervisory board enforce the company's claims against the members of the board of directors. If the board of directors or the supervisory board does not exercise these claims, the minority shareholders are entitled to bring an action on behalf of the company (a derivative action).

Unlike an LLC, shareholders of a JSC are entitled to exercise their information rights only at the general meeting. Beside the right to participate and vote at the general meeting, each shareholder has the right to request information and explanation from the board of directors at the general meeting regarding the company's affairs, even if they do not have the voting right. However, the right to information is restricted to the information pertinent to the agenda of the general meeting, which shall avoid abusive actions from shareholders. The board of directors is obliged to disclose full and true information, and if unable to provide information at the meeting or a shareholder requests the information be provided in writing, the information must be sent to the shareholder no later than 15 days from the date of the general meeting.²⁵³ The board of directors may also refer the shareholder to the company's website if the information requested by the shareholder can be found there.

Section 180 of the CC further stipulates certain instances in which the board of directors may refuse to provide information. The reason for refusing to disclose the information may be a breach of law or potential damage caused to the company or to its controlled company. If information is denied, a shareholder may request that the supervisory board decides whether the information should or should not be disclosed. If the supervisory board disapproves of the disclosure of the information, a shareholder may initiate a court proceeding to enforce the right to information. However, the action must be brought no later than 1 month from the date of the general meeting where the shareholder exercised his right to information, which was denied. Furthermore, shareholders have a right to review and inspect the company's

251 Ovečková et al., 2022, p. 1499.

252 Section 182(1), CC.

253 Section 180(3), CC.

documents, which are to be filed with the Collection of Deeds, in the registered office of the company, and request copies of such documents at their own risk and expenses.²⁵⁴ Some authors argue that the abovementioned right could be an excessive administrative burden for the company and a potential hidden abuse of a shareholder's right, as the information requested is publicly available.²⁵⁵

9.3.3. *Simple Joint-Stock Companies*

For simple JSCs, specific rules apply. In case the supervisory board is not formed in the simple JSC, shareholders' rights to request information on the company's affairs at the general meeting are extended. In addition to the general right to request information and explanations at the general meeting, shareholders also have the right to request in writing the information from the board of directors regarding the company's matters.²⁵⁶ If the board of directors refuses to provide the information, the court shall decide, upon the shareholder's action, whether the company is obliged to disclose the requested information.

9.4. *Shareholders' Agreements*

Shareholders' rights and duties may be stipulated in legal provisions, articles of association or shareholders' agreements. An amendment to the CC No. 389/2015 Coll., effective as of 1 January 2017 expressly introduced a basic statutory legal framework on shareholders' agreements. Section 66c of the CC indicates the content of such agreements, which may include conditions for the exercise of shareholders' rights related to the shares, rights related to corporate governance and share capital, or conditions related to the transfer of shares. The requirement of a written form for shareholders' agreements is expressly stipulated. Section 66c of the CC also regulates the relationship between a corporate decision and a contractual agreement among shareholders. If a decision of the general meeting or other corporate body is passed contrary to the shareholders' agreement, this shall not result in the invalidity of such a decision.²⁵⁷

As follows from the above, a breach of a shareholders' agreement (e.g. when a shareholder's vote is cast contrary to the provisions in the shareholders' agreement) shall not be accepted by courts as grounds for finding a resolution of the general meeting void. The result of non-compliance with the shareholders' (voting) agreement by a shareholder can only be the application of agreed contractual sanctions or the emergence of liability for damages.

In general, the law does not provide for any special requirements concerning voting agreements, however, those in contravention of good morals would be void.²⁵⁸ It is disputable whether voting agreements may also be executed as agreements involving

254 Section 183a, CC.

255 Buhala, 2022, p. 29.

256 Section 220zc, CC.

257 Section 66c(2), CC; Mrázová, 2018, p. 543.

258 Mrázová, 2018, p. 547.

a consideration. Some scholars argue that agreements involving consideration should be void owing to a breach of loyalty by a shareholder towards a corporation.²⁵⁹

Voting agreements among shareholders of a JSC expressly defined in Section 186a (1) of the CC are void. Those are voting agreements whereby a shareholder agrees with a corporation or member of a corporate body to vote according to the instructions of a corporation or corporate bodies, to vote for a proposal submitted by a corporate body, or agrees to exercise his voting right in a certain manner for consideration provided by the company itself. Beside this exception, the law does not provide for any special requirements concerning agreements on the exercise of voting rights.²⁶⁰

The Slovak regulation on simple JSCs explicitly regulates certain types of shareholders' arrangements. According to Section 220w of the CC, such ancillary covenants may include the right to accede to the transfer of shares (tag-along right), the right to request the transfer of shares (drag-along right) and the right to request the acquisition of shares (shoot-out clause). These ancillary covenants may not be assigned to another person without simultaneously transferring the shares to which such a right is attached. Although these provisions are applicable solely to the shareholders' agreements, within a simple JSC, it is possible to agree on those rights in a manner and to an extent different from the statutory provisions.

