

# THE ROLE OF ELECTRONIC VOTING IN THE MANAGEMENT OF THE JOINT-STOCK COMPANY (A CONTRASTIVE STUDY)

Nawfal Rahman Mleghut, Imam Kadhim College (IKC)  
Kadhim Fakhri Ali, Imam Kadhim College (IKC)

## ABSTRACT

*Having the privilege to vote in the general assembly of the joint-stock company is very significant. It crucially and fundamentally determines the existence of the company. In most cases, this requires the attendance of most of the voting shareholders. However, what is actually happening is the problem of having the required quorum, especially after the spread of the Coronavirus epidemic, which makes it difficult for most shareholders to attend actual meetings. Consequently, it is necessary to find a way to balance between the continuation of the company's work and the general assembly's actual meetings on the one hand, and avoiding the risk of spreading the epidemic among shareholders and encouraging them to engage in the general assembly's actual meetings, on the other.*

*Therefore, some statutes approved the electronic voting as an ideal strategy to achieve this balance and make the General Assembly play its role before the Board of Directors. Adopting the electronic voting assures the participation of the largest number of shareholders due to its important advantages in this field. However, the adoption of this system requires special procedures and preparations that need to be set beforehand. Also, its adoption imposes on the company some additional obligations that the shareholders must abide by. In addition, there might be a conflict between the electronic voting and the in-person voting when they are combined. This would make the company liable for identifying and fixing this sort of conflict.*

*In this study, the researchers will attempt to explain the aforementioned issues meticulously, for the electronic voting serves as an effective method to be adopted in company management, especially during the current circumstances.*

**Keywords:** Electronic Voting, Joint-Stock Company, In-Person Voting, General Assembly

## INTRODUCTION

Joint-stock companies are one of the most important types of companies. They are the mainstay and the principal medium for developing the country's economy. A joint-stock company is characterized with having the large size of its capital and the large number of its shareholders, hence usually known as a broad-based company. It is clearly known that all the shareholders are members of the company's general assembly and active participants in its management, for they have the right to participate in its meetings, discuss and vote on its decisions. In other words, the right to vote is one of the basic rights of all shareholders, which they can never be deprived of. Therefore, in order for the shareholder to practice this right, he or she must attend the meetings of the company's general assembly at the specified time and place. However, the reality indicates that most of the meetings of the general assembly does not achieve the presence of the shareholders required due to the distances that constitute a burden on them, especially in companies with an international scope. The occurrence of Coronavirus pandemic further complicated the matter, making it impossible for shareholders to physically attend the general assembly meetings (Turki, 2010).

In view of the foregoing, we find that some legislations began to develop a successful means to achieve effective participation in the meetings of the general assembly to facilitate this issue for those who are unable to do so. Work began on the electronic voting system, which can

shorten time and distances, and allow all these groups to participate without trouble. Electronic voting is a successful method and an alternative to the in-person attendance. It also comes in line with the spread of Coronavirus epidemic and allows the largest number of shareholders in the broad-based companies to participate in the meetings (Arab, 2018).

The adoption of this method may encounter some problems, such as hacking the system and making some people control and elaborate the decisions of the general assembly. However, the adoption of unfringeable and disciplined systems would prevent this. Therefore, it is mandatory for this kind of voting to have a stability and credibility that is no less important than the in-person voting, and eventually it becomes difficult for the shareholder who votes electronically to manipulate the voting results after being finally released (Jassim, 2012).

Therefore, the study of this alternative means for the in-person voting requires scrutinizing the general rules and texts related *via* scientific analysis in order for the companies to adopt it in the meetings of the general assembly and even in the meetings of the board of directors, if necessary, especially in light of the current circumstances of Coronavirus epidemic outbreak. In comparison with the Egyptian legislation, Egyptian legislators are also concerned with electronic voting and they enacted some statutes for it to benefit from. This may be a motive for the Iraqi legislators to include some texts in the relevant laws to regulate the statutes related to the subject in question, which were not covered and approached by the general rules. This should be done in line with the privacy and importance of the management of joint-stock companies (Lahrsh, 2019).

Accordingly, the research on this subject requires us to address it through two sections. The first is concerned with the concept of the electronic voting system in the joint-stock company. This is done through two requirements: the first requirement sheds lights on defining the electronic voting and its role in the management of the joint-stock company, and the second requirement deals with the prerequisites of electronic voting in the management of the joint-stock company. We dedicate the second section to the provisions of the electronic voting system. This section falls into two sub-sections as well: the first concerns the consequences of adopting the electronic voting system; the second deals with the authenticity of the electronic voting system in the management of the joint-stock company. The research concludes with the most important findings and suggestions in this regard.

## **The Concept of Electronic Voting in the Management of the Joint-Stock Company**

The right to vote in a joint-stock company is one of the basic rights that are established for taking part in the general assembly. Also, a member of the board of directors must participate in the meetings of the general assembly and in voting on the decisions taken. This right or obligation is usually exercised within a truly united council. However, some exceptional circumstances necessitate the practice of electronic voting through an electronic council. This topic requires us to address it through two requirements: the first is concerned with the definition of the electronic voting system in the management of the joint-stock company, and the second is concerned with the prerequisites of the electronic voting in the management of the joint-stock company.

## **Introducing the Electronic Voting System in the Management of the Joint-Stock Company**

The electronic voting system is one of the means adopted by companies for the purpose of continuing their activities under exceptional circumstances that make it difficult for multiple people to meet in one council, or in order to involve the largest number of shareholders in the general assembly meetings. Therefore, it replaces the electronic council with the actual direct physical council, and according to specific procedures required for the success of this alternative system. Therefore, this topic requires us to deal with it through three branches, in the first we deal with the definition of the electronic voting system, and in the second the conditions for

working with the electronic voting system, and in the third distinguishing the electronic voting system from other kinds of voting closely resemble it.

