General Assemblies in Germany - Virtual or Physical?

Article By

Dr. Kai Mertens

Squire Patton Boggs (US) LLP
Down the Wire

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Abandoning the Covid-19 concept, Germany has set a new standard for virtual shareholder meetings. The German 2023 general assembly season will be a new legal venture – companies and investors need to prepare.

Traditionally, shareholder meetings of German public companies were physical meetings. In principle, shareholders or their representatives needed to attend physically the meeting in order to speak and vote. In March 2020, due to the Covid-19 pandemic, Germany quickly introduced a rather simple and straightforward concept of virtual meetings, which companies could use until August this year. Now, following a controversial debate, amendments to the German stock corporation law provide for a revised long-term concept for virtual meetings.
Companies are free to hold the meeting as a traditional physical meeting or use the new virtual meeting concept in 2023 and thereafter, based on shareholders’ approval, which they will seek to obtain in 2023.

Under the new regime for virtual meetings, companies must provide online tools for communication and for shareholders to exercise their rights and insight into the directors’ report prior to the meeting. They must also allow shareholders to actively participate in the video conference, not only as passive listeners and voters as was the case for Covid-19 virtual assemblies.

Advocates of the new principles celebrate the changes as a success for more shareholder transparency and true shareholder democracy. Critics fear that companies using the new virtual format for their assemblies will face a significant risk of law suits challenging resolutions based on alleged violations of their rights under the new regime.

Since the 1980’s, Germany had long fought to introduce certain instruments to limit abusive shareholder litigation, where shareholders simply challenged resolutions for any remote reason, just to put them on hold. Companies paid generous settlement amounts, just to be able to proceed with the implementation of their decisions. The new law might indeed be a new playground for abusive lawsuits. Companies will need to put a lot of thought into designing procedures for speeches and Q&As, such that these can be handled without giving rise to challenges to resolutions based on incomplete answers given during the meeting.

Read the new legislation (in German).

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