In general, the acquirer of shares does not automatically become a party to a shareholders' agreement. The acquirer may become a party to the shareholders' agreement under the conditions set forth by contract law, especially on the ground of a consent of the remaining parties to the agreement.

9.5. Control of Legality of General Meeting Resolutions

9.5.1. Limited Liability Companies

It is in the interest of the company that the resolution passed at the general meeting become and remain valid. However, sometimes the resolution of the general meeting may be affected by formal or material defects. Therefore, the CC contains provisions based on which action may be taken against the resolutions of the general meeting which have been adopted in a way that breaches the law or the articles of association. A resolution of the general meeting may be challenged by an action to set aside the resolution (*žaloba o určenie neplatnosti uznesenia valného zhromaždenia*) provided in Section 131 of the Slovak CC. Although it is not explicitly stated by the law, the reason for determining the invalidity of a resolution can also be a conflict with good morals or other principles on which the CC is based.²⁶¹ The action can be brought to challenge shareholders' decisions made outside the general meeting as well.

The reasons for determining the invalidity of the resolution of the general meeting relate mostly to formal and procedural defects. These are mainly defects relating to

259 Ovečková et al., 2022, p. 620.

260 Mrázová, 2018, p. 546.

261 Patakyová et al., 2021, p. 695.

the procedure for convening the general meeting, for instance, a failure to meet the specified time periods for convening the general meeting,²⁶² insufficient specification of the items on the agenda,²⁶³ or non-compliance with the prescribed voting majority.²⁶⁴ The defects are not expressly listed in the law, but they are the results of judicial law-making. In this context, the Supreme Court of the Slovak Republic stated that formal defects relating to the convening of the general meeting can be remedied as long as all shareholders attend the general meeting and expressly state that they do not insist on the prescribed formal procedure. However, it is worthy to mention that mere attendance and voting without further expression of will cannot be considered an expression of will aiming at curing the defects in the formal procedure of convening the general meeting.²⁶⁵

As already stated, if the resolution of the general meeting is passed in violation of the law or the articles of association, the resolution may be subject to an action to set aside the resolution. The CC expressly stipulates who is entitled to initiate the court's proceedings. The lawsuit may be filed by each shareholder, a managing director, a member of a supervisory board, a former shareholder, or a former member of a corporate board if the resolution concerns them, the liquidator, and the bankruptcy administrator.²⁶⁶ In order to successfully bring an action, it is necessary to exercise this right within a 3-month period of the adoption of the resolution, or if the general meeting was not properly convened, the period runs from the day when the plaintiff could have learned about the resolution. After the expiration of this time period, the resolution becomes binding despite any potential defects that may have occurred.

If a lawsuit is filed by a shareholder, the court may declare the resolution void only if the violation of the law or the articles of association could have restricted the rights of the shareholder bringing the action. However, it is sufficient to prove that the illegal resolution could potentially affect and restrict any right of the shareholder, but it is not necessary to prove the actual violation of this right.²⁶⁷ If the lawsuit to determine the invalidity of the general meeting's resolution is filed by a shareholder who meets the statutory conditions, it is sufficient that the person claiming the invalidity of the resolution became a shareholder of the company just at the time of filing the lawsuit.²⁶⁸ When the action is taken by a managing director who is at the same time a shareholder of the company, the requirement to meet the abovementioned condition on restriction of rights is not required.²⁶⁹ Each managing director or member of the