### **What is Electronic Voting System?**

The electronic voting system, or remote voting, was defined by some researchers. It was known as “an updated system that allows shareholders or partners who are unable to attend the company's general assembly meetings (in person or on behalf) to vote on its decisions that it presents at its meetings. Attendance at this meeting is considered as an attendance in person. Votes made *via* electronic means are added to the quorum and counted among the final voting results for voting on each of the decisions issued by the general assembly”.

The electronic voting system was also defined as “a system that allows shareholders in banks and joint-stock companies to vote on the items of the general assembly through electronic means.”

It is noticed from these definitions that they restrict the electronic voting system to the general assembly of the joint-stock company. While the members of the board of directors can follow this system according to certain procedures.

Regarding the position of legislation on electronic voting, we find that the Egyptian legislator adopted the electronic voting system No. 4 of 2018. This law is linked to the Electronic Signature Law No. 15 of 2004, in that the electronic voting is, practically, accompanied by the necessity of an electronic signature. The French legislator also approved the fact that the shareholder has the right to attend the company's general assembly through electronic means of communication and allowed the application of the voting method to achieve the quorum necessary to take decisions (Khalfawi, 2009).

As for the Iraqi legislation, though we did not find what indicates the adoption of the electronic voting method in the management of the joint-stock company, the Iraqi legislator calls for considering the Electronic Signature and Electronic Transactions Law No. 78 of 2012. The Iraqi legislator does not find anything that prevents this method from being followed in companies and it can be applied to other companies if certain conditions are available. The first and second articles of this law allows the application of electronic transactions and specified the requirements for that (Sharif, 2018).

It can be noticed from the foregoing explanation; it is possible to define electronic voting in the joint-stock company as a smooth method for the shareholder to have the right to attend and vote on the items of the meeting remotely using modern technology efficiently and by relying on protected programs that are difficult to be hacked and designed for this purpose. We believe that it is desirable for the law to stipulate this method, as did the Egyptian and French legislators, since its adoption in the meetings of the joint-stock company achieves the following advantages:

1. It enables the company to hold its meetings that include large numbers of members without the risk of gatherings at the time of epidemics and the spread of Coronavirus.
2. It is easier for members to attend meetings and participate in voting without the trouble of traveling, especially if he or she is a foreigner or in a country other than the one in which the meeting is being held.
3. Shareholders can participate in voting on all decisions of the general assembly and contribute to the cumulative voting for the selection of members of the board of directors.
4. It helps the company to hold its meetings on time and in a manner that guarantees a flawless holding due to the ease of achieving a quorum in this method of meetings, especially when the number of shareholders increases. The electronic voting can then help activate the role of the general assembly before the board of directors, which takes control of the company's management during the absence of the general assembly.
5. It helps the company not to stop holding its meetings due to the spread of Coronavirus. It can also allow it to hold emergency meetings as quickly as possible, which may be difficult to achieve through the physical direct meeting, and issue decisions at record speed.
6. This method guarantees the confidentiality of information and the privacy of voting, especially when the voting is cumulative or related to the selection or dismissal of the managing director of the company.

7. This method does not conflict with physical attendance, as it allows a combination of electronic and physical voting.

### **Conditions for Applying the Electronic Voting in a Joint-Stock Company**

In order for the electronic voting system to be implemented as a method of managing a joint-stock company, several conditions must be met, which are:

**First:** The company's system or contract should include what allows shareholders to use electronic voting.

By reviewing the legislation that organizes electronic voting, we find that in order to activate the electronic voting system in the management of the company, it must be stipulated in its statute or contract. As we find the French legislator allows the use of electronic voting to achieve the necessary quorum in taking the decisions presented at the meeting. The Egyptian legislator also approves in the last amendment to the Companies Law for companies registered in the depository system to allow the use of the electronic voting system in the decisions of the general assembly (Miqdad, 2016).

On this basis, to follow the electronic voting system in the management of the company, there must be a clause allowing it to do so in its contract or principal system. Then the company that wants to follow that and does not find in its contract or system anything that indicates this, it must amend it to allow this (Mushrafi, 2017).

As for the position of the Iraqi legislation, we do not find any reference to electronic voting. Is it possible to work with it? Is it required for the contract of company that uses this system to include that? Does the company that wishes to follow this method have to resort to amending its contract by including a clause allowing the use of electronic voting?

When examining the Iraqi Companies Law, the Articles (88, 90, 94) which outlined the mechanism of the general assembly meetings, it tackles the in-person meeting in detail by specifying the attendance, place and time of the meeting, and there is none that refers to electronic voting, even if the company can refer to the law of electronic signature and electronic transactions. However, this is not sufficient to accommodate all the provisions of electronic voting in corporate governance. Therefore, working in this way requires adding a clause that allows or defines the method of electronic voting. It is also necessary to include this in the contract of the company that wishes to follow this method so that the shareholders are aware of it and the company should prepare the necessary matters for this. This is what the Egyptian and French legislators approved of.

**Second:** The company should use the electronic presentation of the meeting items and prepare the necessary requirements (Mushrafi, 2017).

Informing the shareholders of the items of the general assembly meeting and discussing them is one of their basic rights. Also, the electronic voting mechanism requires protection from external interference that affects the confidentiality and integrity of the vote when required. Therefore, this requires the creation of special means and the preparation of protected programs that allow only the shareholders who have the right to vote to gain access to them (Al-Busaili, (n.d.)).

With this condition, we find the Egyptian legislator explicitly stipulates it when authorizing the company to set up an automated system for voting on the meetings of the general assembly in a way that allows the participant to express his or her opinion on the issues and discuss them. The company is obligated to develop models and methods through which electronic voting takes place in a manner that guarantees the ease and accuracy of voting and ensures its authenticity and reasonable feedback. However, some criticize this stance of the Egyptian legislator on the grounds that the company's adoption is one of the electronic means to present the items of the meeting of the general assembly that would allow those in charge of managing this system to control the voting process and direct the company's decisions to serve their interests. This leads to an existence of a conflict between, on one hand, the interests of

those in charge of the management, and, on the other hand, the interest of the rest of the shareholders who are not involved in the management (Al-Houty, 2021).

