

Übersetzung durch Ute Reusch

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Stand: Gesetz über Maßnahmen im Gesellschafts-, Genossenschafts-, Vereins-, Stiftungs- und Wohnungseigentumsrecht zur Bekämpfung der Auswirkungen der COVID-19-Pandemie vom 27. März 2020 (BGBl. I S. 569)

Version information: Act Concerning Measures Under the Law of Companies, Cooperative Societies, Associations, Foundations and Commonhold Property to Combat the Effects of the COVID-19 Pandemic of 27 March 2020 (Federal Law Gazette I, p. 569)

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## **Act Concerning Measures Under the Law of Companies, Cooperative Societies, Associations, Foundations and Commonhold Property to Combat the Effects of the COVID-19 Pandemic Federal Code for Notaries**

Act Concerning Measures Under the Law of Companies, Cooperative Societies, Associations, Foundations and Commonhold Property to Combat the Effects of the COVID-19 Pandemic of 27 March 2020 (Federal Law Gazette I, p. 569)

### **Section 1**

#### **Stock corporations; public partly limited partnerships; European companies (SEs); mutual insurance companies**

(1) Decisions concerning the right of shareholders to participate in the general meeting by means of electronic communication in accordance with section 118 (1) sentence 2 of the Stock Corporation Act (*Aktiengesetz*) (electronic participation), to exercise the right to cast their vote by means of electronic communication in accordance with section 118 (2) of the Stock Corporation Act (postal vote), the participation of members of the supervisory board by means of audio and video transmission in accordance with section 118 (3) sentence 2 of the Stock Corporation Act and provision for the general meeting to be broadcast by means of audio and video transmission in accordance with section 118 (4) of the Stock Corporation Act may be taken by the company's management board even without authority being granted therefor under the by-laws or rules of procedure.

(2) The management board may decide that the general meeting is to be held in the form of a virtual general meeting without the need for shareholders or their authorised representatives to be physically present, provided that

1. the broadcast by means of audio and video transmission encompasses the entire general meeting,
2. provision is made for shareholders to exercise their voting right by means of electronic communication (postal vote or electronic participation) and to grant a power of attorney,
3. shareholders are given the opportunity to ask questions by means of electronic communication,
4. shareholders who exercise their voting right in accordance with no. 2 are afforded the possibility of objecting to a resolution adopted by the general meeting by way

of derogation from section 245 no. 1 of the Stock Corporation Act, the need to be physically present at the general meeting thus being waived.

The management board decides at its duty-bound, free discretion which questions it wishes to respond to; it may also stipulate that questions must be submitted by means of electronic communication no later than two days prior to the meeting.

(3) By way of derogation from section 123 (1) sentence 1 and (2) sentence 5 of the Stock Corporation Act, the management board may decide to convene the general meeting no later than the 21st day prior to the day of the general meeting. By way of derogation from section 123 (4) sentence 2 of the Stock Corporation Act, proof of shares held in companies listed on the stock exchange must refer to the start of the 12th day prior to the general meeting and must, in the case of bearer shares of the company, be sent to the address stated in the invitation convening the general meeting to arrive there no later than four days prior to the general meeting, unless the management board makes provision in its invitation convening the general meeting for a shorter period within which the company must be in receipt of that proof; deviating determinations made in the by-laws are irrelevant. Where an invitation convening a general meeting stipulates a shorter period than that set out in sentence 1, the notification referred to in section 125 (1) sentence 1 of the Stock Corporation Act must be made no later than 12 days prior to the general meeting and the notification referred to in section 125 (2) of the Stock Corporation Act must be made to the entity entered in the share register before the start of the 12th day prior to the general meeting. By way of derogation from section 122 (2) of the Stock Corporation Act, the company must, in the aforementioned case, be in receipt of any demands for amendments no later than 14 days prior to the general meeting.

(4) By way of derogation from section 59 (1) of the Stock Corporation Act, the management board may decide, even without being granted authority therefor under the by-laws, to make an interim payment towards the net income to shareholders pursuant to section 59 (2) of the Stock Corporation Act. Sentence 1 applies accordingly to an interim payment towards the payment of compensation (section 304 of the Stock Corporation Act) made to external shareholders under an inter-company agreement.

(5) The management board may decide, by way of derogation from section 175 (1) sentence 2 of the Stock Corporation Act, that the general meeting is to be held in the course of the financial year.

(6) The decisions of the management board as referred to in subsections (1) to (5) require the consent of the supervisory board. By way of derogation from section 108 (4) of the Stock Corporation Act, the supervisory board may pass resolutions pertaining to its consent in writing, by telephone or by other comparable forms, regardless of the rules set out in the by-laws or rules of procedure and without the need for its members to be physically present.

(7) Notwithstanding the rule set out in section 243 (3) no. 1 of the Stock Corporation Act, an action for avoidance of a resolution adopted by the general meeting may also not rely on breaches of section 118 (1) sentences 3 to 5, (2) sentence 2 or (4) of the Stock Corporation Act, on a breach of formal requirements in respect of notifications in accordance with section 125 of the Stock Corporation Act nor on a breach of subsection (2), unless the company can be proven to have acted with intent.

