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GENERAL MEETING OF SHAREHOLDERS ACCORDING TO THE LEGAL FRAMEWORK OF GERMANY, UNITED KINGDOM AND NORTH MACEDONIA

Abstract

General meeting of the shareholders plays crucial role in the structure of the company. This is forum where shareholders are practicing their rights, acknowledge by the relevant legal acts and the internal acts of the company. This is very important for the achieving inclusive shareholders activism. In that regard, the author of this paper is analyzing the relevant provisions concerning the general meeting of shareholders contained in the Companies act of 2006 of United Kingdom, the Aktiengesetz of Germany and the Law on Trade Companies (Закон за трговските друштва) of North Macedonia.

Key words: *general meeting, shareholders rights, company law*

I. INTRODUCTION

Modern public limited company especially that is listed, is structured on a very complex way. This is true if we consider the fact that that kind of companies are involving large number of shareholders dispersed in different parts of the world. Shareholders are playing very specific role into the structure of the company. As many authors are saying "Shareholders are the residual claimants to the firm's income. Creditors have fixed claims, and employees generally negotiate compensation schedules in advance of performance. The gains and losses from abnormally good or bad performance are the lot of shareholders, whose claims stand last in line. As the residual claimants, shareholders have the appropriate incentives (collective choice problems notwithstanding) to make discretionary decisions…"[1]

In principle, regarding the reform of company law in last decades in European Union, some authors are describing two important changes (innovations) i.e. the harmonization of

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[1] Christoph Van der Elst "Shareholder Rights and Shareholder Activism: The Role of the General Meeting of Shareholders", ECGI - Law Working Paper No. 188/2012, p.2, available at https://papers.ssrn.com/sol3 /papers. cfm?abstract_id=2017691 (3.7.2019)

corporate law among the different Member States of the Union made by the EU directives and the decisions and court practice of the European Court of Justice.[2]

In general, special challenge for the running of the company is the process of delegation of powers. The delegation of power in essence in any kind of situation whether in the context of a simple principal/agent relationship, the somewhat more complex owner/manager relationship, or the citizen/minister relationship characteristic of representative democracies – creates the risk that the person receiving the delegated power will be disloyal or incompetent.[3] To reduce the risks of incompetence and disloyalty, the person delegating the authority must incur certain costs to structure the rights and duties of the agent and also supervise the agent's performance.[4] Economists refer to these expenses as agency costs.[5]

Curtail moment for the development of the structure of shareholders meeting is French 1807 Code de Commerce.[6] This development had effects in Germany, for instance in the Prussian Companies Act of 1843 and in the Allgemeines Deutsches Handelsgesetzbuch (General German Commercial Code) of 1861.[7] In the United Kingdom, companies originally had relatively great freedom in the regulation of their own affairs.[8] This can be seen in, for instance, the fact that the powers of the general meeting, on the continent usually laid down by law, used to be contained only in the articles of association. However, since 1948, a general trend towards increasingly mandatory law can be noted.[9] This was further enhanced by the influence of EU directives, which lay down a basic standard of mandatory law. By way of a counter-movement, however, as in Germany and France, less onerous rules are becoming increasingly common for private companies.[10]

Some authors in order to describe this delegation of powers are promoting the parliamentary theory. In this respect, the shareholders are mostly seen not as the 'citizens' but as the 'parliamentarians' of the company, so that the general meeting is to be regarded as the parliament of the company and thus as its 'highest body'.[11] In this case there are some critics referring that "direct democracy is costly and many academic observers have expressed

[2]Federico Cesare Guido Ghezzi, Corrado Malberti, "Corporate Law Reforms in Europe: The Two-Tier Model and the One-Tier Model of Corporate Governance in the Italian Reform of Corporate Law", Bocconi Legal Studies Research Paper No. 15, p.5-7, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=960133.

[3] Donald David and Chan Andreas, "Comparative Company Law", Cambridge University Press, 2010, p. 299.

[4] Ibid.

[5] Ibid.

[6] This law for the first time regulated the institution of the joint stock company in abstract rules, so that, based on this model, the charter system was replaced by the concession system. By the end of the seventeenth century, the general meeting had been established as an organ of the participants, and shareholder law was thereby brought to a new stage of development. Following on from the ideas of the French Revolution and the Enlightenment, the equality of shareholders and the democratization of the general meeting were now taken as themes. Siems Mahias, "Convergence in Shareholders Law", Cambridge University Press, 2008, p. 18.