We do not agree with this criticism because the company's management is limited to organizing the electronic presentation process in a precise and clear manner. There are also carefully designed programs that provide protection from manipulation and complete confidentiality that prevent the organizers from controlling and changing the fate of voting by relying on its encryption, especially for each shareholder. It can also be avoided by adopting voting directly during the electronic meeting, and then it cannot be tampered with by those who have the intention to do so. It is assumed that those responsible for this enjoy honesty and integrity, and the company is responsible for their selection. When the rules of integrity are violated, the organizers' legal responsibility becomes effective (Hemard et al., 1974).

As for the conflict of interests, this is available even in the in-person meeting, and it is not necessary that there should always be a conflict of interest. They also have to work for the interest of the company first, and they should not have a personal interest behind the administrative work that they are assigned to do, otherwise their actions will be considered illegal (Merle, 2001).

**Third:** What is stipulated in practicing the right to electronic voting is stipulated in real voting

For the shareholder to practice the right of electronic voting requires him or her in the physical meeting. The voter should be one of the shareholders and has to attend the meeting at the specified time. However, this attendance shall be electronic as specified and notified to the shareholders and bearing a number that allows him to do so. For the legislation that requires the practice of the right to vote is to have a minimum number of votes. However, this does not include the Iraqi legislator, who establishes the right to attend and vote for each shareholder, regardless of the number of shares owned, and his or her votes are equal to the number of the owned shares (Augusto, 2010).

However, we do not believe that this is compatible with the electronic voting situation and prefer setting a minimum number of shares that the shareholder owns in order to be entitled to attend the meetings of the general assembly, ensure his serious participation and his concern for the public interest of the company, and to prevent intruders who seek to harm the company. Entering the share business is done by purchasing a few of the shares before the meeting, such as buying five or ten shares for the purpose of obtaining their directions, so that the electronic voting system does not become a new window for confusion, intruders and bad intentions.

### **Distinguishing the Electronic Voting System from what Looks Like it**

Some may confuse the electronic voting method used in the management of the company with other methods of voting that are close to it. Some may confuse this method with other methods adopted in the types of voting to select members of the board of directors. Therefore, it is useful to distinguish this method from the method of voting by mail and the so-called cumulative voting used in the joint-stock company, as follows:

#### **First: Distinguishing Electronic Voting from Mail Voting**

Mail voting is the method that takes place by sending a letter from the joint-stock company to the general assembly. This letter shows that the sender's stance on the items presented; either approval or rejection, and in the manner specified for that.

Some legislations have adopted this method as a measure to address the phenomenon of shareholders' failure to attend the company's general assembly meetings. It was taken in this way by the French, Moroccan and Tunisian legislators. The French legislator recognized the permissibility of voting by mail according to a specific mechanism, and any committed violation considered the voting as non-existent.

Some other legislations think that adopting this method of voting requires placing a special form at the disposal of the joint-stock company. For the validity of this vote, it was stipulated that the sender puts his or her signature on this form, and this form is sent to the general assembly before the date of the session. The sender should receive a delivery notice from the company.

On this basis, both mail and electronic voting aim to reduce the phenomenon of many shareholders' failure to attend the general assembly meetings and participate in voting by finding an easier way than the physical attendance to participate in that. However, they differ in the following:

1. The electronic voting allows the joint-stock company to participate directly in the actual discussion of the items of the meeting and listen to clarifications on the issues that need that, and then decide on the voting. While voting by mail does not give the shareholder that, but only a negative or positive vote on the items presented.
2. The voting by mail takes place before the date of the meeting of the general assembly designated to putting up these items and sending the card for that before the day of the meeting. The electronic voting, however, takes place on the date of the general assembly.
3. Voting by mail requires accuracy in the wording of the items and in the manner in which voting on them is whether or not they are accepted. While the general points can be specified in the meeting in which electronic voting is practiced and the details are left to be formulated after the meeting to be voted on afterwards.

We can refer here to the possibility of combining the two methods, *i.e.*, electronic voting by mail – or simply electronic mails (e-mails). However, this requires the approval of the legislator and the consent of the general assembly. This combination of methods needs some reliable programs that provide adequate protection for that from hacking and tampering.

## **Second: Electronic Voting and Cumulative Voting**

Cumulative voting is defined as a procedural system for voting within the company's general assembly meetings to select board members. In this method, each shareholder is allowed to cast all the votes he or she owns for one candidate or work to distribute them to more than one candidate. The shareholder can even distribute the votes to all candidates for the board of directors, provided that they are not repeated. It aims to enable minority shareholders to collect their votes and grant them to one candidate to represent them on the board of directors.

On this basis, the cumulative voting is a special type for selecting the members of the board of directors in the general assembly. Unlike electronic voting, which is a method for shareholders to participate in voting on what is decided in the general assembly, and it can even be followed in the meetings of the board of directors itself. Therefore, when the issue of cumulative voting is raised, the shareholders can participate in it and choose members to represent them in the board of directors. This may be by using electronic voting if its conditions are met and its grounds are prepared.

## **Electronic Voting Requirements in the Management of the Joint-Stock Company**

Electronic voting is one of the new methods in managing companies that need special preparation by shareholders to practice voting using modern technology and prepare them for that. Exercising this right may raise the issue of the registered owner and the beneficiary with regard to the right to attend and to vote in this regard, and then it is necessary to show this as one of the requirements required to proceed in the electronic voting system. Therefore, going into the details of this talk requires that we deal with it through two branches, the first section deals with the requirements for activating the electronic voting system in the management of the company. The second section is devoted to determining who is rightly entitled to practice the right to vote electronically.