262 The Supreme Court of the Slovak Republic No. 3 Obo 339/98, and No. V 30/2001, 29 October 2003.

263 The Supreme Court of the Slovak Republic No. 1 Obo 154/02, 1 July 2003.

264 The Supreme Court of the Slovak Republic No. 1 Obo 95/2002.

265 The Supreme Court of the Slovak Republic No. 5 Obdo/25/2021, 27 September 2022.

266 Section 131(1), CC.

267 The Constitutional Court of the Slovak Republic No. IV. ÚS 434/20103–9, 16 June 2011.

268 The Supreme Court of the Slovak Republic No. 1 Obdo V 86/2004, 24 March 2006.

269 The Supreme Court of the Slovak Republic No. 5 Obdo/25/2021, 27 September 2022.

supervisory board has the right to bring an action in his own name, even if they are not authorised to act on behalf of the company alone.²⁷⁰

The action to set aside is filed against the company represented by managing directors, otherwise by a member of the supervisory board if the lawsuit was filed by the managing director. In the absence of a supervisory board, the representative of the company is appointed by the general meeting. The court's decision is generally binding with retroactive effects *ex tunc*, however, the invalidity of the resolution does not affect rights acquired in good faith by third parties.

Although the Slovak corporate law does not explicitly distinguish between invalidity and nullity of resolutions, certain defects of a decision shall not be remedied even after the expiration of the statutory period of 3 months. Null resolutions of the general meeting can be those decisions clearly exceeding the powers of the general meeting, passed by the general meeting that was convened by unauthorised person, or when the outcome is contrary to the public order.²⁷¹ However, it is not possible to file an action to set aside pursuant to Section 131 of the CC to declare the nullity of the general meeting's decision, but a general action under the Civil Proceedings Code for Adversarial Proceedings must be filed.²⁷²

9.5.2. Joint-Stock And Simple Joint-Stock Companies

The LLC's legal framework on the basis of which action may be taken against the defective resolution passed by the general meeting also applies for JSCs and simple JSCs with some specificities.²⁷³ When a shareholder or a former shareholder is present at the general meeting that adopted the defective resolution, another requirement must be met to successfully bring an action: the need to file a protest in the minutes of the general meeting. Although filing a protest does not necessarily mean immediate success in court proceeding, its absence always leads to the rejection of the action. Thus, at first glance, it may appear that the shareholder who was not present at the general meeting has a more favourable position than a shareholder who participated in the general meeting and whose status as plaintiff is conditioned by the filing of the protest.

The requirement to file a protest is assessed according to the presence of the shareholder at the general meeting at the time of voting on the agenda item that resulted in the resolution, whose validity the shareholder contested. If the shareholder's presence is recorded in the list of shareholders and he leaves during the general meeting, registration of protest to those items of the agenda that were voted upon during his absence at the general meeting is not required.²⁷⁴ Furthermore, a shareholder's objections raised in the agenda item regarding the opening and control of the quorum of

270 The Regional Court of Bratislava, No. 4 Cob/83/2019, 17 September 2020.

271 Šuleková, 2016, pp. 18–21.

272 The Supreme Court of the Slovak Republic, the Great Senate of the Commercial Law Collegium, 1 V Obdo 1/2021, 24 June 2021.

273 Sections 220h(3) and 220h(4), CC.

274 The Constitutional Court of the Slovak Republic No. III. ÚS 323/2012, 10 June 2012.

the general meeting is considered a protest raised by the shareholder against all resolutions adopted at the general meeting.²⁷⁵ However, some scholars consider that the protest should contain at least the description of the resolution or resolutions against which the shareholder is protesting.²⁷⁶

10. Conclusions

Across the eight Central and Eastern European jurisdictions examined, three fundamental themes emerge: (I) how shareholder participation in governance is structured and balanced against managerial prerogative; (II) how private ordering through shareholders' agreements is permitted and policed; and (III) how courts review the legality of general-meeting decisions. While the building blocks are recognisably European, each system calibrates them differently, often reflecting the ownership patterns and policy priorities of its market.

All systems place the general meeting at the top of member decision-making, yet the mechanics of convening, agenda-setting, and voting diverge in ways that matter in practice. Czech law explicitly recognises a broad bundle of participation rights (attendance, proposals/counter-proposals, protest, and access to judicial review) and permits significant tailoring of voting power (including non-voting and multi-voting shares) subject to targeted safeguards (e.g. minimum voting capital in a JSC; consent rights for affected non-voting holders in an LLC). This goes hand-in-hand with a distinctive split between ex-ante veto-style protection in LLCs and ex-post exit (redemption) protection in JSCs.

