

**COVID-19:
HOW TO HOLD A GENERAL
MEETING OF PARTICIPANTS IN
AN LLC?**

Outbreak of COVID-19 disease in Ukraine and implementation of the governmental restrictive measures against its spread will likely affect the holding of general meetings of participants (the "General Meeting") in limited liability companies (the "LLCs") in Ukraine, the adoption of General Meeting's resolutions and carrying out registration actions to reflect such resolutions and their implications in the corporate registry. While LLCs with the sole participant might be less affected, what options are available to the LLCs with 2 or more participants?

WHAT PROCEDURES OF THE GENERAL MEETING ARE PROVIDED FOR BY THE LAW?

The Law of Ukraine No. 2275 "On Limited Liability Companies and Additional Liability Companies" dated 6 February 2018 (the "Law on LLCs") provides for the following options to hold a General Meeting:

- **Standard procedure of the General Meeting**

Due to the quarantine in Ukraine, the General Meeting held via a standard procedure with physical presence at the meeting when "joint presence of the LLC's participants in one place to discuss the matters on the agenda" is ensured as required by Clause 3 of Article 33 of the Law on LLCs can be problematic.

- **Holding the General Meeting via absentee voting**

The Law on LLCs provides for the absentee voting procedure, whereby the participant may cast his or her vote on items of the agenda in writing. However, such a form of voting may not be practical as the signature of the LLC's participant has to be certified by a notary (and further apostilled if done not in Ukraine).

KEY ISSUES:

- **Current COVID-19 restrictions preclude the LLC's participants from attending the General Meeting in person.**
- **Absentee voting is not the best solution given that a signature of the LLC's participant on the resolution has to be certified by a notary if such resolution entails registrations in the corporate registry.**

WHAT ARE THE SOLUTIONS FOR HOLDING THE GENERAL MEETING DURING COVID-19?

In view of the current COVID-19 restrictions and the said difficulties, the LLC may consider two options for holding the General Meeting: **a video conference or voting by poll** (written consent in lieu of a meeting).

• GENERAL MEETING VIA A VIDEO CONFERENCE

Convocation and holding procedure: a video conference mode allowing to see and hear all participants simultaneously must be used. The General Meeting is convened in a standard manner, i.e. the LLC's executive body sends 30-day prior notices to all participants. If the agenda of the General Meeting is amended, the LLC's executive body notifies the participants about changes at least 10 before the scheduled date of the General Meeting, unless a different term is prescribed by the LLC's charter. It is recommended that a video conference/associated chat are recorded.

Minutes' execution: the General Meeting's minutes are kept and executed by the chairman of the General Meeting. The LLC's participants "may" execute the minutes, in other words, their presence during the execution is not required.

Restrictions on decision making: no restrictions apply. To comply with law, the decisions of the General Meeting on matters subject to further registration with the Unified State Registry of Legal Entities, Individual Entrepreneurs and Public Organisations (the "**Unified Registry**") have to be made on special notarial letterhead. Such matters commonly include changing the LLC's director, restating the constitutional documents or changing the composition of the LLC's participants.

KEY ISSUES:

- **The General Meeting during the quarantine may be held via a video conference or voting by poll.**
- **The law does not provide for any restrictions for the decisions which can be made by the General Meeting via a video conference.**
- **The decisions of the General Meeting, which are subject to further state registration, have to be made on special notarial letterhead.**

- **GENERAL MEETING VIA VOTING BY POLL**

Convocation and holding procedure: any LLC's participant or the executive body may initiate the voting by poll procedure by sending the draft minutes to all participants. In case of no objections, all participants must send their responses back to the initiator within 15 days upon receipt of the draft minutes. The initiator then prepares the execution version of the minutes with the copies of the participants' responses attached and circulates the minutes to all participants within 10 days after expiry of the term for voting.

Minutes' execution: the initiator of the poll must send the participants' responses to the executive body of the LLC. The responses are stitched, kept together, and have the status of the executed minutes.

The following decisions cannot be made by polling:

- election and termination of powers of the members of the supervisory board or the executive body;
- amendments to the LLC's charter, a decision on the LLC's operation under a model charter;
- amalgamation, acquisition, split, separation or reorganisation of the LLC, approval of the successor's charters;
- liquidation of the LLC;
- amount of the authorised capital and participation interests of the participants; and
- exclusion of the participant from the LLC.

KEY ISSUES:

- The law provides for several restrictions concerning the decisions which cannot be made by the General Meeting via voting by poll.

HOW TO HOLD THE GENERAL MEETING ON MATTERS SUBJECT TO FURTHER STATE REGISTRATION?

Holding the General Meeting via a standard procedure (physical presence of participants in one place) may be challenging during the quarantine. At the same time, the restrictions against the spread of COVID-19 in Ukraine should not be an obstacle for the LLC to conduct its business. When the decision of the General Meeting provides for matters subject to registration with the Unified Registry, inter alia, change of the LLC's director, approval of the increased charter capital's results, **the following sequence of actions can be a solution:**

- holding the General Meeting via a video conference with a notary's presence*;
- electing the chairman and secretary of the General Meeting**;
- authorising the chairman and secretary of the General Meeting to execute the minutes;
- indicating in the minutes that the General Meeting was held via a video conference (it is also recommended to have the conference recorded and recording kept); and
- executing the General Meeting's minutes on the special notarial letterhead with the chairman and secretary's signatures, which signatures have to be certified by a notary.

KEY ISSUES:

- **Legislative restrictions implemented against the spread of COVID-19 in Ukraine should not be an obstacle for the LLC to conduct its business.**

Additional considerations:

* The notary's presence during the General Meeting via a video conference is not required by Ukrainian law. Yet it is recommended to invite the notary to protect the interests of the LLC's participants during the process of the decision making.

** Article 15 of the Law of Ukraine No. 755-IV "On State Registration of Legal Entities, Individual Entrepreneurs and Public Organisations" dated 15 May 2003 necessitates to have the minutes signed by a chairman **and** a **secretary** of the General Meeting (if the General Meeting makes such decision).

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This publication does not necessarily cover all important aspect of matters described here. No advice, including legal, is provided in this publication.

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