## **Requirements to Activate the Electronic Voting System**

The issue of the shareholders' ability to electronically vote and activate this system in the correct way is one of the basic matters that are required to proceed with this method of management. These matters or requirements are as follows:

**First:** The technological ability of the joint-stock company to use the electronic voting system

Technological knowledge and awareness in the use of websites by the persons concerned with this system are among the basic requirements for the activation and success of the electronic management system. The lack of this knowledge at the required level may have negative effects and constitute a burden on the company from the wrong and sloppy use by the less knowledgeable shareholders. For this reason, some argue that the legislator should pay attention, when enacting any legislation related to this matter, to take into account the amount of technological knowledge, and to take into account the degree of balance between technological knowledge in this field and the technological illiteracy prevailing among most of the targeted people. If technological knowledge is predominant, then there is nothing wrong with applying this system. If technological illiteracy is predominant, here it requires the company to wait a bit and take the necessary measures to raise the level of technological knowledge of the intended people, otherwise the company would fail.

We see that there is no need to link the legislative progress with the ignorance of some groups that lack technological knowledge. The legislator would set the necessary procedures to raise the level of knowledge and the optimal use of technology, on one hand. On the other hand, working with this system is not an imperative for the company to follow, but rather it is optional. When it decides to work with it, it must provide the means to ensure its success, and put in place procedures to raise the level of knowledge and develop the users' skills until they reach the level required to use this system. Hence, there is no need to place this burden on the shoulders of the legislator, get them engaged with partial issues, and make it an obstacle to legislative progress, as long as this issue can be addressed by companies wishing to apply this field.

### **Second: The Shareholder's Confidence in Electronic Work**

The shareholders' confidence in dealing with the electronic voting system is an important factor for the success of this method of management. This entails presenting matters with complete transparency to all shareholders and on an equal basis. Also, the information being presented must be sufficient to form an opinion when contributing to the decision-making of acceptance or rejection of the meeting's agenda. It may be necessary to present some important documents related to the subject of the meeting that enable shareholders to familiarize themselves with the company's conditions and activities. Then, this must be provided so that the shareholder is confident in having his right to monitor the company's performance with transparency and integrity, away from electronic fraud.

The joint-stock company's confidence of the security of the electronic voting system, the unhackability, and its immunity from manipulation of the course of decisions by controlling the credibility of the vote, is an important matter for the success of the electronic voting and for moving forward with it. In order to establish this confidence among the shareholders, the legislator must at least intervene in the ordinary laws or instructions from the competent authority, by setting the minimum limits of the basic information that must be provided to the shareholders before the session is held, while ensuring that it reaches the knowledge of these shareholders and giving them a sufficient period to think and take the appropriate decision as to what is required to serve their interests and the interest of the company together. The company is obliged to inform all shareholders equally of the important information related to the topics that will be raised at the meeting.

### **Third: The Interactive Presence of the Shareholder**

The contribution in the management of the company by the shareholders is not limited to the role of the shareholder by voting positively or negatively on the decisions raised at the meeting, but rather includes their active role in discussing and formulating the content of these decisions and participating in discussions and proposals. The participation of the shareholder in these matters is one of the rights that must be provided to the shareholders. The legislator believes that every shareholder, during the general assembly, has the right to discuss the report of the board of directors, the budget, profits and losses, the auditor's report, and the serious facts that are revealed during the meeting. The board of directors or the managing partner or partners, as the case may be, are obliged to answer their questions to the extent that they do not conflict with the interest of the company.

Of course, good decisions do not come immediately until after discussions and many proposals are put forward, then the best ones are to be selected. This requires their active participation in the discussion and having their questions and inquiries answered by the board of directors or persons concerned with the management. Therefore, when organizing an electronic meeting, this must be taken into account and the meeting system should include a feature that allows shareholders to participate in the discussion and dialogue transparently in everything related to the meeting's items before going to the electronic voting, because discussions may change the shareholders' views and even those in charge of the management in some cases.

### **The Owner who is Entitled to Practice Electronic Voting**

It is known that the nature of securities in joint-stock companies is characterized by continuous trading and the constant changing of owners. Therefore, the securities may be registered in the name of one person and the rightful owner of another person at some time. Now, who practices these rights stemming from shares, especially electronic voting, and how is this controlled?

It is different when we talk about joint-stock companies listed in the stock market from those not listed in the market. With regard to the listed companies, we find that there are legislations that recognized this fact and differentiated in this regard between the registered owner and the beneficial owner. The Egyptian legislator stipulated that the owner of the securities has all the rights produced by these securities. However, securities may be deposited and registered in the name of a person, and another person may have the rights produced by these securities. The first is known as the registered owner and the second as the beneficial owner. Here, the registered owner is bound by the obligations of the custodians. The registered owner, who is not allowed to take this role, was identified as: Depository banks, entities that practice custodian activities, securities portfolio management, or any other entity for which a decision is issued by the competent minister after taking the opinion of the securities commission. Each registered owner must enter the name and data in a special register prepared by the institution for this purpose.

Here, we find the Egyptian legislator limits dealing with the registered owner to the trading of securities. This must comply with the instructions of the beneficial owner; *i.e.*, the trading of restricted securities is through the registered owner only. But what concerns us in this regard is who attends the general assembly meetings and practices the right to vote?

The practice of the right to vote and to attend the meetings of the company's general assembly is restricted by Egyptian legislation to the registered owner. But the registered owner must comply with the instructions of the beneficial owner regarding the topics presented in the general assembly meeting and the direction of voting on them.

As for the Iraqi legislation, the trading of shares in the stock market is through financial intermediaries. However, we do not find anything that limits the practice of voting rights through financial intermediaries. Rather, voting is one of the inalienable rights of the shareholder who exercises it or on behalf of others.



In fact, we find that the Iraqi legislator's stance is more acceptable than the Egyptian legislator's stance, because the presence of the registered owner and the beneficial owner and the restriction of voting in the general assembly in the hands of the registered owner may raise some illogical problems – this is when the securities have multiple owners with multiple beneficiaries and one registered owner.

