

Recent Changes to the German Act on Public Limited Companies (*Aktiengesetz*)

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The implementation of the European directive on the exercise of certain rights of shareholders in listed public limited companies (Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007) has resulted in the German legislator introducing a number of important amendments to the German Act on Public Limited Companies (*Aktiengesetz*) principally in relation to shareholders' rights, but also in respect of the maintenance and alteration of the share capital of public limited companies (listed and non-listed). The most important amendments are as follows:

- simplification of capital maintenance rules
 - deregulation of the provisions regarding the establishment by contribution in kind
 - new provisions regarding hidden contributions in kind
- strengthening of shareholders' rights
 - online participation in shareholders' meetings and voting by mail
 - obligation of listed public limited companies to publish documents relating to shareholders' meetings on their website
- prevention of abusive legal actions to challenge shareholders' resolutions

I. Simplification of Capital Maintenance Rules

German rules on capital maintenance of public limited companies are very strict. One of the major objectives of the new legislation is to simplify these rules in order to reduce company administration costs.

1. Deregulation of the Provisions regarding the Establishment by Contribution in Kind

So far, the establishment of a public limited company by contribution in kind requires a special audit. The new legislation changes this so that such audit will no longer be required if assets are contributed that have been audited up to six months prior to the contribution being made.

2. New Provisions regarding hidden Contributions in Kind

Formerly, every transaction between a public limited company and its shareholders which violated the strict provisions on contributions in kind resulted in the invalidity of the underlying transactions. In particular in case of insolvency of the company, such hidden contribution in kind obliged the respective shareholder to make an equivalent contribution in cash (in most cases without retrieving the initial contribution in kind). Under the new legislation, the respective shareholder is entitled to deduct the value of the contribution in kind from any such claim made by the company.

II. Strengthening of Shareholders' Rights

A further objective of the new legislation is to enable shareholders independently of their place of residence to easily gain access to documents relating to shareholders' meetings and to facilitate the exercise of their rights before or during shareholders' meetings, in particular in order to allow cross border participation and voting.

1. Online Participation in Shareholders' Meetings and Voting by Mail

Pursuant to the new law, the articles of association of public limited companies can provide that shareholders are entitled to participate in the shareholders' meeting and to exercise their voting rights online without the necessity of sending a proxy to the meeting itself. Furthermore, the shareholders can determine that the voting right can be exercised by mail.

2. Obligation of listed Public Limited Companies to publish Documents relating to Shareholders' Meetings on their Website

Listed public companies are now obliged to publish documents relating to shareholders' meetings on their website, in particular the convening of shareholders' meetings, the agenda and any further documents the shareholders must have taken notice of in order to pass resolutions.

III. Prevention of abusive Legal Actions to challenge Shareholders' Resolutions

Certain shareholders' resolutions of German public limited companies need to be registered with the commercial register in order to take legal effect. Motivated by the prospect of receiving monies for out-of-court settlements shareholders have often challenged resolutions requiring such registration. In order to prevent this, one of the former amendments to the German Act on Public Limited Companies introduced special court proceedings allowing registration with the commercial register in certain cases even though the respective resolution has been challenged. The new legislation strengthens the position of affected companies further by allowing registration, in principle, if the challenging shareholder is unable to prove that he holds shares in a total nominal amount of at least EUR 1,000. Such court decision cannot be appealed.

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