

VIRGINIA ACTS OF ASSEMBLY -- 2017 SESSION

CHAPTER 646

An Act to amend and reenact §§ 13.1-654, 13.1-655, 13.1-658, 13.1-660.2, and 13.1-661 of the Code of Virginia, relating to stock corporations; meetings of shareholders.

[H 2230]

Approved March 20, 2017

Be it enacted by the General Assembly of Virginia:

1. That §§ 13.1-654, 13.1-655, 13.1-658, 13.1-660.2, and 13.1-661 of the Code of Virginia are amended and reenacted as follows:

§ 13.1-654. Annual meeting.

A. Unless directors are elected by written consent in lieu of an annual meeting as permitted by § 13.1-657, a corporation shall hold a meeting of shareholders annually at a time stated in or fixed in accordance with the bylaws, except that a corporation registered under the Investment Company Act of 1940 is not required to hold an annual meeting in any year in which the election of directors is not required to be held under the Investment Company Act of 1940 unless the articles of incorporation or bylaws of the corporation require an annual meeting to be held.

B. ~~Annual~~ *Except as otherwise determined by the board of directors acting pursuant to subsection C of § 13.1-660.2*, shareholders' meetings may be held at such place, in or out of the Commonwealth, as may be provided in the bylaws or, where not inconsistent with the bylaws, in the notice of the meeting.

C. The failure to hold an annual meeting at the time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

§ 13.1-655. Special meeting.

A. A corporation shall hold a special meeting of shareholders:

1. On call of the chairman of the board of directors, the president, the board of directors, or the person or persons authorized to do so by the articles of incorporation or bylaws; or

2. In the case of ~~corporations having~~ *a corporation that is not a public corporation and that has 35 or fewer shareholders of record*, if the holders of at least 20 percent of all votes entitled to be cast on any issue proposed to be considered at the special meeting sign, date, and deliver to the corporation's secretary one or more written demands for the meeting describing the purpose or purposes for which it is to be held. The articles of incorporation may provide for an increase or decrease in the percentage stated in this subdivision.

B. Unless otherwise provided in the articles of incorporation, a written demand for a special meeting may be revoked by a writing, including an electronic transmission, to that effect received by the corporation prior to the receipt by the corporation of demands sufficient in number to require the holding of a special meeting.

C. If not otherwise fixed under § 13.1-656 or 13.1-660, the record date for determining shareholders entitled to demand a special meeting is the date the first shareholder signs the demand.

D. ~~Special~~ *Except as otherwise determined by the board of directors acting pursuant to subsection C of § 13.1-660.2*, shareholders' meetings may be held at such place in or out of this Commonwealth as may be provided in the bylaws or, where not inconsistent with the bylaws, in the notice of the meeting.

E. Only business within the purpose or purposes described in the meeting notice required by subsection C of § 13.1-658 may be conducted at a special shareholders' meeting.

§ 13.1-658. Notice of meeting.

A. A corporation shall notify shareholders of the date, time, and place, *if any*, of each annual and special shareholders' meeting. Such notice shall be given no less than 10 nor more than 60 days before the meeting date except that notice of a shareholders' meeting to act on an amendment of the articles of incorporation, a plan of merger, share exchange, domestication or entity conversion, a proposed sale of assets pursuant to § 13.1-724, or the dissolution of the corporation shall be given not less than 25 nor more than 60 days before the meeting date. The notice shall include the record date for determining the shareholders entitled to vote at the meeting, if such date is different than the record date for determining shareholders entitled to notice of the meeting. Unless this chapter or the articles of incorporation require otherwise, the corporation is required to give notice only to shareholders entitled to vote at the meeting as of the record date for determining the shareholders entitled to notice of the meeting.

B. Unless the articles of incorporation or this chapter requires otherwise, notice of an annual meeting need not state the purpose or purposes for which the meeting is called.

C. Notice of a special meeting shall state the purpose or purposes for which the meeting is called.

D. If not otherwise fixed under § 13.1-656 or 13.1-660, the record date for determining shareholders entitled to notice of and to vote at an annual or special meeting is the day before the effective date of the notice to shareholders.