This is normal as long as the stock is in continuous circulation. As this may lead to the fragmentation of the will of the registered owner to vote on the same resolution on which the vote is required. Here the registered owner is forced to vote by means of conflicting numbers of votes with the proposed decision and a number of other votes opposing the decision. This is what the Egyptian legislator allowed in the Central Depository and Registry of Securities Law in Article (7).

As for joint-stock companies that are not listed in the stock market, the issue of voting does not raise the issue of the registered owner and the beneficiary in this scope, because the legal holder is one person to whom the ownership of the shares is transferred after their registration in the company records prepared for that. This is the person who can attend the meetings of the general assembly and participate in voting on its decisions, whether the voting is in-person or electronic. This person must prove his or her ownership of the shares at the meeting by presenting a certificate, or submitting an official power of attorney for the shares by proxy.

### **Rules for the Application of the Electronic Voting System in the Joint-Stock Company**

The electronic voting system, which is applied in the management of the joint-stock company, as an alternative method to in-person voting, imposes some of the obligations on the persons concerned with the subject that must be adhered to. Also, relying on this system requires evaluating the authenticity of this method of work in the face of the company and shareholders. It is also necessary to determine whether a shareholder who practices voting in this way can opt out. Therefore, this section requires us to address two requirements. We summarize the first with the implications of the adoption of electronic voting, and the second is assigned to the authoritativeness of the electronic voting system.

### **The Implications of Adopting the Electronic Voting System in the Company**

What results from the effects of adopting a particular system is what is left from the obligations among the persons concerned with it. The adoption of the electronic voting system in the meetings of the joint-stock company requires that there be obligations that the company undertakes in proportion to this system. Likewise, the shareholder must fulfill the obligations in a manner consistent with the privacy of this system. Accordingly, we will address this subsection through two branches: the first relates to the company's obligations in the electronic voting system, and the second relates to the shareholder's obligations in this system.

#### **The Company's Obligations in the Electronic Voting System**

The company usually imposes a number of obligations, as soon as it acquires a legal personality and carries out its activities, in its relationship with shareholders and with others who deal with it. However, we are not looking for all of these obligations in detail, but rather we are interested in the obligations that may be imposed on the company as a result of its application of the electronic voting system that is in line with its method of management or it can simply have its own special character, as each company can choose to implement this system. In order to avoid the risks involved, it must configure a secure electronic system as one of the prerequisites for its proper implementation. It must implement its obligations electronically by informing shareholders to attend its meetings and presenting the items of the meeting electronically to the shareholders in a sufficient period of time before the meeting. It shall also prepare a statement of the voting result and present it to the shareholders as a matter of transparency and disclosure

after performing the electronic vote. Since we have mentioned the issue of preparing a secure electronic system as one of the requirements for adopting the system more than as an obligation, so we will mention the other obligations associated with this system as follows:

### **First: The Company's Obligation to Notify Shareholders to Attend the Meeting Electronically**

One of the basic obligations of the company and those in charge of its management is to inform all shareholders of the date of the general assembly meeting. The notification is made by means of a lawsuit addressed to the shareholders to attend the general assembly meeting. This occurs through publishing an announcement by the registrar in two daily newspapers and in the stock market. The period between the date of notification and the date of the meeting shall not be less than fifteen days.

However, the question that can be raised here is whether it is possible to use the electronic notification by means of a lawsuit sent on the account of the shareholder registered with the company?

We believe that it is possible for the shareholder to be notified electronically in addition to adhering to the method of notification referred to in Article (88) of the Iraqi Companies Law, and it is not possible to use the electronic method instead. This is for two reasons: the first is that the legislator stipulates the method of accurate notification of shareholders in the joint-stock company, and therefore it cannot be ignored; The second is that the shares of the joint-stock company are in continuous circulation, and therefore it is difficult to accurately control the shareholders at all times. Although this is easy for those in charge of management, it is not an easy job for all shareholders. Reliance on electronic notification requires a text acknowledging this.

Definitely, the notification must specify the exact date of the meeting by day and hour, and the place of the meeting or from which the electronic meeting is conducted. Companies used to set the second date for the meeting in case the quorum was not reached with the first notification in order to avoid delay.

### **Second: Inform the Shareholder of the Meeting's Items**

The company is obliged, before the date of its general assembly meeting, to present the items of the electronic meeting to the shareholders so that they can peruse them. This needs to be within enough time to enable them to study these items and take the appropriate decision. This requires opening a window on the electronic system adopted by the company and in a way that allows shareholders to discuss and exchange opinions to take the appropriate decision.

There are those who argue that the apparent position of the Egyptian legislator obliges companies to include in the electronic voting system what allows the shareholder to express his or her opinion on the agenda items of the general assembly five days before the date of the meeting.

Allowing the exchange of opinions on the previous way would be a sound opinion that is in the interest of the company and the shareholders, because the discussion may need to clarify some issues and listen to the opinion of others, especially those with experience and specialists in this field. The time of the meeting may not be enough to clarify and discuss it in detail, and then form the final opinion of the shareholder, so we believe that the legislator should allow the company to do so, provided that it does not violate the confidentiality of the company's information in a way that would result in harm to the company.

### **Third: The Company's Obligation to Prepare a Statement of the Final Voting Results**

This is one of the obligations imposed on the company, whether this is a remote meeting or a virtual meeting. The focus, however, is on the electronic voting system more than on the in-

person voting, because the latter is in front of the shareholders and they are aware of the results while the voting is taking place. This is unlike voting in the electronic system, which is not clear to all shareholders.

This commitment is somewhat difficult and requires training for those in charge of it: the auditor and the vote counted, especially when there is a mixture of the in-person voting system with the electronic voting system. It is necessary to combine the votes obtained in the electronic voting system with the votes cast in the physical voting system to ensure that voting is not practiced twice at the same time by the same shareholder, especially in companies where the number of shareholders is large. So, this is one of the difficult things to control.

