

## General Meetings During the COVID-19 Crisis in Germany

***During the spread of COVID-19, listed companies must prepare for their upcoming annual general meeting in 2020.***

### Key Points:

- The annual general meeting (AGM) of a listed company must generally take place within the first eight or (for European stock companies) six months of a business year.
- If meetings are prohibited by law, either completely or restricted to a certain number of participants, they must be postponed. Currently, and subject to longer-term local event bans, this applies to all companies whose AGM was scheduled for March or April 2020. Such postponements do not imply a breach of duty. Companies with an AGM at a later date can and should still wait and see, as cancellations can also be made at short notice.
- Regularly communicating the cancellation of the AGM by press release is sufficient. An ad hoc announcement is only necessary in exceptional cases.
- Companies that are affected by a ban on events should try to find an alternative date that is still within the statutory period of eight or six months, respectively. If it later becomes evident (or is already certain) that the meeting cannot be held within this period, the delay should be minimized, although organizational considerations may be taken into account when scheduling the meeting.
- Once general meetings can be held, companies should take all legal and practical measures to minimize the risk of infection for shareholders, guests, and employees.

In light of the current crisis and the total or partial bans on meetings, many companies, including well-known names such as Deutsche Telekom AG, Continental AG or BASF AG, have already postponed their Annual General Meetings 2020 to a later, still undetermined date. The majority of German companies have postponed their Annual General Meetings to May 2020 or even further. However, these companies, too, will soon have to consider how they can and must react to the presumably continuing restrictions.

### Legal Situation and Possible Actions

Public companies and limited partnerships should, in general, hold their AGM within the first eight months of a business year. For European public companies the timetable is only six months. Holding the AGM is essential, especially for the payout of the dividend for the year 2019.

However, if — as currently throughout Germany — meetings are, either completely or above a certain number of participants, prohibited by law, most companies cannot hold an annual general meeting. A pure online AGM is not permitted under current law.

### **Cancellation/Rescheduling of the Annual General Meeting**

Until the point where the shareholders have gathered in the published meeting room at the published start of the event, the management board is entitled and, if necessary, obligated to cancel the AGM and postpone it to a later date. Therefore, companies that have scheduled their AGM for May or June 2020 are, subject to longer-term bans on events that have already been imposed, not obligated to react at present. It should in any case be ensured that an alternative date is reserved within the statutory periods of eight or six months and that all organizational measures — including renting appropriate premises — are taken. Exceeding the statutory periods should only be considered if it is no longer to be expected that the AGM can be held within these periods. Any time exceeding these deadlines should be kept as short as possible. However, it is permissible to take into account organizational circumstances (e.g. the availability of a suitable meeting room and the avoidance of scheduling conflicts with other general meetings) when scheduling the meeting.

In principle it is sufficient, but also necessary, to announce the cancellation of the AGM by means of a press release. A supplementary publication in the Federal Gazette is not mandatory. The publication of an ad hoc announcement would probably only be necessary if items on the agenda were to be resolved which themselves were ad hoc relevant.

If a postponement beyond the statutory periods becomes necessary, the Executive Board will not be in breach of duty if the deadline is exceeded. Shareholders cannot therefore assert any claims for compensation, particularly with a view to the subsequent dividend payment.

### **Protective Measures at Annual General Meeting Held at Later Stage**

If the postponed general meetings are held later this year, everything should be done to keep the risk of infection for shareholders, guests, and employees during the general meeting low, in view of the presumably still existing risk of infection. Useful protective measures include:

- Requesting shareholders to refrain from attending in person and instead to make use of the option of authorizing a proxy (e.g., the company's voting proxy), postal voting or, if applicable, online attendance
- Waiving of catering (for reasons of hygiene and as a measure to reduce the number of participants)
- Provision of sufficient hygiene equipment (e.g., contactless disinfectant dispensers)
- Regular and more frequent cleaning of the toilet facilities as well as the door handles, escalator runs, lectern, etc.
- Reduction of personnel employed as far as possible
- Separation of shareholders and personnel, especially in the area of entrance and exit control (e.g., by installing transparent partition walls with pass through)

### **Further Impacts**

The COVID-19 crisis will have a considerable impact on the sales and earnings development of many companies in the 2020 financial year. In addition to examining whether it is necessary to adjust the forecast for the current financial year, companies should therefore also examine whether the proposal for the appropriation of the net retained profits for the 2019 financial year should be adjusted or amended in order to maintain any liquidity that may be required in the company in the near future and not distribute it to shareholders. In the event of a subsequent change in the proposal for the appropriation of profits or a deviation from the communicated dividend policy, such a measure will have to be published regularly in the form of an ad-hoc announcement.

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