

The new Austrian Virtual Assembly Act

The COVID-19 Corporate Law Ordinance (abbreviated in German to "COVID-19-GesV") expired on 30 June 2023. Its purpose was to enable corporations to hold meetings virtually. After initially being enacted in 2020, it has since been extended several times, and yet another extension did not appear to be the most effective solution going forward.

Given that there was an obvious need for a more permanent regulation in this area, the Act on Virtual Meetings (Virtuelle Gesellschafterversammlungen-Gesetz; abbreviated in German to „Virt-GesG“) seeks to create a permanent legal framework for the holding of virtual meetings. The law entered into force on July 14, 2023, giving Austrian law parity with German law; a similar law entered into force in Germany back in mid-2022.

Among other things, the draft law gives corporations several options for holding their meetings in the future. In addition to still having the option of holding a meeting physically, in future there will also be the option of holding a simple virtual meeting, a moderated virtual meeting, or a hybrid meeting. The distinction between the simple virtual meeting and the moderated virtual meeting is that the moderated virtual meeting is held by a director and it does not require a two-way connection. This is particularly useful in situations where the number of participants is unmanageable and a two-way connection would only be of limited practical value. Hybrid meetings allow participants to choose between participating in the meeting in person or virtually; in turn, where participants are attending the meeting virtually, this

can take the form of either a simple virtual meeting or a moderated virtual meeting. To be able to hold a virtual meeting, the company's articles of association or by-laws must contain a provision permitting meetings to be held in this way. In this respect, the Act on Virtual Meetings differs from the arrangements provided for in the COVID-19 Corporate Law Ordinance in that the option to hold a virtual meeting will in future no longer exist ex lege, but instead provision must be explicitly created for it in the company's articles of association or in the by-laws. Consequently, it is especially important that the articles of association/by-laws are drawn up correctly. The relevant provision can either stipulate that meetings can be held virtually in the future or that the bodies of the company authorised to convene a meeting are given the authority to decide how the meeting is to be held. This does not prevent a meeting of the partners or shareholders from being held in person on a case-by-case basis. Any amendment of the articles of association or by-laws requires a three-quarters majority of the partners or shareholders, except where the articles of association or by-laws provide for a larger majority.

However, it should be noted that, unlike in the COVID-19-GesV, meetings of corporate bodies do not fall within the scope of the Act on Virtual Meetings. Therefore, the law applicable prior to the COVID-19-GesV applies. In this respect, however, it is worth noting that the provisions on the formation of the board's will are formulated less strictly anyway.

In principle, the very same provisions apply to listed stock corporations. In addition, the Act on Vir-

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tual Meetings contains a number of special provisions applicable to these companies, which are intended to facilitate low-threshold participation and the active participation of small investors.

In conclusion, the Act on Virtual Meetings is a step towards digitalisation in corporate law and one that is long overdue. It enables investors to participate actively and in an easier way. Furthermore, this law makes domestic companies somewhat more attractive to foreign investors, whose active participation in meetings in future will be – to use a popular expression – just a click away.

Forms of assembly from July 14, 2023		
Form	Regulatory location	Characteristics
Physical meeting	Law	<ul style="list-style-type: none">• only physical participation possible;
Simple virtual meeting	Articles of Association/Company Agreement	<ul style="list-style-type: none">• acoustic and optical two-way connection in real time;• recommended with limited number of participants;
Moderated virtual meeting	Articles of Association/Company Agreement	<ul style="list-style-type: none">• acoustic and optical connection in real time;• participation via e-mail or questionnaire (video feed if necessary);• recommended for unmanageable number of participants;
Hybrid meeting	Articles of Association/Company Agreement	<ul style="list-style-type: none">• both physical and virtual participation possible;• need to ensure equal treatment of virtual and physical participants;



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