Therefore, this voting adds difficulties to the problems that those in charge of the management, including the auditor and the vote-counter, face in practice. Therefore, fine-tuning them requires training these groups well to avoid these problems as much as possible.

### **Obligations of the Shareholder in the Electronic Voting System**

When the electronic voting system is adopted in the management of the joint-stock company, the shareholders participating in the meeting must remain in this capacity until the day of the meeting by owning a certain number of shares, freezing them and not dealing with them in a way that makes the shareholder loses the right to join the general assembly meeting and participate in voting in proportion to the shares he or she owns. The shareholder is also obliged to maintain the confidentiality of the information that he or she has become acquainted with as a result of the perusal of the meeting items and the participation in the discussions and dialogues that took place between them in a manner that causes harm to the company and offends its name. These obligations are assumed by the shareholder in all cases, whether the voting is electronic or in-person. However, the strictness of electronic voting is to ensure the seriousness of the shareholders' dealings and to increase their concern for the company's interest, which may be more vulnerable to harm in following the electronic voting system. For the purpose of clarifying these obligations, we will discuss them in some detail below.

#### **First: Retaining the Capacity of a Shareholder until the Day of the Meeting**

The shareholder is able to attend the meetings of the general assembly, participate in the deliberations, submit questions and question the members of the board of directors, and sometimes even submit a request by a group of shareholders for the purpose of inviting the general assembly to meet, and other rights granted by law to shareholders. This person should have the privilege of being a shareholder continuously and not only initially, that is, this person must be a shareholder until the day of the meeting.

This requires the shareholder to prove the privilege of shareholding so that he or she can attend the meetings of the general assembly. Proving this privilege does not raise any difficulty, especially in the Iraqi legislation. Indeed, some of the legislation restricts the right to attend by owning a certain number of shares. There are those who support this view on the grounds that it does not affect the rights of small investors and their right to attend the meetings of the general assembly. They can form an alliance among themselves with the required number, and one of them represents the whole group on his own behalf and on their behalf. Hence, there is no harm in limiting the right to attend the general assembly meeting to those who own a certain number of shares. This is, of course, contrary to what is established in the Iraqi legislation, which recognizes the right to attend for all shareholders, regardless of the number of shares they own.

The question that arises here is: can the shareholder delegate someone else to attend the general assembly meeting? There is no problem in the physical in-person voting. However, this is not preferable in the electronic meeting, because by allowing others to see documents related to the company, which may be confidential, it would lead to harm if they were exposed to a notorious person.

## **Second: Freezing Trading in Shares until the Day of the Meeting**

One of the rules of the companies that adopt the electronic voting system is to oblige shareholders to freeze their shares from trading, with the number they wish to vote, three days before the date of the meeting. This is with one of the authorities licensed to work in the stock market and keep it safe to ensure that the eligibility and seriousness of voting is not tampered with.

We believe that there is no harm in adopting this method regarding the application of electronic voting as an organizational measure to ensure that the number of votes is not tampered with and that voting is practiced by people who are not entitled to practice it. However, this freeze should not be for a long time, because it affects the right of a basic shareholder. We believe that it should be specified within a period of 24 hours before the meeting, because what exceeds this period is sufficient to confirm the transfer of shares to the company upon transfer of ownership, and therefore there is no problem with the issue of matching between the real owner of the shares and the person having the right to electronic voting. When transferring its ownership to a third party, the shareholder must inform the company of this directly and must not, as well, practice the right to vote in the shares he disposed of during the day of the meeting.

## **Third: The Shareholder's Obligation to Preserve the Confidential Information of the Company**

It is a common practice that all shareholders are obliged to preserve the interests of the company and to keep information about it strictly confidential. Anyone who has access to this information from the shareholders is obliged in any way not to pass it on to others from the competing companies so as not to be at risk of unfair competition by the companies that seek to overthrow them.

The nature of the contribution to the decisions taken by the company's general assembly is with the participation and knowledge of the shareholders. The information they obtain comes as a result of their participation in the meetings and discussions that take place between them and the members of the board of directors and those responsible for the management of the company, which affect the interests of the company and which are considered confidential. This risk increases in the matter of electronic meetings, for this method of management can put some information and documents where the leakage of which to others would cause harm. Therefore, it is necessary here to emphasize the strict adherence to this obligation. The Egyptian legislator confirmed this commitment in Article (245/2) of the Executive Regulations of the Companies Law. While we do not find in the Iraqi legislation a mention of this obligation in the applicable Companies Law, and it seems that the Iraqi legislator was satisfied with the general rules here considering that every act issued by the shareholder and arranged harm to others is a reason for the establishment of responsibility. However, being satisfied with general rules when organizing electronic voting is not desirable. The necessity of emphasizing the commitment of the shareholder participating in the meetings of the electronic general assembly to keep the information that is under their knowledge, the disclosure of which is harmful to the company. This obligation continues even after they leave the company, as long as disclosing it causes harm to it.

## **The Authoritativeness of Electronic Voting in the Management of the Joint-Stock Company**

After having the privilege to vote electronically by the shareholders, this obviously produces the effects of direct voting. However, this voting, when it is practiced electronically, is taken more likely in terms of the authoritativeness than the in-person voting, on the one hand. On the other, electronic voting arranges all the effects towards others and the company itself.

Therefore, it is necessary to indicate the extent of the stability and authoritativeness of electronic voting for the shareholder. This will be the subject of the first sub-section, and then the authoritativeness of electronic voting for others will be the subject of the second.

### **The Authoritativeness of Electronic Voting for the Shareholder**

What is meant by the authoritativeness of electronic voting here is the extent of its stability and its obligation to those who participated in it. In other words, can the shareholders who practice voting electronically renounce it and practice voting in the opposite direction, whether this subsequent voting is electronic or in-person?