(8) Subsections (1) to (7) apply accordingly to companies established in the form of a public partly limited partnership (*Kommanditgesellschaft auf Aktien*). Subsections (1) to (7), with the exception of subsection (5), apply accordingly to European companies within the meaning of Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE) (OJ L 294, 10.11.2001, p. 1), as last amended by Regulation (EU) No 517/2013 (OJ L 158, 10.6.2013, p. 1). The decisions referred to in subsections (1) to (4) are taken by the administrative board in the case of a company established in accordance with section 20 of the Act Implementing Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European Company (SE) (*SE-Ausführungsgesetz*) of 22 December 2004 (Federal Law Gazette I, p. 3675), as last amended by Article 9 of the Act of

12 December 2019 (Federal Law Gazette I, p. 2637), (company with a one-tier system); subsection (6) does not apply to such companies.

(9) Subsections (1) and (2), subsection (3) sentences 1 and 3, and subsections (4) to (7) apply accordingly to mutual insurance companies within the meaning of section 171 of the Insurance Supervision Act (*Versicherungsaufsichtsgesetz*).

## **Section 2**

### **Limited liability companies**

By way of derogation from section 48 (2) of the Limited Liability Companies Act (*Gesetz betreffend Gesellschaften mit beschränkter Haftung*), shareholder resolutions may be taken, in text form or by submitting votes in writing, even without the consent of all the shareholders.

## **Section 3**

### **Cooperative societies**

(1) By way of derogation from section 43 (7) sentence 1 of the Cooperative Societies Act (*Genossenschaftsgesetz*), member resolutions may be passed in writing or electronically even where explicit provision has not been made therefor in the statutes. In such cases, the board of directors must ensure that a list of the members who were involved in passing the resolution is included with the transcript required under section 47 of the Cooperative Societies Act. The manner in which each member was involved in passing the resolution must be indicated. Notwithstanding the rules set out in section 51 (1) and (2) of the Cooperative Societies Act, an action for avoidance of a resolution adopted by the general meeting may not rely on a breach of this Act or of members' rights which are due to technical faults arising in connection with the passing of the resolution in accordance with sentence 1, unless the cooperative society can be accused of having acted with intent or gross negligence.

(2) By way of derogation from section 46 (1) sentence 1 of the Cooperative Societies Act, the notice calling a general meeting may be made via the Internet on the cooperative society's website or by direct notification in text form.

(3) By way of derogation from section 48 (1) sentence 1 of the Cooperative Societies Act, the annual accounts may also be adopted by the supervisory board.

(4) The cooperative society's board of directors may, at its duty-bound discretion and with the supervisory board's consent, make an interim payment towards a prospective disbursement of the credit balance from the redemption of retired members' shares or make a prospective dividend payment to a member; section 59 (2) of the Stock Corporation Act applies accordingly.

(5) Members of a cooperative society's board of directors or supervisory board remain in office even after the end of their term of office until such time as their successor has been appointed. The number of members of the board of directors or of the supervisory board may fall below the minimum number required by law or the statutes.

(6) Meetings of a cooperative society's board of directors or supervisory board and joint meetings of the board of directors and of the supervisory board may be held even without any provision therefor in the statutes or rules of procedure by way of circular in text form or by way of telephone or video conference.

## **Section 4**

### **Law of transformations**

By way of derogation from section 17 (2) sentence 4 of the Transformation Act (*Umwandlungsgesetz*), it is sufficient, for the register entry to be permissible, for the balance sheet to have been prepared as per a cut-off date preceding the application for entry in the register by no more than 12 months.

## **Section 5**

### **Associations and foundations**

(1) Members of the board of an association or of a foundation remain in office even after the end of their term of office until such time as they are withdrawn from office or their successor has been appointed.

(2) By way of derogation from section 32 (1) sentence 1 of the Civil Code (*Bürgerliches Gesetzbuch*), the board may, even without authority being granted therefor under the articles of association, also enable members of the association

1. to participate in the general meeting without being physically present at the meeting and to exercise their membership rights by means of electronic communication or

2. to cast their vote in writing before the general meeting is held without participating in the general meeting itself.

(3) By way of derogation from section 32 (2) of the Civil Code, a resolution is valid without a meeting of the members of an association if all the members were involved, at least half of the members cast their vote in text form by a date set by the association and the resolution was passed by the required majority.

#### **Section 6 Commonhold associations**

(1) The last administrator within the meaning of the Commonhold Property Act (*Wohnungseigentumsgesetz*) to be appointed remains in office until such time as he or she is withdrawn from office or a new administrator has been appointed.

(2) The last business plan to have been adopted by the owners in a commonhold association continues to be valid until a new business plan has been adopted.

#### **Section 7 Transitional regulations**

(1) Section 1 only applies to general meetings held and interim payments towards the net income made in 2020.

(2) Section 2 only applies to shareholder meetings held and resolutions passed in 2020.

(3) Section 3 (1) and (2) applies to general meetings and meetings of representatives held in 2020, section 3 (3) to annual accounts adopted in 2020, section 3 (4) to interim payments made in 2020, section 3 (5) to the terms of office of board or supervisory board members which expire in 2020, and section 3 (6) to meetings of the cooperative society's board of directors or supervisory board or their joint meetings held in 2020.

(4) Section 4 only applies to register entries made in 2020.

(5) Section 5 only applies to the terms of office of members of the board of an association or of a foundation which expire in 2020 and to meetings of the members held in 2020.

#### **Section 8 Authorisation to issue statutory instruments**

The Federal Ministry of Justice and Consumer Protection is authorised, by way of statutory instrument not requiring the approval of the Bundesrat, to extend the period of application of sections 1 to 5 pursuant to section 7 until no later than 31 December 2021 if this appears necessary on account of the continued impact of the COVID-19 pandemic in the Federal Republic of Germany.