[7] Ibid. p.18.

[8] Ibid. p.52.

[9] Ibid. p.52.

[10] Ibid. p. 52.

[11] In detail, however, there are differences in the justification and shape of the democratic model. First of all, it may be a metaphor for the political nature of decision-making and thus in particular a theoretical justification for voting rights and the powers of the general meeting. The competence of the general meeting is not, however, all-embracing on this view. A certain delegation of power to management as the 'government' of the company and a residual competence of the general meeting for questions of principle may very well fit the political model. Ibid. p.62.

skepticism on the usefulness of this institution, not least because shareholders rarely reject management proposals which pass with wide margin"[12]

There are authors that are considering that the general meeting, the supervisory board and the management board do not form a hierarchical chain of organs, and the general meeting is not the "highest" or "supreme" organ of the company. The powers of the general meeting are in practice the powers that have been specifically vested in it by the provisions of the law (in particular mandatory rules of the specific legislation).[13]

In general, a company is compelled by law to hold certain general meetings of shareholders, i.e. annual general meetings and in exceptional cases extraordinary general meetings.[14] There are two types of general meetings of shareholders. Every Company must every year hold a general meeting as its annual general meeting. A Company can also hold extraordinary general meetings.

As for comparation, shareholders meeting is not only mandatory company body in national forms of company, but also in the supranational forms of companies. Namely, the shareholders meeting is one of the mandatory bodies of the Societas Europea (SE). The Regulation provides that "an SE shall comprise: (a) a general meeting of shareholders and (b) either a supervisory organ and a management organ (two-tier System) or an administrative organ (one-tier System) depending on the form adopted in the Statutes"[15]

Very important factor that is increasing the interest of the shareholders and is extending their activism into the company is the trend of spreading the number of institutional investors. The institutional investors in practice are seen as a type of shareholders that ensures counterbalance vis-a`-vis executive directors and managers.[16]

II. GERMANY

German law recognizes many forms of shareholder activism. In principle, shareholders can influence the management of a public limited-liability company either at a general meeting or otherwise. It is characteristic of this type of entity that shareholders have relatively limited formal powers to decide on general management matters.[17] In addition, Shareholders holding 5%

[12] Ernst G. Maug, Kristian Rydqvist, "Do Shareholders Vote Strategically? Voting Behavior, Proposal Screening, and Majority Rules", Mannheim Finance Working Paper No. 2006-15available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=471362

[13] Mantusaari Petri, "Comparative Corporate Governance: Shareholders as a Rule Maker", Springer, 2005, p.251.

[14] Mary Keenan, Charles Wild and Stuart Weinstein, "Smith and Keenan's COMPANY LAW", Pearson Education Limited, 2009, p. 381.

[15] Mantusaari Petri, op.cit. p.68.

[16] Sabrina Bruno, Eugenio Ruggiero, "Public Companies and the Role of Shareholders - National Models Towards Global Integration Introduction" Kluwer Law International, The Netherlands, 2011, p. 3, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1932680.

[17] It is nevertheless important to keep in mind that the direct rule-making powers of the general meeting are quite limited in management matters. The statutory and mandatory division of powers between different Company organs and the statutory and mandatory co-determination are the most important factors that restrict the powers of the general meeting. On the other hand, they have relatively large formal powers to decide on measures related to share capital or structural change. They also have meaningful powers to monitor management ex post (in addition to the usual monitoring powers ex ante), and relatively liberal rights to bring things on the agenda of a general meeting. In addition to the decision-making powers of the general meeting, shareholders have a number of rights both individually and together with other shareholders. For example, each shareholder may: participate and express his opinion at a general meeting; vote at a general meeting; request verbal information from the management board at a general meeting; enforce this right; contest the validity of resolutions of the general meeting; nominate persons for

(one-twentieth) of the shares have further rights in the Company. Typically, this group of shareholders may demand a general meeting and items to be put on the agenda. Shareholders holding more than 25% (one fourth) of the shares have a right of veto with regard to many important resolutions.[18]

The most important tasks of the general meeting listed in the Aktiengesetz are: the appointment of members of the supervisory board (or the members representing shareholder or employer interests in companies to which the Co-determination Act applies), the appointment of auditors; the approval of the amount and number of profit distributions; decisions on any change of the Company's share capital; and decisions on the amendment of the articles of association.