When we searched the Iraqi legislation, we did not find anything explicitly specifying this. The general rules do not allow the shareholder to reverse the voting decision, especially after the board meeting has ended. But it is possible for the shareholder to cancel the vote during the meeting and the discussion is still going on if he or she hastened the voting decision before he or she requested the final vote. Upon the final voting, the shareholder may change the course of the voting, which he or she had initially adopted. After that, it becomes difficult or even impossible to reverse the decision to vote. This is related to regulatory matters, the stability of the company's course of action, and protection from subsequent effects if this is allowed.

As for the Egyptian legislator, we find that this case was addressed in the Minister of Investment Decision No. 16 of 2018 in the last paragraph of Article (240) of it. Which gave the right to the shareholder who practiced electronic voting to attend the general assembly and re-vote if he or she likes to, with the cancellation of the result of the electronic voting.

On this Egyptian approach, the practice of electronic voting does not affect the right to actually attend the general assembly and to practice in-person voting again. And then the shareholder can modify the course of the electronic voting, but he or she must inform the company that his or her electronic voting has been cancelled. All of this is conditional on the fact that the general assembly meeting on the issues that were voted on electronically is still in place.

Also, this confirms that the possibility of modifying the electronic voting is with the subsequent physical voting only. But is it obligatory to attend in person, or is it permissible on behalf of and record attendance?

Actual attendance may take place in person or on behalf as long as there is no observance of that. As for recording the physical attendance, we do not believe it has value unless the purpose of attendance is to change the electronic voting decision. This means that whoever actually attends the general assembly meeting after practicing electronic voting, either the decision to attend is to insist on electronic voting, and here there is no need to register attendance, or if he or she has attended in order to change the course of electronic voting. Here the shareholder is required to register attendance, practice voting and report. The company cancels the electronic voting that has previously been practiced, even if it has been practiced, so that there is no repetition of the voting process.

Here, the Egyptian legislator, when allowing the amendment by the subsequent attendance vote, assuming good faith, decided the possibility of canceling the electronic voting with a subsequent in-person voting. However, the reality leads to the occurrence of double voting with the intent of fraud and the pursuit of private benefit away from the public interest of the company. Voting here is mostly governed by alliances among the ill-intentioned shareholders for the purpose of creating a dominant position by influencing the decisions of the shareholders and pushing them to vote in a certain direction using various illegal methods. Therefore, it is necessary to impose some kind of control in this regard and to prevent double voting. This is achieved through what the Egyptian legislator approached by informing the company, preferably in a written letter, of canceling the shareholder's electronic vote and adopting the physical in-person one, and requiring the shareholder to provide a convincing justification for changing his or her position and to show that he or she had no personal interest behind it, for example, it was done in ill-intentionally through illegal alliances.

## Authoritativeness of the Electronic Voting for Others

What is referred as ‘others’ here is every person related to the voting decision other than the decision-maker from the other shareholders and the company and everyone who has a relationship with the company? What is the authoritativeness of the electronic voting in standing before the specialized courts?

By examining the Egyptian legislation, where it regulates the subject of electronic voting, we note that it did not make electronic voting the same force with in-person voting when it allowed the shareholder to waste the electronic voting with a subsequent in-person voting. In the sense that the electronic vote, when followed by an in-person voting, there will be no authoritativeness for it to authenticate, hence is considered as nothing. Then when it is discovered that there is a double voting from the shareholder, one electronic and the other in-person, the in-person voting will be valid. As for the electronic voting itself, unless it is canceled in the above picture, it is no less authoritative than the in-person voting as far as authentication.

In order to demonstrate the authoritativeness of the electronic voting, it is necessary to scrutinize the general rules governing electronic editors and electronic signatures. Considering that electronic voting is done through electronic writing that is inserted into an electronic document and appended with an electronic signature. An electronic document is every letter, symbol, number, or any other sign affixed to an electronic, digital, or optical support, or any other similar means that gives a perceptible indication.

In order for these documents to be authenticated by the vote, they must be appended to the electronic signature. The written document is not considered complete proof unless it bears the signature of its owner. If the electronic documents are written, then they should contain the signature of their owner. Of course, this signature will only be electronic. It is different from the normal signature in terms of nature and form.

This electronic signature is a personal mark that takes the form of letters, numbers, symbols, signs, sounds, etc. It has a unique character indicating its attribution to the site and is approved by the voting authority.

Here, the Iraqi legislator in the Law of Electronic Signatures and Electronic Transactions has given electronic documents appended with electronic signature the same authoritativeness as a written signature when the following conditions are met and on the procedures that the Ministry specifies:

- 1) The signature must be issued by the signer. This means, if it is proven that the signature is not linked to the voting shareholder, but was issued by another person due to the account being hacked, then it will not be authoritative.
- 2) The electronic medium of the website must be controlled solely. If it is proven that the signer did not have control at the time of the signature on the medium, such as if the signer was coerced or a victim of fraud and deception, then the vote is not valid.
- 3) Electronic voting is final. That is, it is not allowed to make any modification or change by voting. This is by obliging the program to include a system that allows detecting and preventing any modification or change made by the shareholder to the voting at a later time, so that the authoritativeness of the electronic vote is final and does not allow it to be changed or deleted later.

On this basis, in order for the electronic vote in the joint-stock company to be authoritativeness, it must be substantiated by an electronic document appended with the electronic signature of the shareholder approved by the company. This is like the in-person voting; no voting is allowed to be repeated. Whoever practices electronic voting, he or she is subsequently prohibited from practicing a subsequent electronic voting or even a subsequent in-person voting.