Hungarian law, while maintaining the general meeting's primacy, emphasises procedural formalism in convocation (content-rich notices) and embraces technology: participation by electronic means, "meeting by conferencing", and even a presumption of remote attendance for open public companies where the articles so provide. It also admits preference shares conferring multiple votes (capped at ten times the nominal value to curb excessive concentration in case of public companies limited by shares) and authorises veto-right preference shares for designated resolutions.

Croatia takes a different tack by entrenching shareholder equality in listed companies: the Companies Act bars plural voting and ties votes strictly to nominal value, though statutes may cap any one shareholder's aggregate votes. The law is otherwise permissive on convening (e.g. advance registration) and, strikingly, does not impose a statutory quorum, limiting the ability of holdouts to paralyse meetings, while reserving qualified majorities for structural decisions (capital changes, amendments, dissolution).

Information rights likewise reflect distinct governance philosophies. Czech law draws a sharp line: the LLC shareholder enjoys robust information and inspection

275 The Regional Court of Nitra No. 26 Cob/43/2020, 8 October 2020.

276 Patakyová et al., 2022, p. 835.

(even trade secrets are within limits), whereas the JSC shareholder's right is confined to explanations necessary for items on the agenda. Slovakia adopts a similar gradient, restricting joint-stock information rights largely to the general meeting's agenda and introducing short judicial deadlines when disclosure is denied, with enhanced written information rights in the simple JSC.

In Polish LLCs, preferences may extend to voting, dividends, or liquidation proceeds, but voting preference is attached only to shares of equal nominal value and may not exceed three votes per share. Resolutions can be taken without a meeting by unanimous written decision, and even where a meeting is held, it may proceed without formal convocation in the circumstances laid down by the Commercial Companies Code; in single-member companies, the sole shareholder exercises the meeting's powers. If a transaction requires a resolution by law, acting without it renders the juridical act invalid, although a post factum shareholder consent within 2 months cures the defect with retroactive effect; where only the articles require consent, the act remains valid but management faces internal liability for breach. For the simple JSC (PSA), the Code makes the general meeting workable and auditable in hybrid settings by allowing electronic participation, by treating the meeting as valid irrespective of the number of shares represented unless the law or articles say otherwise, and by prescribing highly granular minutes that record headcounts, vote totals, and participants using electronic communication. In JSCs, shares in non-public companies are recorded in a shareholder register accessible to the company and each shareholder, and, crucially for control engineering, no more than two votes may be granted per share.

Finally, minority-rights toolkits vary but converge on three pillars: the right to force a meeting/agenda, targeted audits, and derivative-style litigation. Hungary articulates these expressly (5% in most companies; 1% in public companies limited by shares), with detailed procedures and cost-allocation rules.

All surveyed systems recognise the shareholders' agreement as a contract alongside the charter, but they police its perimeter differently. Czech doctrine treats shareholders' agreements as purely contractual, external to the corporate constitution and non-propagating with the share, yet the Supreme Court has clarified the "no instructions on business management" principle: while a promise to procure that directors decide a matter in a particular way may be void if it compels them to breach duty, a commitment to achieve an agreed outcome (backed by a contractual penalty) can be valid if it does not subordinate managerial judgment to shareholder dictates.

Croatian law accepts shareholders' agreements in both company types but forbids encroachment on mandatory equality (no derogation from "one share-one vote" in PLCs) and denies effects against non-parties and the company; enforcement is typically arbitral or before commercial courts. Slovak law goes further by positively codifying the device (since 2017), specifying permissible content (e.g. governance arrangements, transfer restrictions) and clarifying that a corporate decision contrary to such a contract is not thereby invalid, thus privileging corporate over purely

contractual ordering. It also singles out ancillary covenants (tag-/drag-along, shoot-out) at least for simple JSCs.

Regional practice also acknowledges voting arrangements beyond classic shareholder-to-shareholder agreements. Romanian legislation accepts pacts that affect voting rights, often to coordinate control, while preserving the primacy of statutory and charter constraints. Hungary's "syndicate agreement" remains an unregulated but familiar instrument, explicitly positioned as separate from the articles and typically used to coordinate voting or joint exercise of minority rights. Slovenia underscores a policy contrast: more latitude in LLCs and an elevated strictness in JSCs, invalidating undertakings to vote as management instructs to preserve shareholder autonomy and market integrity.