The Umwandlungsgesetz provides for a number of ways to carry out structural change. It applies to the merger of two or more businesses (Verschmelzung), the Splitting of a whole or parts of a business (Spaltung), and, the change of the legal form without transferring assets or liabilities to another entity (Formwechsel).[19] These transactions typically require the consent of shareholders in general meeting. This means that many fundamental matters require the prior consent of shareholders in general meeting. These specific provisions of the Aktiengesetz and the Umwandlungsgesets are complemented by the *Holzmüller* principle that applies to decisions on "fundamental matters" (Grundsatzentscheidungen). In addition, shareholders have an opportunity at the annual general meeting to approve or disapprove of the actions that members of each board have taken during the past financial year (Entlastung).[20]

A general meeting is normally called by the management board. The management board may always call a general meeting. The management board must call a general meeting under the Aktiengesetz or the company's articles of association "when the good of the Company so requires". The management board must call annual general meetings. The annual general meeting must be held each year within eight months of the end of the financial year. In addition, the supervisory board must call a general meeting "when the good of the Company so requires".[21] Large shareholders holding in the aggregate at least one-twentieth of the share capital (5%) are permitted to ask the management board to call a general meeting of shareholders.[22]

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election to the supervisory board; contest the validity of the composition of the supervisory board; ask a court to appoint a member of the supervisory board; and ask a court to determine the compensation payable under a profit transfer agreement. Mantusaari Petri, op.cit. Ibid. p.278. See also: Christoph Van der Elst, "Shareholder Rights and Shareholder Activism: The Role of the General Meeting of Shareholders", ECGI - Law Working Paper No. 188/2012, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2017691

[18] In particular, resolutions relating to share capital often require a majority of at least 75% (three-fourths) of the shares represented and a simple majority of the votes cast at the general meeting. For the same reason, shareholders holding more than 25%) (one-fourth) of the shares can block resolutions to amend the articles of association. Ibid. p.292. For the German model see also: Christiane Holz, "Shareholders Meeting in Europe", European Corporate Governance Service, available at https://www.dsw-info.de/fileadmin/Redaktion/Dokumente/PDF/Publikationen/Shareholders_Meeting_Europe-web.pdf p.39-40.

[19] Mantusaari Petri, op.cit. Ibid. p.278

[20] Ibid.

[21] For example, the management board must call a general meeting when a matter arises which, according to the provisions on the distribution of powers between different Company organs, must be decided on by the general meeting. Ibid. p.280.

[22] If the management board falls to call the meeting, a court may empower these shareholders themselves to call the meeting. The shareholders can hold a general meeting any time without observing the general rules on how to call the meeting, provided that all shareholders are present or represented at the meeting and no shareholder objects to holding the meeting. Ibid. p.287.

The bodies that may cause a general meeting to be called can also get items onto the agenda. The management board can thus always get items onto the agenda. There are four formal ways for shareholders to do the same.[23]

As a rule, each share carries one vote. Multiple voting rights are not permitted. There may nevertheless be different classes of shares. An AG can issue both common shares (Stammaktien) and preferred shares (Vorzugsaktien). These shares can be issued either as bearer shares (Inhaberaktien) or registered shares (Namensaktien). Preferred shares may be non-voting. Only half of the registered share capital may be composed of preferred shares without voting rights.

At a general meeting, decisions are made by a simple majority of votes unless: mandatory law requires a greater majority (normally three-fourths); the law requires the consent of certain shareholders; or the articles provide otherwise.

The Aktiengesetz contains several rules on the procedure of a general meeting. For example, there are rules on: the notice of calling a general meeting; the Obligation of members of the two statutory boards and the auditor to participate; the list of participants; the drafting of minutes; the disclosure of information to shareholders; and the use of voting rights.[24]

Regarding the exercising of the voting rights the follow rules are important:

- The Aktiengesetz permits proxy voting. There are different ways to use proxies in Germany. Two of the most important groups of proxies are banks and the management; and
- The Aktiengesetz contains specific provisions on the management as proxy. According to the Aktiengesetz, the Company can arrange for the appointment of a representative to exercise shareholders' voting rights in accordance with their instructions.[25]

III. UNITED KINGDOM

Companies Act of 2006[26] is the basic law regulating the structure of the company in United Kingdom. Article 336 of the Companies Act prescribes that every public company must hold a general meeting as its annual general meeting in each period of 6 months beginning with the day following its accounting reference date (in addition to any other meetings held during that period). Also, every private company that is a traded company must hold a general meeting as its annual general meeting in each period of 9 months beginning with the day following its accounting reference date (in addition to any other meetings held during that period). If a company fails to comply with these provisions, an offence is committed by every officer of the company who is in default. A person guilty of an offence under this section of the Companies

[23] Large shareholders can get items onto the agenda although the meeting has been called by another body. The threshold for getting items onto the agenda is lower than the threshold for asking a general meeting to be called. Shareholders holding in the aggregate at least one-twentieth (5%) or € 500,000 of the share capital may submit a proposal and ask the Company to notify the other shareholders in advance that the proposal has been made. Ibid. p. 280.