## Concluding Remarks

After we finished studying the subject of our research: (the role of the electronic voting\

system in the management of the joint-stock company), we reached a number of conclusions and recommendations, the most important of which are the following:

### CONCLUSION

- 1) The right of the shareholder to participate in the management of the joint-stock company and to have control over it is actually shown through the wide participation in attending the meetings of the general assembly and voting on the decisions presented therein.
- 2) The reason why most of the shareholders are not interested in attending the meetings of the general assembly is due to the difficulty that they face, like the distance that separates them from the meeting place. What made matters even more complicated was the spread of Coronavirus pandemic. It became impossible to gather a large number of shareholders in one place.
- 3) The adoption of the electronic voting system is the best alternative to the in-person voting. The electronic voting can achieve the continuity of the company's activity and the issuance of its decisions, avoid the risk of the epidemic for shareholders and shorten the time and effort on them. Hence, the majority of shareholders are encouraged to attend and participate in voting.
- 4) To adopt the electronic voting system, the company's contract must include what provides for its approval, or it can be approved by the general assembly and included in its statute. The company can also amend its contract to allow application of this voting method, because its adoption requires special equipment from the company and the preparation of safe programs; this of course costs expenses and preparations.
- 5) The right of electronic voting belongs to the real owner of the shares and there is no need for the mediation of the so-called registered owner or intermediary. It is preferable that this other person is from the shareholders in order to preserve the privacy of the company.
- 6) The adoption of the electronic voting system would eliminate the negligence of shareholders and the difficulties of the physical meeting in the general assembly. It also can revitalize the general assembly and its oversight role towards the board of directors, which actually had the real role in the management due to the weak role of the general assembly.
- 7) The electronic voting is absolutely authoritative to the shareholder and the company. It may not be canceled or amended by a subsequent counter voting, except within the limits permitted by the legislator and in a manner that does not lead to double voting.

### RECOMMENDATION

- 1) The Iraqi legislation did not include in the Corporate Law what refers to the electronic meeting mechanism. Therefore, we believe it is necessary to include a text that allows the company to follow this method whenever the necessary requirements are available. It is better to include this in the company's contract as it is one of the main issues it faces.
- 2) It is necessary to emphasize, *via* a special stipulation, the commitment to confidentiality on the shareholders who participate in the electronic voting, as it places in their hands physical evidence that may be misused if others view it. It is assumed that this obligation is adhered to even after the shareholder has left the company, as long as the interest of the company requires maintaining his or her confidentiality.
- 3) The Iraqi Corporate Law did not establish a statute specifying the minimum number of shares that allow a shareholder to participate in voting. However, it is better to take this into account so that the shareholder can practice the electronic voting method, to ensure the seriousness of the shareholder and his or her concern for the general interest of the company. This also can help to prevent those who intend to undermine the company. It is preferable that the number of shares be of a considerable percentage, such as 2%, so that the shareholder has the right to participate in the electronic voting or form a minority alliance.
- 4) In order to achieve the full authoritativeness of the electronic voting, it is obligatory not to allow the shareholders themselves, after the completion of the voting, to manipulate it with change or modification. However, it is desirable that they be allowed to amend the electronic voting as long as they do not have the right to finish the meeting and decide the final voting, making sure that the shareholders make logical amendment and provide justification for this action. In addition, the shareholders should submit a request to cancel the voting, which they conducted electronically, in order to prevent the occurrence of double voting.

## REFERENCES

- Turki, B. (2010). *Obligations of the shareholder in the joint-stock company*. Dar Al-Hamid for Printing and Publishing, Amman, Jordan, 93 - 120.
- Arab, S. (2018). Cumulative voting and electronic voting in the meetings of the general assemblies of joint-stock companies in Egyptian law. Dar Al-Nahda Al-Arabi, Cairo, 61-100.
- Jassim, F. (2012). *The rights of the shareholder in the joint-stock company, (2nd Edition)*. Al-Halabi Human Rights Publications, 177-185.
- Lahrsh, S. (2019). *The right of the shareholder to vote at the general assembly*. Master's Thesis, Faculty of Law and Political Science, University of Mohamed Boudiaf - M'Sila, Algeria, 10-30.
- Khalfawi, A. (2009). *The right to participate in the supervision of the joint-stock company*. Master's Thesis, Faculty of Law and Political Science, Al Ikhwa Mentouri University, Algeria, 14-6.
- Sharif, A. (2018). Non-financial shareholding rights in the joint-stock company. *A research published in the Journal of the College of Law for Legal and Political Sciences*, 7(27), 301.
- Miqdad, S. (2016). The role of electronic editors in proof. *A research published in the Journal of the Legal Platform - Morocco*, 10, 98.
- Mushrafi, A. (2017). The legal system of the shareholder's right to vote. A research published in the Journal of Law - Faculty of Law and Political Sciences - University of Oran 2, 8, 312-314-315.
- Fahim, N. (2008). Electronic documents and their authoritative in proving civil and commercial actions. *Moroccan Courts Journal*, 112, 43-44-45.
- Al-Busaili, A. (n.d.) The application of electronic voting for the general assemblies on the deal (Almarai and Hadco).
- Al-Houty, H. (2021). Electronic voting system for companies in Egypt. Iraqi Companies Law No. 21 of 1997 (amended).
- Iraqi Stock Exchange Temporary Law No. 94. (2004).
- Iraqi Electronic Signature and Electronic Transactions Law No. 87. (2012).
- Egyptian Companies Law No. 159. (1981 ).
- The executive regulations of the Egyptian Central Depository and Registry Law No. 93. (2000).
- Saudi Companies Law. (2015).
- Art. 115 - Ioin 2001-420 Du 15. (2001).
- Loin83-10. (1983). Relating to the development of investments and protection of savings.
- Hemard, J., Fterre, P., & Mabilat. (1974). *Societes commerciale*, tome 2, Dalloz, Paris, 250.
- Merle, P. (2001). *Commercial law, commercial societies, (8th edition)*, Dalloz, Paris, 215-216.
- Augusto, J. (2010). The influence of shareholder voting rights on internal control mechanisms: A Comparative study of publicly traded firms in Portugal and United Kingdom. *Corporate ownership, control*, 7(3), 353-354.