

# Virtual Shareholder Meetings of Public Companies – An Update

The revised Swiss corporate law (entry into force: January 1, 2023) allows to hold shareholder meetings virtually, i.e., with no venue and exclusively by electronic means. Lenz & Staehelin advised various listed Swiss companies on the evaluation as to whether the 2023 annual general meeting (AGM) shall be held physically or virtually. This update is to share some relevant practical and legal considerations.

Published: 15 September 2023

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## Background

While general meetings had exclusively been held with physical presence for decades, the COVID-19-pandemic put an involuntary and abrupt end to this era. Although such COVID general meetings were based on the COVID ordinance of the Swiss Federal Council and were not full-fledged virtual shareholder meetings, they gave a flavor of what could be expected under the revised Swiss corporate law.

Since the entry into force of the revised corporate law, less than a handful of listed Swiss companies have ventured the step into holding their AGM virtually (as most companies first had to amend their articles of association to provide for a respective statutory basis).

Lenz & Staehelin advised, among others, NYSE-listed On Holding AG on the planning and execution of their virtual AGM, which was one of the very first fully virtual AGM of a listed Swiss company and the first shareholder meeting in Switzerland, where a full two-factor authentication was used for accessing the virtual meeting and identifying shareholders.

## Some practical and legal considerations

Practical and legal challenges that are to be addressed when an AGM is held virtually include, *inter alia*, the following:

- **Invitation:** The invitation to the AGM has to specify in detail the key elements that are characteristic for the virtual nature of the AGM. Among others, a company has to inform shareholders on (i) how they can get access to the virtual AGM and what steps have to be taken for a pre-registration on the AGM platform (such as the GVMANAGER-Live platform provided by Devigus Engineering AG), (ii) what the different possibilities are to cast their votes, and (iii) how they can ask questions and/or make statements and what is required to be admitted to do so in the course of the AGM. Such information has to be provided not only to registered shareholders but also to nominee / street name shareholders (i.e., shareholders that hold their shares indirectly via nominees or banks) via their banks.
- **Independent Proxy Representative:** Similar to a physical AGM, shareholders who do not wish to attend the AGM must be given the possibility to instruct the independent proxy representative electronically or by mail. Depending on the stock exchange on which a company is listed, close cooperation with foreign local counsel and respective foreign service providers (e.g. share register or brokers) is crucial to ensure a seamless completion of the process.
- **Software Tool with Two-Factor Authentication and Immediately Available Voting Results:** In one of the AGMs on which Lenz & Staehelin advised, the company was supported by Devigus Engineering AG, one of the leading service providers in Switzerland in this field. Devigus provided the software platform/tool for the virtual AGM ("GVMANAGER-Live"). This platform/tool fulfills all requirements of Swiss corporate law for the use of electronic means in shareholder meetings, i.e., the requirements to ensure that (i) the identity of the participants is established, (ii) oral contributions at the general meeting are directly transmitted (without any lag), (iii) each participant can table motions and participate in the debate, and (iv) the results of the votes cannot be falsified. The Devigus platform/tool can also fulfill the requirement of a two-factor authentication that is often considered to be an important function by company representatives when ensuring the proper identification of all participants.

To ensure that both the votes cast by the shareholders virtually present at the AGM as well as the votes cast via the independent proxy representative are properly taken into account for the computation of the voting results under each agenda item, it is key to provide for enough time between the date until which shareholders are entitled to instruct the independent proxy representative and the date of the AGM. An additional important aspect is to implement a function into the software, ahead of the AGM, that allows the input and display of the correct number of shares entitled to vote under each agenda item (which may differ among various agenda items).

## Key takeaways and outlook

To ensure a seamless implementation of a virtual AGM, it will be key to start the detailed planning

of the meeting and the evaluation of the software tools well ahead of the date of the shareholder meeting and to discuss any interfaces among the various service providers (software/platform provider, video and audio director, share register, independent proxy representative, simultaneous translators, banks, brokers etc.) early on in the process. Further, it is key to plan for unexpected situations, such as power failure, disruption of internet connectivity or large numbers of participating shareholders.

In light of the increased focus on environmental measures, sustainability and efficient corporate processes, we expect that numerous listed Swiss companies will make use of the new option and hold their future shareholder meetings virtually, starting already in the next AGM season in spring 2024.

Please do not hesitate to contact us in case of any questions.

**Legal Note:** The information contained in this Smart Insight newsletter is of general nature and does not constitute legal advice.

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