[24] Shareholders may participate in a general meeting provided that they are listed in the share register and the possible requirements laid down by the articles of association have been met. The articles of association can provide for the prior notification of attendance or the deposit of bearer shares. According to the German Corporate Govemance Code, each shareholder should nevertheless be entitled "to participate in the general meeting, to take the floor on matters on the agenda and to submit materially relevant questions and proposals". Ibid. p.283.

[25] Ibid. p. 292.

[26] The Companies Act 2006 is available at https://www.legislation.gov.uk/ukpga/2006/46/contents (15.4.2019).

Act is liable (a) on conviction on indictment, to a fine; (b) on summary conviction, to a fine not exceeding the statutory maximum.

According to article 302 of Companies Act he directors of a company may call a general meeting of the company.

Furthermore article 303 says that the members of a company may require the directors to call a general meeting of the company. According to paragraph 2 of the same article, the directors are required to call a general meeting once the company has received requests to do so from (a) members representing at least 5% of such of the paid-up capital of the company as carries the right of voting at general meetings of the company (excluding any paid-up capital held as treasury shares); or (b) in the case of a company not having a share capital, members who represent at least 5% of the total voting rights of all the members having a right to vote at general meetings. Article 303, paragraph 3, of the Companies Act prescribes the formal conditions that the request must fulfill. Namely, the request for calling general meeting of the company (a) must state the general nature of the business to be dealt with at the meeting, and (b) may include the text of a resolution that may properly be moved and is intended to be moved at the meeting.

Article 304 of the Companies Act is prescribing the situation in regard of the directors' duty to call meetings required by members. Namely as it is set in paragraph 1 of the respected article 304, directors required under article 303 to call a general meeting of the company must call a meeting (a) within 21 days from the date on which they become subject to the requirement, and (b) to be held on a date not more than 28 days after the date of the notice convening the meeting. In addition, if the requests received by the company identify a resolution intended to be moved at the meeting, the notice of the meeting must include notice of the resolution.

According to article 305 of the Companies Act, if the directors (a) are required under article 303 to call a meeting, and (b) do not do so in accordance with article 304, the members who requested the meeting, or any of them representing more than one half of the total voting rights of all of them, may themselves call a general meeting. Where the requests received by the company included the text of a resolution intended to be moved at the meeting, the notice of the meeting must include notice of the resolution. When acting under article 305 of the Companies Act, the meeting must be called for a date not more than three months after the date on which the directors become subject to the requirement to call a meeting and in addition as a right belonging to the members that requested the meeting, the company can reimburse the reasonable expenses incurred for the purpose of organizing the meeting.

As a final solution, article 306 of the Companies Act refers to the situations where the mandate to call general meeting belongs to the Court. Namely, paragraph 2, of the respected article, says that, the court may, either of its own motion or on the application (a) of a director of the company, or (b) of a member of the company who would be entitled to vote at the meeting, order a meeting to be called, held and conducted in any manner the court thinks fit.

In the articles 307 to 313 of the Companies Act is prescribed the procedure for giving notice of the meetings. In addition if it is case of public company or private company that is traded according to article 337 of Companies Act, the notice must state that the meeting is an annual general meeting.

Companies Act makes distinction between ordinary resolutions (article 282) and special resolutions (article 283). Ordinary resolution of the members (or of a class of members) of a company means a resolution that is passed by a simple majority. Special resolution of the members (or of a class of members) of a company means a resolution passed by a majority of not less than 75%.

Article 318 of the Companies Act prescribes the rules for quorum at meetings. In the case of a company limited by shares or guarantee and having only one member, one qualifying person present at a meeting is a quorum. In any other case, subject to the provisions of the company's articles, two qualifying persons present at a meeting are a quorum, unless (a) each is a qualifying person only because he is authorized under article 323 to act as the representative of a corporation in relation to the meeting, and they are representatives of the same corporation; or (b) each is a qualifying person only because he is appointed as proxy of a member in relation to the meeting, and they are proxies of the same member. For that purposes a "qualifying person" means (a) an individual who is a member of the company, (b) a person authorised under article 323 (representation of corporations at meetings) to act as the representative of a corporation in relation to the meeting, or (c)a person appointed as proxy of a member in relation to the meeting.

