

# New Jersey Amends Law to Permit Remote Shareholder Meetings

By **Jeffrey M. Shapiro**

## What You Need To Know:

- **New Jersey corporations are permitted to hold shareholder meetings solely by remote participation during a state of emergency declared by the Governor.**
- **A board of directors must approve remote participation and the guidelines and procedures to govern a meeting.**
- **Governance document requirements and New Jersey Business Corporation Act provisions still apply.**

On March 20, 2020, Section 14A:5-1 of the New Jersey Business Corporation Act was amended to permit New Jersey corporations to hold shareholder meetings solely by means of remote communication during a state of emergency declared by the Governor. On March 9, 2020, Governor Phil Murphy declared a State of Emergency and a Public Health Emergency, effective immediately, to ramp up New Jersey's efforts to contain the spread of COVID-19. Prior to the amendment, New Jersey corporations could permit shareholders to participate in meetings by remote participation provided the meeting was otherwise called for a designated place.

### Process to Authorize Remote Participation

For a New Jersey corporation to hold a meeting of shareholders by remote communication, whether in whole or in part, the board must authorize the meeting and adopt guidelines and procedures governing the meeting. Shareholders will be deemed present in person and entitled to vote at a meeting held in accordance with the statutory requirements. As part of a shareholder meeting that includes remote communication,

the corporation must implement reasonable measures to do the following:

- a. verify that each person participating remotely is a shareholder or a proxy of a shareholder;
- b. provide each shareholder participating remotely with a reasonable opportunity to participate in the meeting, including an opportunity to vote on matters submitted to the shareholders, and to read or hear the proceedings of the meeting substantially concurrently with those proceedings; and
- c. record and maintain a record of any shareholder votes or other actions taken by remote communication at the meeting.

### Governance Documents

Before a corporation undertakes to call a meeting at which shareholders may participate remotely, the certificate of incorporation and by-laws should be reviewed to consider any limitations on remote participation. Depending on the existing provisions, if a meeting is to be held by remote communication only, the by-laws may need to be amended to allow for that

possibility. Generally, a board of directors will have the power to adopt amendments to the by-laws to address any existing limitations.

### Notice of Meetings

While shareholder meetings may be held by remote communication, notice of a shareholder meeting must still be provided pursuant to Section 14A:5-4 not less than 10 nor more than 60 days before a meeting, which notice must describe the means of that remote participation if authorized.

### Voting List

Pursuant to Section 14A:5-8, a corporation is required to have present at a shareholder meeting or available by visual display its list of shareholders who are entitled to vote at the meeting. For remote shareholder meetings, corporations should also consider the means by which that list of shareholders will be available for review by shareholders.

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