

COVID 19: GERMAN RULES ON POSSIBILITY TO HOLD VIRTUAL SHAREHOLDERS' MEETINGS LIKELY TO BE EXTENDED UNTIL END OF 2021

With talk about a second Coronavirus wave gathering pace, the German Ministry of Justice and Consumer Protection (*Bundesministerium der Justiz und für Verbraucherschutz*) is proposing to extend the temporary COVID-19-related legislation of March 2020 significantly simplifying the passing of shareholders' resolution, including, in particular, the possibility to hold virtual-only shareholders' meetings. The extension is proposed in unchanged form for another year until the end of 2021. A respective draft regulation has been published at short notice on 18 September 2020 and stakeholders are invited to submit their comments until 25 September 2020.

While the legislation of March 2020 was well received in the rise of the COVID-19 crisis the reactions to an extension were mixed so far. Criticism focuses on the significant restrictions of shareholders' rights by this legislation (e.g. no right to ask questions or to counter-motions in real time, wide discretion of the management with respect to answering submitted questions, only limited appeal right etc.). This was raised not only by shareholders' activists but also by various parliament members including prominent experts of the ruling coalition.

In the reasons of the draft regulation, the ministry strongly emphasizes that companies should only hold virtual-only meetings if actually required in the individual circumstances due to the pandemic. In addition, the ministry encourages the corporations in question to handle the Q&A process as shareholder-friendly as technically possible, including allowing for questions in real-time, if they decide to hold a virtual meeting.

The time window to debate the proposal is extremely short. The new shareholders' meeting season is already approaching quickly, starting as early as in January/February 2021 for companies with business years ending on 30 September 2020. While the Ministry of Justice and Consumer Protection is authorized to extend the period of application of the legislation for another year without any modifications, modifications in substance would require the involvement of parliament and are thus deemed rather unlikely. If the proposal is adopted, it would be up to the corporations themselves to take the ministry's appeal seriously and to make use of the virtual format in a responsible and shareholder-friendly manner.

[Back to Top](#)



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Gibson Dunn's lawyers in the two German offices in Munich and Frankfurt are available to assist you in addressing any questions you may have regarding the issues discussed in this update.

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