Article 319 of the Companies Act entitles special role to the Chairman of the meeting. Namely a member may be elected to be the chairman of a general meeting by a resolution of the company passed at the meeting. This is subject to any provision of the company's articles that states who may or may not be chairman.

In 2007, article 319A is introduced in to the Companies Act that says, at a general meeting of a traded company, the company must cause to be answered any question relating to the business being dealt with at the meeting put by a member attending the meeting. No such answer need be given (a) if to do so would (i) interfere unduly with the preparation for the meeting, or (ii) involve the disclosure of confidential information; (b) if the answer has already been given on a website in the form of an answer to a question; or (c) if it is undesirable in the interests of the company or the good order of the meeting that the question be answered.

Companies Act of 2006 recognizes the right to appoint proxies. Namely, according to article 324 of the Act, a member of a company is entitled to appoint another person as his proxy to exercise all or any of his rights to attend and to speak and vote at a meeting of the company. In the case of a company having a share capital, a member may appoint more than one proxy in relation to a meeting, provided that each proxy is appointed to exercise the rights attached to a different share or shares held by him, or (as the case may be) to a different £10, or multiple of £10, of stock held by him. In this regard, based on article 324A, the proxy must vote in accordance with any instructions given by the member by whom the proxy is appointed. Article 327 of the Companies Act contains rules regarding the notice required of appointment of proxy.[27]

Article 330 of the Companies Act, says that in in the case of a traded company the termination of the authority of a person to act as proxy must be notified to the company in writing.

[27] In the case of a traded company (a)the appointment of a person as proxy for a member must be notified to the company in writing; (b)where such an appointment is made, the company may require reasonable evidence of (i)the identity of the member and of the proxy, (ii)the member's instructions (if any) as to how the proxy is to vote, and (iii)where the proxy is appointed by a person acting on behalf of the member, authority of that person to make the appointment; but may not require to be provided with anything else relating to the appointment.

IV. NORTH MACEDONIA

Key legal provision that determines the position of the general meeting (that is assembly of the company), is article 383 of the Law on Trade Companies[28] of North Macedonia. Namely, paragraph 1, of the same article, clearly states "the assembly shall decide only on issues explicitly determined by this Law or the statute, and in particular on…". This without any doubt is positioning the general meeting into the structure of the bodies of the company. In addition, paragraph 1 of the article 383 of the Macedonian law, says the assembly of the shareholders has the power to: 1) amendment the statute; 2) approve the annual account, financial statements and the annual report of the company's operation for the previous business year, and deciding on the distribution of the profits; 3) elect and dismiss the members of the board of directors and members of the supervisory board; 4) approve the operation and management of the company's operation by the members of the management body and the supervisory board; 5) amendment of the rights attached to particular types and classes of stocks; 6) increase or decrease the company's basic capital; 7) issue stocks and other securities; 8) appointment of the authorized auditor to audit the annual account and other financial statements, if the company is obliged to prepare them; 9) transform the company into another type of company, as well as reorganization of the company; and 10) terminate of the company.

Also the powers of the general meeting are contained in different articles of the Law on Trade Companies. Examples for this are articles 456 (3), 456 (4), 460 (3) of the Law on Trade Companies. What is important is the fact that the Law clearly stipulate that the general meeting cannot go out of the scope of the powers entitled to this body of the company, by the Law on Trade Companies and articles of association (that is the Statute of the company).

In the case where the Government of the Republic of Macedonia is the founder of the company, the assembly, in addition to the issues referred to in paragraph (1) of article 383, of the Law on Trade Companies, shall give consent to the act determining the value of the point for calculation of the salaries of the employees in the joint stock company.

Very important article of the Law on Trade Companies is article 353. Namely, this article is regulating the position of the management body towards the decisions adopted by the general meeting. In this direction, article 353 of the Law on Trade Companies, says that the management body, during the preparation and implementation of the decisions of the assembly shall be, in particular, obliged: upon a request of the assembly prepare the general acts and decisions whose adoption is within the competence of the assembly; to prepare the contracts which can be concluded solely with the consent of the assembly; to implement the decisions which are adopted by the assembly within the scope of its competencies, and to perform other activities which in accordance with this Law are prepared by the assembly and which are within the scope of its competencies.