Every jurisdiction distinguishes between curable defects leading to voidability and graver defects entailing nullity/non-existence, yet the triggers and filters differ. Czech law channels most defects into an avoidability action, tempered by a proportionality test that can deny annulment where consequences are minor or third-party reliance would be unduly harmed; only in specified circumstances does the law treat a resolution as non-existent (e.g. *ultra vires* matters, legal impossibility, and lack of notarisation), which courts must recognise *ex officio*.

Croatia also operates a two-track regime. Nullity (the graver sanction) arises, *inter alia*, from defective convocation/notice, missing notarial minutes, *ultra vires* content, or contrariety to morals or creditor-protection rules; voidability actions are constrained by short limitation periods and standing rules (e.g. a 30-day suit by dissenters whose opposition was recorded).

Slovakia centralises review in the action to set aside resolutions, with courts focusing on procedural defects (convening, specificity of agenda, and voting majorities) and recognising that unanimous presence and waiver can cure certain notice flaws, a pragmatic tilt toward corporate stability. Legality control centres on the action to set aside a resolution under Section 131 of the CC, which must be brought within 3 months and is open to a broad set of claimants; courts focus on procedural breaches in convening and voting, and have accepted that unanimous attendance plus an explicit waiver can cure certain notice defects. More serious flaws remain unremedied after the 3-month period: Slovak law does not label "nullity" expressly, but decisions that exceed general-meeting powers, are convened by an unauthorised person or offend public order are treated as null and must be attacked by a general civil action rather than under Section 131. In JSCs and simple JSCs, a shareholder who was present must have a protest recorded in the minutes to keep a later challenge alive, with case-law detailing when a protest is deemed to extend to multiple items or to items adopted after the shareholder left.

Romania conceptualises review as a legality check, neither a re-business-judgment review nor a remedial power to substitute decisions, grounded in mandatory law and the charter, with standing rules that favour dissenters and absentees while preserving relief where consent was vitiated. Likewise, Serbia separates null and voidable resolutions, spreading nullity cases across the Companies Act and anchoring voidability in

broad, procedurally framed grounds, again with attention to third-party good faith. Poland maintains a dual track for annulment and invalidity, reinforced by meticulous minute-keeping, and applies the same logic to the simple JSC.

Two vectors of convergence stand out. First, EU-level impulses (e.g. the Shareholder Rights framework) are visible in the modernisation of meeting mechanics: remote participation, proxy transparency, advance disclosure of drafts, most fully elaborated in Hungary's provisions on electronic participation and publication of meeting materials. Second, minority-protection toolkits now commonly combine meeting-forcing rights, bespoke audit remedies, and company-benefit litigation, albeit at different thresholds, reflecting a regional consensus on "voice plus oversight".

Natural and necessary divergences remain: Croatia's insistence on strict voting equality in PLCs contrasts with the calibrated plural-voting allowances of Czech and Hungarian law; Czech law's ex-ante veto in LLCs and ex-post exit in JSCs mark a distinctive solution for entrenchment and mobility; Slovakia's statutory treatment of shareholders' agreements and ancillary covenants goes beyond neighbouring systems in clarity; and Czech doctrine's granular taxonomy of non-existent resolutions sets a comparatively sharp boundary for corporate nullities.

For closely held companies, the region generally privileges flexibility (strong member information/inspection, expansive agenda rights, and enforceable private ordering), although the "no-instructions" principle remains a hard stop on attempts to contract around managerial fiduciary duties. For widely held or listed companies, the law leans toward procedural discipline, technologically enabled participation, and equality of treatment, coupled with a litigation architecture that polices legality without substituting business judgment. This composite shows a recognisably European model of shareholder governance, locally adapted to market structures and institutional histories, and likely to continue converging at the procedural margin while preserving substantive diversity in voting design and the reach of private ordering.

