

# Germany Introduces ‘Virtual’ General Meetings for Public Companies

Skadden

April 3, 2020



If you have any questions regarding the matters discussed in this memorandum, please contact the attorneys listed on the last page or call your regular Skadden contact.

This memorandum is provided by Skadden, Arps, Slate, Meagher & Flom LLP and its affiliates for educational and informational purposes only and is not intended and should not be construed as legal advice. This memorandum is considered advertising under applicable state laws.

One Manhattan West  
New York, NY 10001  
212.735.3000

TaunusTurm, Taunustor 1  
60310 Frankfurt am Main  
Germany  
49.69.74220.0

On March 27, 2020, Germany passed a package of COVID-19-related amendments that apply to various areas of the law, with some important aspects already put into effect in the country on March 28, 2020. Included in the act on Reducing the Impacts of the COVID-19 Pandemic on German Civil, Insolvency and Criminal Procedure Law (COVID-19 Act) are provisions for temporary measures to ease the consequences of the pandemic on German corporations, aiming to ensure that companies are able to still operate during restrictions enacted in response to COVID-19.<sup>1</sup>

One area of particular importance is the facilitation of virtual general meetings for German stock corporations.

## Challenges for Stock Corporations With Regard to General Meetings

Since German stock corporations require an in-person annual general meeting at least once a year — in part to resolve annual dividend distributions to their shareholders — current meeting and contact restrictions due to COVID-19 are a huge constraint for companies’ operations. As a result, several large German public companies have already postponed their annual general meetings. However, given that a number of corporate measures require shareholder approval, these delays put companies in awkward positions.

## ‘Virtual’ General Meetings Can Be a Solution

Under the previous rules, management boards could already decide to broadcast meetings and allow shareholders to participate and vote electronically. Additionally, members of the supervisory board could participate by means of phone or videoconferencing. However, this only applied if the articles of the company provided for an authorization of the management board. In practice, the majority of companies’ articles do not contain such an authorization, and therefore, prior to the pandemic, virtual general meetings had not been popular in Germany.

The current crisis may be a game-changer in this regard, as the COVID-19 Act allows for fully virtual general meetings. Effective as of March 28, 2020, management boards now may elect to hold their general meetings without the physical attendance of shareholders, their proxies and the supervisory board, even if a corresponding authorization is not contained in the company’s articles. This new rule is in effect until December 31, 2020, but may be extended by another year, if required.

<sup>1</sup> See the details of the COVID-19 Act [here](#).

# Germany Introduces ‘Virtual’ General Meetings for Public Companies

## Requirements for a ‘Virtual’ General Meeting

Despite the COVID-19 Act’s ruling allowing virtual general meetings, holding such a meeting still requires the approval of the company’s supervisory board. In addition, the following prerequisites need to be met:

- the entire general meeting needs to be broadcasted live (*i.e.*, via streaming) and shareholders need to be able to cast their votes electronically or by proxy;
- shareholders must be able to ask questions through an electronic Q&A tool. The new rules, however, give the management board discretion to decide which questions will be answered, and management also can demand that all questions need to be submitted electronically at least two days prior to the general meeting;
- shareholders who have participated in a vote during the virtual general meeting shall have the right to object to the relevant resolution without being physically present (under the current rules, the right to object would have required physical attendance);
- the management board, the chairman of the meeting (typically the chairman of the supervisory board) and the notary who records the minutes of the general meeting need to come together physically at the venue of the general meeting (*i.e.*, there still needs to be a type of physical headquarters for the general meeting).

## Companies Are Granted More Time

To also provide the stock corporations with more flexibility regarding the timing of their general meetings, management boards (subject to supervisory board approval) may now:

- convene general meetings within a shorter notice period (a minimum of 21 days instead of 30 days previously);
- hold general meetings at any time during the fiscal year (instead of during the first eight months of the financial year, as under the previous rules); and
- decide to make advance payments on dividends for the respective previous fiscal year, even before the relevant resolution of the general meeting is in place (under the previous rules this was only possible if the articles explicitly provided for such advance dividend payments).

## Types of Companies to Which These Rules Apply

The new rules on virtual general meetings and extended time periods apply only to German stock corporations (*Aktiengesellschaft - AG*) and, accordingly, to German joint-stock companies (*Kommanditgesellschaft auf Aktien - KGaA*) and the *Societas Europaea* (with the exception of the right to hold a general meeting at any time during the fiscal year).

Additionally, the COVID-19 Act provides for similar rules intended to simplify the meetings and decision-making process for other legal forms of (privately held) German companies, such as limited liability companies (*Gesellschaft mit beschränkter Haftung - GmbH*), cooperatives (*Genossenschaften*) or foundations (*Vereine*). For example, with regard to the GmbH, Germany’s most popular type of corporation for private companies, shareholders are now allowed to pass shareholder resolutions in text form without a physical meeting or by casting votes in writing, even if not all of the shareholders agree to such procedure.

## Practical Considerations

While it is still too early to forecast, the temporary amendments made in the COVID-19 Act will come as a very welcome relief for German public companies because of the following reasons:

- the new rules make it easier for management boards to convene and hold virtual general meetings, giving them a way to proceed operationally during the pandemic lockdown;
- limiting shareholders’ rights to bring actions for annulment based on alleged claims of failure in general meeting formalities by stock corporations will help public companies overcome their previous reservations to make use of the ability to hold virtual general meetings;
- the number of questions asked by shareholders during virtual general meetings are likely to increase as questions can be asked “from a safe distance.” Seemingly, legislators do not expect management boards to answer all these questions, but to rather summarize and select meaningful questions in the interest of all shareholders, which will likely ease the workload for management boards.

For further information or any questions please feel free to reach out to attorneys from our German corporate practice.

# Germany Introduces 'Virtual' General Meetings for Public Companies

## Contacts

---

### **Jan Bauer**

Partner / M&A/Private Equity / Frankfurt  
49.69.74220.140  
jan.bauer@skadden.com

### **Holger Hofmeister**

Partner / Mergers and Acquisitions / Frankfurt  
49.69.74220.117  
holger.hofmeister@skadden.com

### **Matthias Horbach**

Partner / Mergers and Acquisitions / Frankfurt  
49.69.74220.118  
matthias.horbach@skadden.com

### **Ruediger Schmidt-Bendun**

Counsel / M&A/Private Equity / Frankfurt  
49.69.74220.151  
ruediger.schmidt-bendun@skadden.com