

# New Jersey Corporations May Now Hold Any Shareholder Meeting Remotely

By **Jeffrey M. Shapiro**

## What You Need To Know:

- New Jersey corporations may now hold fully remote shareholder meetings even absent a state of emergency.
- Boards of directors must still adopt guidelines and procedures governing remote shareholder meetings.
- For meetings that involve remote participation, corporations must implement reasonable measures to verify that only shareholders are participating, that shareholders may participate in the meeting and read or hear the proceedings of the meeting, and that a record will exist of votes and other actions taken at the meeting.

On August 24, 2021, Section 14A:5-1 of the New Jersey Business Corporation Act was amended further to permit New Jersey corporations to hold any shareholder meeting solely by means of remote communication. Prior to the amendment, shareholder meetings could be held solely by remote communication only during a state of emergency, and in the absence of a state of emergency, corporations were authorized to permit shareholders to participate in meetings by remote participation provided the meeting was otherwise called for a designated place. Section 5-1 was amended previously, in 2020, to permit shareholder meetings solely by remote communication during a state of emergency because of COVID-19.

### 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.

Unlike meetings held in person, which do not require the adoption of “guidelines and procedures”, the board of directors, or a board committee that is delegated the responsibility, is required to “authorize and adopt” such

guidelines and procedures for remote meetings. Unfortunately, Section 5-1 does not specify the nature of guidelines and procedures. While unspecified, in light of the requirements for remote meetings as described in (a) through (c) above, it is reasonable to conclude that, at a minimum, the guidelines and procedures should address the means and manner by which the corporation will verify that only shareholders are participating, that shareholders may participate in the meeting and read or hear the proceedings of the meeting, and that a record will exist of votes and other actions taken at the meeting. Of course, the board is free to authorize and adopt guidelines and procedures that go beyond the enumerated items.

### **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 still must 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.

## **Contacts**

Please contact the listed attorneys for further information on the matters discussed herein.

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