References

- Angheni, S. (2013) *Drept comercial. Profesioniști-comercianți*. București: C.H. Beck.
- Arsić, Z. (2007) 'Ništavost odluka skupštine akcionarskog društva', *Pravo i privreda*, 44(1-4), pp. 11-18.
- Arsić, Z. (2008) 'Pojam skupštine akcionarskog društva, kvorum za rad i većina za donošenje odluka', *Zbornik radova Pravnog fakulteta u Novom Sadu*, 42(1-2), pp. 133-144.
- Bohinc, R. (2008) *Korporacije: razlaga pravnih pravil in sodna praksa*. Ljubljana: Nebra.
- Buhala, O. (2022) *Právo spoločníkov na informácie*. Praha: C.H. Beck.
- Căpățînă, O. (1991) *Instituții ale noului drept comercial. Societățile comerciale*. București: Lumina Lex.
- Cărpenaru, St. D. (2016) *Tratat de drept comercial roman*, 5th edn. București: Universul Juridic.
- Cărpenaru, St.D., Piperea, Gh., David, S. (2014) *Legea societăților. Comentariu pe articole*, 5th edn. București: C.H. Beck.
- Catană, R., Șumandea-Simionescu, I. (2019) 'Romania' in Gerner-Beuerle, C., Mucciarelli, F.M., Schuster, E., Siems, M. (eds.) *The Private International Law of Companies in Europe*, 1st edn. München/Baden-Baden/Oxford: Beck/Nomos/Hart, pp. 509-538.
- Chomiuk, M. (2023) in Z. Jara (ed.) *Kodeks spółek handlowych. Komentarz*. Warszawa: C.H. Beck/Legalis.
- Cileček, F., Ruban, R. (2017) 'Nejvyšší soud České republiky: Účinky opětovného uplatnění návrhu na vyslovení neplatnosti (části) usnesení členské schůze', *Obchodněprávní revue*, 2017/2, p. 50.
- Csach, K. (2021) 'Právo spoločníka spoločnosti s ručením obmedzeným na informácie po R 44/2019', *Súkromné právo*, 7(4), pp. 137-144.
- Csach, K. (2022) 'Digital corporate governance in Slovakia', *Právny obzor*, 105 (special issue), pp. 3-13.
- Csach, K., Havel, B. (eds.) (2017) *Akcionářské dohody*. Praha: Wolters Kluwer.
- David, S. (2014) in Cărpenaru, St.D., Piperea, Gh., David, S., *Legea societăților. Comentariu pe articole*, 5th edn. București: C.H. Beck, pp. 260-461.
- Duțescu, C. (2010) *Drepturile acționarilor*, 3rd edn. București: C.H. Beck.
- Fegyveresi, Zs. (2024) 'A tagok/résztvényesek' in Fegyveresi, Zs. (ed.) *Román társasági jog*, 3rd edn. Cluj-Napoca: Forum Iuris.
- Flidr, J. (2023) 'Prekluze informačních práv společníka s. r. o. a povinnost společnosti opatřit si společníkem požadovanou informaci (současně kritická glosa k rozsudku Nejvyššího soudu sp. zn. 27 Cdo 1385/2022)', *Obchodněprávní revue*, 2023/2 [Online]. Available at: <https://app.beck-online.cz/bo/chapterview-document.seam?documentId=nrptembsgnpw64s7gjpngxzsg4xgwyju&refSource=toc> (Accessed: 10 October 2025).

