

Enabling virtual-only shareholder meetings

Adaptation of benchmark voting policy necessary

Introduction

Deutsches Aktieninstitut (Transparency Register: 38064081304-25; Lobbying Register German Bundestag: R000613) represents the entire German capital market-oriented economy. The members of Deutsches Aktieninstitut are listed companies, banks, stock exchanges, investors and other important market participants. Our more than 200 members, represent more than 85 percent of the market capitalization of German companies. We advocate their interests and make their voices heard. In hearings and exchanges with policy-makers and supervisory authorities, we transport the perspectives of the real and financial economy into the political and regulatory debate. Our approach is to identify and pursue sensible solutions catering for all interests.

1 Virtual General Meeting

Please allow us to comment on your Benchmark Voting Policy Changes for the 2023 AGM season.

Our main concern relates to the absence of an adjustment regarding the implementation of a **virtual-only AGM**:

- **Contradiction with the latest German legislation:** After a long legislative process, a new virtual AGM was created in Germany (July 2022), which implemented changes concerning the representatives of institutional investors as well as shareholder protection association to a very large extent. All shareholder rights were guaranteed and even extended. Due to the equivalence of the formats, the legislator deliberately opted for a provision in the Articles of Association of the company that is not limited to specific occasions. However, the provision in the Articles of Association must be renewed after 5 years at the latest.
- **All shareholder rights are guaranteed:** The virtual AGM mirrors the physical AGM and equally provides for the execution of shareholder rights such as speeches, questions, follow-up questions, submission of motions live during the AGM. In addition, there is an extension of shareholder rights such as the right to submit a statement in advance. Furthermore, the possibility of interaction between shareholders and management is guaranteed as in physical AGMs.
- **Strengthening of shareholder rights through facilitated participation:** The virtual format facilitates the participation of national and foreign investors. In addition, this format often appeals to young investors. Also, according to the OECD, shareholder meetings in virtual format should be allowed as a means to facilitate and reduce the costs to shareholders of participation and engagement.¹
- **Promoting sustainability:** A virtual AGM caters for a reduction of CO2 emissions by reducing company logistics and shareholders' travel.
- **Good corporate governance:** ISS has a particularly high significance for shareholder voting and thus for the implementation of a virtual-only AGM in the Articles of Association required in Germany. In the future, besides exceptional situations such as pandemics, companies will only be able to

¹ Please refer to the "Public Consultation on Draft Revisions to the G20/OECD Principles of Corporate Governance," available here: <https://www.oecd.org/corporate/ca/public-consultation-review-G20-OECD-principles-corporate-governance.pdf>.

hold a virtual AGM if they have enacted a respective provision in their articles of association. It is therefore in line with good corporate governance to include such a provision in the Articles of Association in order to have this option. In this context, it must be considered not to limit such a provision to specific cases according to a deliberate decision by the German legislator.

2 Other Comments

In addition, we would like to address another two points.

It is our understanding that the suggested voting policy does not aim at setting disincentives for new listings from fast growing companies in which founders still play a key role. From our perspective it is important to recognize multiple voting rights as a well-established mechanism in those cases. We could even imagine a more flexible approach than suggested.

We also assume that the suggested voting policy does not aim at interfering with existing and well-established company structures that are deeply rooted in existing company law and where the company law already provides sufficient protections for minority shareholders as it is for example the case for preference shares (“Vorzugsaktien”) and the structure of the “Kommanditgesellschaft auf Aktien (KGaA)” in Germany.

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