

Virtual meetings under the COVID-19-GesV

(as of 15 April 2020)

1. Introduction

- 1.1. In order to prevent the spread of the COVID-19 pandemic, the Austrian legislator enacted the COVID-19-GesG¹ that allows shareholders and board members of corporations, partnerships, etc., to meet virtually, instead of in person. The law also allows for virtual methods of decision-making.
- 1.2. The COVID-19-GesG only provides a very general framework for virtual meetings. It states that the type of communication used must ensure a very high degree of legal certainty in the decision-making process. The *Corporate Law COVID-19 Ordinance*, from the Federal Minister of Justice (COVID-19-GesV)², now provides more detailed regulations on virtual meetings. Both the COVID-19-GesG and the COVID-19-GesV are **valid until 31 December 2020**.
- 1.3. COVID-19-GesV uses the term "*virtual meeting*" for a meeting where any or all participant(s) are not physically present, but virtually instead.
- 1.4. The following organizations may hold virtual meetings:
 - limited liability companies (*Gesellschaften mit beschränkter Haftung*)
 - stock corporations (*Aktiengesellschaften*)
 - partnerships (*Personengesellschaften*)
 - cooperatives (*Genossenschaften*)
 - private foundations (*Stiftungen*)
 - associations (*Vereine*)
 - mutual insurance companies (*Versicherungsvereine auf Gegenseitigkeit*)
 - small insurance companies (*Kleine Versicherungsvereine*)
 - savings banks (*Sparkassen*)
- 1.5. The COVID-19-GesV contains general provisions on the permissibility of virtual meetings, for supervisory board meetings, general meetings of LLCs, managing director/board of director meetings, etc. It also contains specific provisions for the permissibility of virtual general meetings (*virtuelle Hauptversammlungen*) for stock corporations, cooperatives, and associations. This article provides an overview of the most important requirements and regulations for conducting a virtual meeting. If you would like to hold a virtual meeting, we are happy to advise you in this matter. A virtual meeting must be carefully prepared and implemented, to avoid procedural errors that could invalidate resolutions.

¹ Federal law on special COVID-19 measures in corporate law (*Gesellschaftsrechtliches COVID-19-Gesetz – COVID-19-GesG*).

² 140. Ordinance from the Federal Minister of Justice on virtual meetings and decision-making under corporate law (*Gesellschaftsrechtliche COVID-19-Verordnung – COVID-19-GesV*).

2. Permission to hold virtual meetings

- 2.1. In principle, participants in a virtual meeting should be connected in real time, through an **audio and visual two-way connection**. Each participant must have the opportunity to speak and vote. The COVID-19-GesV allows up to half of the participants to be connected only with audio, such as by telephone if there is for example no internet connection. According to a decree³ of the Federal Minister of Justice, persons who are only connected with audio should also be regarded as participants of the virtual meeting in every respect (these persons should also be counted when determining any quorum of presence).
- 2.2. The body or member that generally calls the meeting also decides whether and how to hold the meeting virtually. The meeting notice must specify the logistical and technical participation requirements. Phone and video conferencing applications available on the market could be adopted or adapted as needed.
- 2.3. Verifying the identity of the participants may pose a challenge. In some cases, it is the chairman's responsibility to confirm identities. In others, such as for certain LLC general meetings, a notary may be required. Notaries have their own regulations which enable them to virtually verify identity.

3. A stock corporation virtual general meeting

- 3.1. The COVID-19-GesV specifically regulates stock corporation general meetings. It is permissible for participants to follow the meeting in real time, through an **audio and visual one-way-connection**. A two-way connection is not required. As long as half of the participants have an audio and visual one-way-connection, it is permissible for the others to have only audio.
- 3.2. The ability to speak and vote must be secured in another way (as a two-way-connection is not required). In our opinion, a chat function or simple e-mails to the chairman could be considered for requests to speak. The chairman could then read out questions, etc. received. In our opinion, chats are, however, not secure enough for voting, because voting requires a level of secrecy. For example, voting could be conducted via a secure app, with access restricted to authorized persons. COVID-19-GesV also allows voting by mail, even if this is not provided for in the articles of association.
- 3.3. There are specific rules for general meetings for:
 - publicly listed stock corporations
 - stock corporations whose shares are traded through a multilateral trading system
 - stock corporations with more than 50 shareholders

General meetings for these stock corporations may be broadcast due to the potentially very large number of participants; it is not required that the shareholders are able to interact directly. Instead, shareholders can use special proxies to vote, propose items, or object. The stock corporation must provide four independent proxies, at least two of which must be lawyers or notaries. The mentioned decree of the Federal Minister of Justice provides that the proxies should be in contact with the shareholders also during the general meeting in order to ensure that the shareholders can react to the events at the general meeting (for example by way of changing

³ Decree of 8 April 2020 on the Ordinance from the Federal Minister of Justice on virtual meetings and decision-making under corporate law (*Gesellschaftsrechtliche COVID-19-Verordnung – COVID-19-GesV*), GZ: 2020-0.223.429.

their voting instructions). Despite the proxies, shareholders should still be able to exercise the right to information themselves (e.g. by way of e-mails to the chairman, etc.).

4. Virtual general meetings for cooperatives and associations

4.1. Cooperatives and associations may also broadcast their general meetings with an audio and visual one-way-connection for participants to follow along in real time. As long as half of the participants have an audio and visual connection, it is permissible for the others to have only audio. Speaking and voting rights must be ensured in other ways.

4.2. The COVID-19-GesV rules for cooperatives and associations stipulate that a vote can be ordered to be taken in writing (instead of a vote in the meeting or in a virtual meeting), even if the cooperative agreement or the articles of association do not provide for such vote in writing. This is different from the rules of stock corporations. Votes in a stock corporation must be either carried out in a virtual meeting or in a meeting in person. Special provisions for deadlines and procedures for written votes can be found in COVID-19-GesV.

5. Disclaimer

This article was originally published in German, and this version is an unofficial translation. The article merely summarizes important items in the COVID-19-GesV, and does not constitute legal advice in any way. We assume no liability for the content of the article, but are always willing to provide legal consultation and answer your specific questions, so please do not hesitate to contact us.