- Flídr, J. (2024) 'K pravomocem předsedy zasedání valné hromady vyhlásit výsledek hlasování a posoudit splnění podmínek pro preventivní systaci hlasovacích práv', *Právní rozhledy*, 2024/1–2, pp. 24–33.
- Georgescu, I. L. (1948) *Drept comercial român*, vol. II. București: Ed. Socec.
- Gheorghe, C. (2020) *Tratat de drept comercial român*. București: C.H. Beck.
- Goergen, M. (2012) *International Corporate Governance*. Harlow: Pearson.
- Ivanjko, Š., Kocbek, M., Prelič, S. (2009) *Korporacijsko pravo*. Ljubljana: GV Založba.
- Jovanović, N., Radović, V., Radović, M. (2021) *Kompanijsko pravo – Pravo privrednih društava*, 2nd edn. Beograd: Pravni fakultet u Beogradu, Centar za izdavaštvo i informisanje.
- Kidyba, A. (2023) *Kodeks spółek handlowych. Komentarz. Tom I i II*, 18th edn. Warszawa: Wolters Kluwer.
- Kováříček, K. (2020) 'Místo § 212 odst. 2 ObčZ v českém právním systému a hmotněprávní podmínky jeho aplikace', *Právní rozhledy*, (5) [Online]. Available at: <https://app.beck-online.cz/bo/chapterview-document.seam?documentId=nrptembsgbpxa4s7gvpngxzrgyza> (Accessed: 10 October 2025).
- Kozieł, G. (2020) *Prosta spółka akcyjna. Komentarz do art. 300¹–300¹³⁴ Kodeksu spółek handlowych*. Warszawa: C.H. Beck.
- Lavický, P. et al. (2022) *Občanský zákoník I. Obecná část (§1–654)*. Komentář, 2nd edn. Praha: C. H. Beck.
- Mićović, M. (2018) 'Savremeni pravni okvir za angažovanje akcionara', *Pravni život*, 67(11), pp. 5–18.
- Modzelewska, K., Reszczyk-Król, K. (2023) in Z. Jara (ed.) *Kodeks spółek handlowych. Komentarz*, 4th edn. Warszawa: C.H. Beck/Legalis.
- Mrázová, Ž. (2018) 'Slovakia' in Mock, S., Csach, K., Havel, B. (eds.) *International Handbook on Shareholders' Agreements: Regulation, Practice, and Comparative Analysis*. Berlin: De Gruyter, pp. 539–566.
- Naworski, J.P. (2003) *Komentarz do Kodeksu spółek handlowych. Spółka akcyjna i przepisy karne*. Warszawa: LexisNexis Polska.
- Oplustil, K., Sokołowski, K. (2003) *Komentarz do Kodeksu spółek handlowych. Tom IV: Łączenie - Podział i Przekształcanie Spółek Kapitałowych. Komentarz do art. 491–633*. Warszawa: C.H. Beck.
- Ovečková, O. et al. (2022) *Obchodný zákonník. Veľký komentár*, vol. I, 2nd edn. Bratislava: Wolters Kluwer SR.
- Ovečková, O., Csach, K., Žitňanská, L. (2020) *Obchodné právo: obchodné spoločnosti a družstvo*. Bratislava: Wolters Kluwer SR.
- Pascu, M., Pârvu, L. N. (2005) 'Convocarea adunării generale a asociaților de către instanță', *Revista de Drept Comercial*, 2005/4, pp. 63–64.
- Patakyová, M. et al. (2022) *Obchodný zákonník. Komentár*, 1st edn. Bratislava: C.H. Beck.
- Petrović, S., Ceronja, P. (2019) *Osnove prava društava*. Zagreb: Narodne novine.
- Radović, M. (2022) 'Kritička analiza pravila o identifikaciji akcionara u srpskom Zakonu o privrednim društvima', *Revija Kopaoničke škole prirodnog prava*, 4(2), pp. 9–31.

- Rodzinkiewicz, M. (2018) in Opalski, A. (ed.) *Kodeks spółek handlowych. Komentarz*. Warszawa: LexisNexis Polska.
- Roth, G.H., Kindler, P. (2013) *The Spirit of Corporate Law: Core Principles of Corporate Law in Continental Europe*. Baden-Baden, Oxford, and Munich: Nomos, Hart, C.H. Beck.
- Ruban, R. (2017) 'O konstitutivní povaze návrhů na vyslovení neplatnosti usnesení nejvyšších orgánů kapitálových společností a družstev', *Obchodněprávní revue*, 2017/11–12, pp. 305–313.
- Săuleanu, L. (2008) *Societățile comerciale. Adunările generale ale acționarilor*. București: Editura Hamangiu.
- Schiau, I., Prescure, T. (2009) *Legea societăților comerciale nr. 31/1990. Analize și comentarii pe articole*, 2nd edn. București: Editura Hamangiu.
- Strzępka, J.A., Zielińska, E. (2009) *Kodeks spółek handlowych. Komentarz*. Warszawa: C.H. Beck.
- Šuleková, Ž. (2016) 'Ničotnosť uznesení valného zhromaždenia obchodnej spoločnosti – posun v slovenskej judikatúre?', *Súkromné právo*, 2(1), pp. 18–21.
- Susanu, C. A. (2018) *Cadrul juridic societar. Repere naționale și europene*. București: Universul Juridic.
- Tulească, L. (2016) *Drept comercial. Întreprinderile comerciale*. București: Universul Juridic.
- Vasiljević, M., Jevremović-Petrović, T., Lepetić, J. (2022) *Kompanijsko pravo: Pravo privrednih društava*. Beograd: Pravni fakultet Univerziteta u Beogradu.
- Veličković, J. (2019) *Derivativna tužba: kompanijskoppravna i procesnopravna analiza*. Doctoral thesis. Beograd: Pravni fakultet Univerziteta u Beogradu.
- Zapadka, P. (2014) 'Praktyczne zastosowanie art. 394 KSH', *Edukacja Prawnicza*, 1, pp. 15–18.