According to article 383, (3), of the Law on Trade Companies, the assembly shall elect a chairman of the session of the assembly, minutes taker and two stockholders to verify the minutes, unless the minutes are taken by a notary. The assembly shall also elect a commission for conducting a secret vote, and other natural persons (to votes counters or others), if necessary for performing other activities necessary to enable continuous operation of the assembly in the manner and under the conditions determined by the Law of Trade Companies and the statute.

[28] Закон за трговските друштва („Службен весник на Република Македонија" бр. 28/2004; 84/2005; 25/2007; 87/2008; 42/2010; 48/2010; 24/2011; 166/2012; 70/2013; 119/2013; 120/2013; 187/2013; 38/2014; 41/2014; 138/2014; 88/2015; 192/2015; 6/2016; 30/2016, 61/2016, 64/2018 и 120/2018).

Article 384 of the Law on Trade Companies refers to the annual assembly. Namely, according to the content of this article, the assembly shall be convened by the management body, no later than three months after the composition of the annual account, the financial statements and the annual report on operation of the company for the previous business year, but not later than six months after the end of the calendar year or 14 months from the last held annual assembly. Article 384 (2) says that the annual meeting assembly shall: examine and adopt the annual account, financial statements and annual report on the company's operation in the previous business year; decide about the use of the net profit, or covering the losses; and approve the work of the members of the management body and supervisory board.

The Law on Trade Companies, also contains provisions for convening assembly in the period between two regular annual assemblies when the interest of the company and the stockholders require so. In this direction is article 385 of the Law on Trade Companies. According to article 385 (2) of the Law on Trade Companies, the management body, the supervisory board, that is the non-executive members of the board of directors can, with majority votes of its members, when it is anticipated by this Law, upon their own initiative or upon a request of any stockholder, adopt a decision for convening the assembly. Article 385 (3) says that the request for convening the assembly can be submitted by stockholders holding at least one tenth of all voting shares. The procedure for approving of the request is described in article 385 (5) which says that the management body, shall, within a time period of eight days as of the day of acceptance of the request of the stockholders for convening the assembly, adopt a decision to accept or refuse the request. The decision for refusal of the request shall state the reasons for the refusal. However, if the request is submitted by the shareholder that have majority of all voting stocks, and the management body, that is the supervisory board, upon the request does not call the assembly within a time period of 24 hours from the day of submission of the request, the shareholders can submit a proposal for convening the assembly to the court.

Article 386 of the Law on Trade Companies, the assembly can be convene by the court. Namely, article 386 (1) of the Law on Trade Companies says that, if the management body, the supervisory board, that is the non-executive members of the board of directors fail to adopt a decision within the time period referred to in paragraphs (5) and (6) of Article 385, or reject the request for convening a meeting, the court can upon a proposal adopt a decision for convening the assembly. In this situation, the court shall, within a time period of 8 days from the day of submission of the proposal, adopt a decision for convening the assembly, if the conditions, the manner and the procedure for convening the assembly determined by this Law are met and if the issues proposed for the agenda of the meeting are within the competence of the assembly as determined by this Law or the statute. The assembly whose convening is imposed by a decision of the court, shall be convened within a time period of eight days as of the day of delivery of the adopted decision of the court, imposing the convening of the assembly, to the person determined by the court to convene the assembly.

According to article 399 (1), of the Law on Trade Companies, each stockholder that intends to participate at the convened assembly shall be obliged to register his/her participation at the assembly (registration for participation at the assembly), before the beginning of session of the scheduled assembly, at the latest. The list of registered stockholders shall be prepared by the management body, that is the person authorized to convene the assembly.

Article 391-a is governing the situation of organizing a session of the assembly by electronic mean at a company whose stocks are listed on the stock exchange, that is the company which in accordance with the Law on Securities has special notification obligations. Namely,

according to article 391-a of the Law on Trade Companies, the company whose shares are listed on the stock exchange and the company which in accordance with the Law on Securities has special notification obligations can enable the stockholders to participate on a session of the assembly by using at least one of the following electronic means: direct transmission of the assembly; two-way audio and video communication in live, enabling the stockholders to address the assembly from any remote location, and electronic means for voting, before or during the assembly without the need to authorize a representative who would attend the session.

