

Practical Guide: General Assembly of Shareholders or Meeting of Partners

In accordance with the provisions of the Colombian Commercial Code (C.Co.), partners or shareholders of a company must hold an ordinary meeting at least once a year (Art. 181), without this preventing them from holding extraordinary meetings on more occasions whenever required. In this ordinary meeting, the situation of the company is analyzed and important decisions are made. Therefore, we answer frequently asked questions regarding its summons and celebration, for the most common types of corporations in Colombia.

1. When should the shareholders' or partners' meeting be held?

It must be held by the date established in the company's by-laws. In case of silence, it must be held within the first three (3) months of the year, that is, until March 31st. However, in the event that the assembly has not been summoned prior to the meeting, it may meet by its own right on the first business day of April, at 10 a.m., in the offices of the main domicile where the administration of the company operates (Art. 422 C.Co.). The meeting of the assembly is also applicable in the case of SAS-type entities with a single shareholder.

2. How and who should summon it?

In accordance with the provisions of the Commercial Code (Art. 181 C.Co.), the assembly must be summoned in the manner and by the person indicated for this purpose in the company's by-laws. However, in case there is no determination in this regard, the requirements will vary depending on the corporate type:

2.1 Simplified Joint-Stock Companies (SAS)

It must be summoned by the legal representative through written communication addressed to each shareholder at least five (5) business days in advance. However, the shareholders of the SAS may waive their right to be summoned, in writing addressed to the legal representative of the company. Likewise, the waiver of this right will be presumed in cases where shareholders attend the meeting, despite not being summoned, unless they express their disagreement with the lack of summons before the meeting is held (Arts.20 and 21, Law1258 of 2008).

2.2 Stock Corporation

It must be summoned by the legal representative through a notice that must be printed in a newspaper published at the main domicile of the company. For meetings in which the end-of-year financial statements must be approved, as is necessary for ordinary meetings, the summons must be made at least fifteen (15) business days in advance. In other cases, five (5) calendar days in advance will suffice (Art. 424 C.Co.).

It is important to bear in mind that, according to article 190 of the Colombian Commercial Code, in case the requirements of the summons are not met, the decisions taken at the assembly or meeting will not produce effects. However, those meetings in which all associates are represented despite not being summoned, either because they attend personally or through a proxy, will be valid (Art. 182 C.Co.).

3. What information should be included in the summons?

In accordance with the Basic Legal Memorandum of the Colombian Superintendence of Corporations, the summon must include, at least, the name of the company, the name and type of the body being summoned, the date, time, city and address in which the meeting will be held. In the event that a merger, division, transformation or cancellation of the registration in the national securities registry or in the stock exchange is to be submitted for consideration, this information must also be included along with the express mention of the possibility that partners have to exercise the right of withdrawal. In addition to the above, although it is not mandatory, it is a good practice to indicate to the associates that they have at their disposal all the documents related to the approval of the financial statements so that they can exercise their right of inspection.

Additionally, in the case of SAS-type corporations, the agenda must be included, unless otherwise stated in the company's by-laws. Additionally, the date on which the second meeting would be held in case the first one is not held due to lack of quorum, may be included. For this last point, bear in mind that the second meeting may not be set for a date prior to ten (10) business days following the date of the first meeting, nor later than thirty (30) business days from the date for the first meeting (Art. 20, Law 1258 of 2008).

Finally, in the case of non-face-to-face meetings, the summons must state that the meeting will be held by this method and indicate the means or tool through which it will be held as well as the way in which the members or their representatives will be able to access the meeting (Decree 398 of 2020).

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4. Where should this meeting be held?

The meeting of the highest corporate body must be held at the main domicile of the company (Art. 186 C.Co.). In SAS-type corporations, the shareholders may meet at the main domicile of the company or in other place, if the requirements of quorum and summons provided for in the law are met (Art. 18, Law 1258 of 2008). In case of non-face-to-face meetings, it will be sufficient to carry it out through any means that allows deliberation and decision through successive or simultaneous communication of all attendees (Art.19, Law 222 of 1995).

