

DIGITAL UPGRADE CORONA

Lately the need for digitalization of Austrian corporate law was a much discussed topic. Even though first cases of digital establishments of limited liability companies were reported in the past months, other areas of Austrian corporate law remained (and remain still) in dire need of reform, including the legal prerequisites of physical participation in board, shareholder or supervisory board meetings. With Sars-CoV-2 (CoVid-19) an unlikely ally in the modernization of Austrian corporate law has arrived.

Before Corona

In general, the relevant legal provisions require a physical meeting of shareholders or board members of corporations, which is often not practical and sometimes, as current times show, even not possible.

- » Stock corporations (Aktiengesellschaften - AGs) must hold their general meetings (Hauptversammlung) within eight months of the end of the financial year, whereas shareholders have to physically participate in such meetings, unless the articles of association of the respective stock corporation foresee remote shareholder participation in the general meeting (which has been rarely the case in the past but is becoming more and more popular for obvious reasons).
- » Supervisory board meetings (Aufsichtsratssitzungen) and board meetings (Vorstandssitzungen) of stock corporations can be held virtually, if they meet certain conditions, e.g. if they are held as a qualified video conference during which all participating parties have mutual visibility and audibility.
- » General meetings of limited liability companies (Gesellschaften mit beschränkter Haftung - GmbHs) can be held virtually, provided that the participation of a notary public is not mandatory in such general meeting (as is required e.g. in relation to capital measures) and all shareholders have agreed to participate in a virtual meeting, e.g. by means of a video conference.
- » Supervisory board meetings of limited liability companies can also be held virtually, if they are held as qualified video conferences.

Corona Induced Digitalization

Based on the technical progress and fast digitalization of our environment, the possibility of physical participation in board, shareholder or supervisory board meetings of corporations was discussed in length in literature and among practitioners, but was nevertheless not progressed by the Austrian legislator. Only the outbreak of Sars-CoV-2 (Covid-19), which led to measures that significantly restrict the freedom of movement, including those of shareholders and board members or their representatives, has resulted in the legislator becoming active.

On 20 March 2020, the Austrian parliament passed the “2nd Covid-19 Law”, which took effect on and applies as of 22 March 2020, under which, inter alia, changes to corporate law have been implemented.

Section 1 of the “Corporate law related Covid-19 Law” (Gesellschaftsrechtliches COVID-19-Gesetz; COVID-19-GesG) contains a temporary (essentially as long as there is a need to limit free movement) legal basis for virtual meetings and other forms of decision-making (e.g. written votes) in corporate meetings, according to which shareholder and board meetings of corporations, partnerships, cooperatives (Genossenschaft), private foundations or associations (Verein), mutual insurance association or small insurance company may be held without the requirement of being physically present. Further detailed legislation on the issue is expected to be released in due course.

In case you have any questions on Covid-19 related corporate law issues, please don't hesitate to contact our experts at PHH.

More Questions? Get in touch!

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