Article 391-b of the Law on Trade Companies regulates very important issue that should insure the participation of the shareholders by using their right to raise questions. Namely, according to article 391-b, each stockholder shall have the right to raise questions on each of the points on the agenda of the session of the company's assembly. The company through its authorized body or a representative shall be obliged to respond to questions raised by the stockholders. The right to raise questions from the stockholders and the obligation of the company to answer the raised questions can be pre-conditioned by the need to verify the personal identity of the stockholders raising the questions, maintain the order in chairing and operation of the assembly, or to undertake actions in order to preserve the confidentiality of the work and the business interests of the company. The company can give a collective response to questions with the same content. The questions raised by the stockholders shall be considered to be answered if the answers are available on the web page of the company in the form of questions and answers.

The company whose stocks are listed on the stock exchange and the company which in accordance with the Law on Securities has special notification obligation shall be obliged to answer the raised questions of the session of the company's assembly to publish on its web page in the format of a question and an answer .

According to article 392 of the Law on Trade Companies, a stockholder can with a letter of attorney authorize other natural person or a legal entity as his/her attorney in fact on a session of the company's assembly, who shall participate and vote at the assembly's session in his/her behalf. The attorney in fact shall enjoy the same rights as the stockholder who authorized him/her with a letter of attorney, including the right to speak, to hold a discussion and to raise question at the session of the company's assembly. Article 392 (2) of the Law on Trade Companies, impose obligation to the shareholder, to inform the joint stock company in writing regarding the appointment of a personal attorney in fact at a session of the company's assembly. Very important provision is that one contained article 392 (10) that says, the proxy can be canceled unilaterally, without stating the reasons, by the stockholder or the attorney in fact by submitting a written notification to the other party. If the stockholder personally registers his/her presence at the session of the assembly with all stocks he/she possess and if he/she declares that he/she shall personally discuss, decide and vote with all stocks he/she possess, it shall be considered that the letter of attorney of the attorney in fact for that session of the assembly has been canceled and the stockholder can personally exercise his/her voting right without restrictions.

Article 392-a is rising the issues of conflict of interest of the attorney in fact.

The quorum issue is discussed in article 393 of the Law on trade Companies. Namely, according to article 393 (1), of the Law on Trade Companies, unless the statute determines a greater majority, the assembly can operate (operation quorum), if verified participants holding at least majority of the total number of the voting stocks are present at the session. If the quorum is not reached, the assembly cannot commence its operation. In a time period no longer than 15 days as of the day when the assembly at which there was no quorum for work has been

scheduled, a new term for convening the assembly shall be scheduled (rescheduled assembly), which is to be convened in this term. The new term of the rescheduled assembly shall be published in the same manner as the publication of the convening of the assembly which did not have the operation quorum.

According to article 394 the decisions of the assembly shall be adopted with majority of the voting stocks represented at the assembly, unless this Law and the statute determine a greater majority or prescribes other conditions in relation to the majority for adopting decisions of the assembly.

Right to vote is determined in article 397. Namely, according to article 397 (1) voting right shall be acquired upon full payment of the monetary contribution, that is full entering of a non-monetary contribution. Special exception is contained in article 397 (2) when the statute can determined the voting right to be acquired when the minimum amount of the contribution as determined by this Law or the statute is paid. The right to one vote shall be acquired for the stock for which the minimum amount of the contribution determined by this Law and the statute is paid.

The shareholders enjoy his right to vote even if the share is under pledge. Namely, article 398 says that the shareholder shall not lose the voting right by pledging his/her stocks. In addition, the voting right of stocks owned by a juvenile or another person having no capacity to contract, shall be exercised by his/her legal representative, that is a guardian, either in person or by an attorney in fact, determined with a written letter of attorney verified by a notary. The voting right of stocks owned by a deceased person, until the completion of the inheritance procedure, shall be exercised by the joint representative appointed by the inheritors of the deceased person, by a written letter of attorney verified by a notary. The voting right of stock held by a company under liquidation or bankruptcy in another legal entity, shall be exercised by the liquidator, that is the bankruptcy administrator, or by an attorney in fact determined by the company with a written letter of attorney verified by a notary.

According to article 400 (1), unless otherwise determined by the Law and the statute, and if the assembly itself has not determined a special manner of voting or secret voting, the manner of voting shall be determined by the chairman of the assembly. At least one person who shall count the votes shall be elected by the assembly. However, according to article 400 (2), the voting shall be secret for the election of a member of the management body, that is a member of a supervisory board or dismissal of the members of these bodies, unless it is determined by the statute for the voting to be public. In addition, if the statute determines for the stockholder to vote publicly, upon a request of one or more stockholders holding at least one tenth of the total number of voting stocks, the voting shall be secret. Also, according to article 400-a the company can enable the stockholders to vote via correspondence before the day of holding the assembly.