5. What topics should be addressed and what documents should be submitted?

The shareholders' assembly or meeting of partners is held in order to: (i) evaluate the situation of the company, (ii) study and approve by-laws reforms (iii) designate the directors and other officials of their choice, which includes the statutory auditor in case the limits on income or gross assets established in Law 43 of 1990 are exceeded, (iv) analyze the reports of the directors, legal representative and statutory auditor, (v) determine the economic guidelines of the company, (vi) evaluate the accounts and financial statements of the last financial year in order to approve or disapprove them, (vii) decide on the distribution of profits and on the constitution of occasional reserves, (viii) agree on all policies and measures aimed at ensuring compliance with the corporate purpose and, in general, with the by-laws provisions, and (ix) other matters indicated by the company's by-laws or Colombian law (Arts. 187, 420 and 422 C.Co.). Lastly, the assembly or meeting may discuss any other additional issue or matter it deems necessary.

Thus, in accordance with article 46 of Law 222 of 1995, the directors must submit the following documents to the assembly or meeting of partners for approval or disapproval: (i) management report, (ii) general purpose financial statements, along with their notes, with cut-off date being the end of the respective year, (iii) the distributable profits project, (iv) the opinion on the financial statements, and (v) other reports issued by the statutory auditor or by an independent accountant.

6. What is the quorum needed to debate and the majority to make decisions?

In order for the meeting to take place and the attendees to be able to deliberate, a plural number of partners or shareholders must attend, however, this will depend on the type of company in question, as follows:

6.1 Partnerships

In the absence of an express regulation in the company's by-laws, deliberation can commence with a numerical majority of the partners, regardless of their contribution (Art. 302 C.Co.)

6.2 Limited Partnership

Deliberation can commence with the numerical majority of the managing-partners and with a plural number of limited-partners representing at least half plus one of the quotas or shares in which the company capital is divided (Art. 341 and 352 C. Co. - Art. 68, Law 222 of 1995.)

6.3 Limited-liability Companies

Deliberation can commence with a plural number of partners representing the absolute majority of all the quotas in which the company capital is divided (Art. 359 C.Co.).

6.4 Stock Corporations

Deliberation can commence with a plural number of shareholders representing, at least, half plus one of the subscribed shares, unless a lower quorum is agreed to in the company's by-laws (Art. 68, Law 222 of 1995).

6.5 Simplified Joint-Stock Companies (SAS)

Unless otherwise stated in the by-laws, deliberation can commence with one or more shareholders that represent at least half plus one of the subscribed shares (Art. 22, Law 1258 of 2008).

For decision making, a simple majority is required, that is, half plus one of the shares or quotas present at the meeting, unless a different majority is established in the company's by-laws. For certain decisions, the law establishes the need to have a special or qualified majority, such as to reform the by-laws or to change the corporate type (Arts. 186 and 427 C.Co.).

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In the event that the necessary quorum is not available and the meeting cannot be held, a new meeting will be summoned and will validly decide with any plural number of members attending, regardless of the number of shares or quotas represented. This meeting may not be held before ten (10) business days after the date of the first meeting nor thirty (30) business days after said date (Art. 429 C.Co. and Art. 20, Law 1258 of 2008).

Finally, bear in mind that decisions made with the number of votes required by the company's by-laws or the law, will bind all members, including absentees or dissidents and must be recorded in minutes approved by the meeting or assembly, or by the individuals designated for this purpose by the meeting (Arts. 188 and 189 C.Co.).

7. Who must sign the minutes?

7.1 Face-to-Face Meetings

The minutes must be signed by the persons designated as president and secretary of the meeting, and express reference must be made to the date, time and place of the meeting, the form of summons, the list of attendees, the matters discussed and the votes that have been obtained in each case, the designations that have been made and the date and time in which the meeting has ended (Art. 431 C.Co.).

7.2 Non-Face-to-Face Meetings

In accordance with article 21 of Law 222 of 1995, when the meeting is not face-to-face, the minutes must be signed by the legal representative and the secretary of the company, or if the company does not have one, by one of the shareholders or partners. Likewise, in accordance with Decree 398 of 2020, for these kinds of meetings, the legal representative must record in the minutes the continuity of the necessary quorum throughout the meeting and must verify the identity of the virtual participants to guarantee that they are in fact partners, shareholders or their proxies.

Lastly, all companies must record these minutes in chronological order in their duly registered book of minutes (Art. 195 C.Co.).