E. Unless the bylaws require otherwise, if an annual or special meeting is adjourned to a different date, time, or place, notice need not be given if the new date, time, or place, *if any*, is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or shall be fixed under § 13.1-660, however, not less than 10 days before the meeting date notice of the adjourned meeting shall be given under this section to shareholders entitled to vote at such adjourned meeting as of the record date fixed for notice of such adjourned meeting.

F. Notwithstanding the foregoing, no notice of a shareholders' meeting need be given to a shareholder if (i) an annual report and proxy statements for two consecutive annual meetings of shareholders or (ii) all, and at least two, checks in payment of dividends or interest on securities during a 12-month period, have been sent by first-class United States mail, addressed to the shareholder at the shareholder's address as it appears on the share transfer books of the corporation, and returned undeliverable. The obligation of the corporation to give notice of shareholders' meetings to any such shareholder shall be reinstated once the corporation has received a new address for such shareholder for entry on its share transfer books.

§ 13.1-660.2. Remote participation in annual and special meetings.

A. Shareholders of any class or series may participate in any meeting of shareholders by means of remote communication to the extent the board of directors authorizes such participation for such class or series. Participation by means of remote communication shall be subject to such guidelines and procedures the board of directors adopts, and shall be in conformity with subsection B.

B. Shareholders participating in a shareholders' meeting by means of remote communication shall be deemed present and may vote at such a meeting if the corporation has implemented reasonable measures to:

1. Verify that each person participating remotely is a shareholder *or a shareholder's proxy*; and
2. Provide such shareholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the shareholders, including an opportunity ~~to communicate, and~~ to read or hear the proceedings of the meeting, substantially concurrently with such proceedings.

C. Unless the articles of incorporation or bylaws require the meeting of shareholders to be held at a place, the board of directors may determine that any meeting of shareholders shall not be held at any place and shall instead be held solely by means of remote communication in conformity with subsection B.

§ 13.1-661. Shareholders' list for meeting.

A. After fixing a record date for a meeting, a corporation shall prepare an alphabetical list of the names of all its shareholders who are entitled to notice of a shareholders' meeting. If the board of directors fixes a different record date under subsection E of § 13.1-660 to determine the shareholders entitled to vote at the meeting, a corporation shall also prepare an alphabetical list of the names of all its shareholders who are entitled to vote at the meeting. A list shall be arranged by voting group, and within each group by class or series of shares, and show the address of and number of shares held by each shareholder.

B. The shareholders' list for notice shall be available for inspection by any shareholder, beginning two business days after notice of the meeting is given for which the list was prepared and continuing through the meeting, at the corporation's principal office or at a place identified in the meeting notice in the county or city where the meeting will be held. A shareholders' list for voting shall be similarly available for inspection promptly after the record date for voting. The original share transfer books shall be prima facie evidence as to who are the shareholders entitled to examine such list or to vote at any meeting of shareholders. A shareholder, or the shareholder's agent or attorney, is entitled on written demand to inspect and, subject to the requirements set forth in subsection D of § 13.1-771, to copy a list, during the regular business hours and at the shareholder's expense, during the period it is available for inspection.

~~C. The~~ *If the meeting is to be held at a place, the corporation shall make the list of shareholders entitled to vote available at the meeting, and any shareholder, or the shareholder's agent or attorney, is entitled to inspect the list at any time during the meeting or any adjournment.*

D. If the corporation refuses to allow a shareholder, the shareholder's agent, or the shareholder's attorney to inspect a shareholders' list before or at the meeting *as provided in subsections B and C*, or to copy a list as permitted by subsection B, the circuit court of the county or city where the corporation's principal office, or if none in the Commonwealth its registered office, is located, on application of the shareholder, may summarily order the inspection or copying at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete.

E. Refusal or failure to prepare or make available a shareholders' list does not affect the validity of action taken at the meeting.