V.CONCLUSION

Separation of power is one of the key challenges on the process of building functional multi stakeholder company. This can be achieve by strict dividing of the responsibilities of the bodies of the company. In principle it is crucial to have appropriate relations between the general meeting that represents the shareholders very directly, and the management board or the board of directors. From the above analysis of the legal framework governing the general meeting of the shareholders (or assembly of shareholders), in the United Kingdom, Germany and North Macedonia the follow can be concluded:

- In all of these countries it is mandatory annual meeting of the shareholders to be organized;
- The analyzed legal framework also gives opportunity for organizing of extraordinary shareholders meeting in the time between two annual meetings;
- In Germany and in North Macedonia, most of the provisions regarding the shareholders meeting are having character of mandatory rules incorporated in relevant legal acts (in Germany that is Aktiengesetz and in North Macedonia that is Law on Trade Companies), while there is very limited space for the company to regulate certain issues in the internal acts of the company. Contrary to this approach is the practice of United Kingdom and the provisions of the Companies Act of 2006, that are giving opportunity to the company broad spectar of issues regarding the general meeting to be regulate with the internal acts of the company;
- In all of these countries, it is allowed for the shareholder to use with his right to be represented at the general meeting by proxy;
- Managing bodies are authorized for calling of a general meeting. However, if this is not done by the managing bodies, the shareholders are entitled to ask for calling of general meeting. Also, in all of these countries, the shareholders can ask from the court to order calling of general meeting;
- Regarding the quorum issue and the voting majority there are some specifics in different legislations analyzed in this paper.

References:

1. Boyle A.J. "Minority Shareholders Remedies", Cambridge University Press, 2002
2. Christoph Van der Elst, "Shareholder Rights and Shareholder Activism: The Role of the General Meeting of Shareholders", ECGI - Law Working Paper No. 188/2012, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2017691
3. Christiane Holz, "Shareholders Meeting in Europe", European Corporate Governance Service, available at https://www.dsw-info.de/fileadmin /Redaktion/Dokumente/PDF/Publikatio nen/Shareholders_Meeting_Europe-web.pdf
4. Donald David and Chan Andreas, "Comparative Company Law", Cambridge University Press, 2010
5. Ernst G. Maug, Kristian Rydqvist, "Do Shareholders Vote Strategically? Voting Behavior, Proposal Screening, and Majority Rules", Mannheim Finance Working Paper No. 2006-15available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=471362
6. Federico Cesare Guido Ghezzi, Corrado Malberti, "Corporate Law Reforms in Europe: The Two-Tier Model and the One-Tier Model of Corporate Governance in the Italian Reform of Corporate Law", Bocconi Legal Studies Research Paper No. 15, p.5-7, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=960133.
7. Mantusaari Petri, "Comparative Corporate Governance: Shareholders as a Rule Maker", Springer, 2005
8. Mary Keenan, Charles Wild and Stuart Weinstein, "Smith and Keenan's COMPANY LAW", Pearson Education Limited, 2009
9. Michel Tison, Hans De Wulf, Reinhard Steennot and Christoph Van Der Elst "Perspectives in Company Law and Financial Regulation", Cambridge University Press, 2009

10. Milman David, “National Corporate Law in a Globalised Market: The UK Experience in Perspective”, Edward Elgar, 2009
11. Petted Ben, “Company Law”, Pearson Longman, 2005
12. Sabrina Bruno, Eugenio Ruggiero, “Public Companies and the Role of Shareholders - National Models Towards Global Integration Introduction” Kluwer Law International, The Netherlands, 2011, p. 3, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1932680
13. Siems Mahias, ”Convergence in Shareholders Law”, Cambridge University Press, 2008
14. Companies Act of 2006, https://www.legislation.gov.uk/ukpga/2006/46/contents
15. Закон за трговските друштва („Службен весник на Република Македонија“ бр. 28/2004; 84/2005; 25/2007; 87/2008; 42/2010; 48/2010; 24/2011; 166/2012; 70/2013; 119/2013; 120/2013; 187/2013; 38/2014; 41/2014; 138/2014; 88/2015; 192/2015; 6/2016; 30/2016, 61/2016, 64/2018 и 120/2018).