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German Tax and Legal News

Private home of co-shareholder as the place of a shareholders' meeting

German Federal Supreme Court decides on validity of shareholders' resolutions adopted in private home of co-shareholder

Numerous stumbling blocks can emerge in shareholder disputes: The German Federal Supreme Court (BGH) recently had to rule about the effectiveness of a shareholder resolution adopted in the rooms of the private home of an opposing co-shareholder.

The BGH ruled that resolutions of a shareholders' meeting of a German Private Limited Company (GmbH) are erroneous and contestable if the shareholders' meeting was held within the rooms of a private home of an opposing co-shareholder.

First, the BGH pointed out that the shareholders are principally permitted to hold a shareholders' meeting at places other than the business premises of the company. This might be the case if the business premises are not reachable or suitable in order to hold a shareholders' meeting. Further, the shareholders' meeting may be held elsewhere if the company has a manageable amount of shareholders and the participation of the shareholders will not be impaired from the outset, because they will be able to reach the alternative meeting place easier than the company's business premises. But if the shareholders' meeting should take place within the rooms of the private home of an opposing shareholder, the other shareholders do no not have to accept the private home of the opposing co-shareholder as the place of the shareholders' meeting. The same shall apply if the shareholders' meeting is held within the offices of the attorney of the opposing co-shareholder. The BGH argues that in all these situations the respective shareholder is in an environment in which the (other) opposing co-shareholder in contrast to him is able to move and behave under familiar circumstances. Resolutions of the shareholders' meeting, which were adopted in the rooms of the private home of an opposing co-shareholder, are therefore erroneous and the other shareholders may file an application of annulment (Anfechtungsklage) against it within a period of one month with the court.

In the case at hand the BGH had further the opportunity to decide that the legal or statutory defined power of representation of the managing directors is not affected by the opening of insolvency proceedings with regard to the assets of the company. For example: If the directors are entitled to act jointly pursuant to their legal or statutory power of representation, this also applies within insolvency proceedings as well. In particular they are only entitled to file the application for the closing of the insolvency proceedings jointly. However, there is one exception from the foresaid principle: Irrespective of how the power of representation is defined by law or the articles of association of the company, each managing director may file the application for the opening of the insolvency proceedings solely.

(The case discussed was decided by the German Federal Supreme Court (BGH) on March 24, 2016, case reference IX ZB 32/15.)

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