



Off to the future : Virtual shareholders' meetings now permanently possible!

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During the pandemic it was necessary to find ways to continue holding general meetings. The result was the possibility of holding virtual meetings created by § 1 of the COVID-19 Act. The advantages of virtual meetings were so obvious that even before the expiry of § 1 of the COVID-19 Act on 30 June 2023 there was a call for a permanent introduction of virtual meetings into Austrian company law. The legislator responded to this call with the Virtual General Meetings Act (VirtGesG), which came into force in July 2023.

Scope

Pursuant to § 1 para 1 VirtGesG, the act applies to corporations (stock corporation, company with limited liability), cooperatives, associations, mutual insurance associations, small insurance associations and savings banks ("Companies"). With respect to all these Companies a virtual general assembly ("Virtual Assembly") can take place in the future.

Meetings of corporate bodies, such as the executive board or supervisory board, are not covered by the VirtGesG. With respect to such meetings the previous legal situation remains unchanged, according to which virtual meetings are permissible if all participants of the meeting agree to them.

No automatism – Change of the statutes required

In order to be able to hold Virtual Assemblies on the basis of the VirtGesG, a corresponding amendment to the articles of association or the statutes ("Statutes") is required. This amendment must be adopted by the majority required for an amendment of the Statutes. Unanimity or increased majority requirements are not provided for by the VirtGesG. If the Statutes are not amended, no Virtual Assemblies are possible and shareholder assemblies must continue to be held in person.

Available options

The amended Statutes may provide for the following:

1. virtual assemblies via an acoustic and optical two-way connection in real time (video conference);
2. hybrid assemblies, i.e. a face-to-face meetings with virtual participation;
3. authorisation of the convening body to decide in each case in which form the assembly is held.

If the decision is left to the respective convening body, it shall give due consideration to the interests of the company and the participants. If a virtual or hybrid assembly is held, the convening body shall allow the participants barrier-free access to the assembly.

Both the virtual assembly and the hybrid assembly can be conducted "simple" or "moderated" (the determination is made in the Statutes or can be left to the convening body). In a moderated assembly there is no two-way connection where all participants can speak at any time, but the assembly is broadcasted. However, written requests to speak (e.g. via chat, e-mail or in a separate portal) must remain possible. In addition, it must also be possible for a participant to speak if he or she so wishes. In hybrid assemblies virtual and real participants must be treated equally.

Listed companies

In the case of listed companies, the following additional rules must be observed:

1. The provision in the Statutes enabling virtual/hybrid assemblies must be limited to five full financial years. After that, a new resolution is required.
2. If a virtual assembly has been held, a minority representing at least 5% of the share capital may request the next general assembly to be held in a form that allows physical participation. The request must be made by the end of the financial year in which the virtual assembly was held.
3. The company shall provide two special proxy holders. These may be appointed by the shareholders to propose resolutions, exercise voting rights and raise objections.
4. Details of the organisational and technical requirements for participation must be made available and must be accessible on the website no later than the 21st day before the Annual General Meeting.
5. An electronic communication channel shall be made available for shareholders to submit questions and proposed resolutions to the company in advance.
6. The Statutes may provide or authorise the board to provide for shareholders to cast their votes electronically in advance of the general assembly.

Conclusion

It is to be welcomed that the legislator has followed the call for the possibility of virtual assemblies. This gives medium to large sized stock corporations and companies with limited liability with an international group of shareholders the possibility to hold shareholders' assemblies in an uncomplicated manner.

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