

## **Annual Shareholders' Meeting of Software Aktiengesellschaft on May 12, 2021**

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### **Information about the shareholder rights within the meaning of § 121 (3), s. 3, no. 3 of the German Sock Corporation Act**

The Notice of the Annual Shareholders' Meeting contains information about the rights of shareholders as defined in §§ 122 (2), 126 (1) and 127 of the German Sock Corporation Act ("AktG") and the Law on Measures in Company, Cooperative, Association, Foundation and Home Ownership Law to combat the Effects of the COVID-19 Pandemic of March 27, 2020 ("COVID-19 Act") and the Act on Further Abbreviation of the Residual Debt Relief Procedure and Adjustment of Pandemic-related Provisions in Company, Cooperative, Association and Foundation Law as well as in Tenancy and Commercial Lease Law of December 22, 2020 ("Amendment Act"). The information below further explains these provisions. The statutory text governing at the time that notice to the Annual Shareholders' Meeting of Software Aktiengesellschaft on May 12, 2020 was published as well as a few key legal provisions to which reference is made therein are reprinted at the end of each explanation. There are different legal views concerning the details of the shareholder rights explained herein. The shareholders are advised to seek legal counsel if they have any questions or concerns.

Any mention of the time of day in this informational disclosure about the rights of shareholders refers to Central European Summer Time (CEST). These references to time correspond to Universal Coordinated Time (UTC) minus two hours (UTC = CEST - 2h).

#### **1. Motions to Supplement the Agenda at the Request of Minority Shareholders (§ 122 (2) AktG)**

Any shareholders, whose shares collectively reach or exceed one-twentieth of the registered share capital or equal a *pro rata* amount of EUR 500,000, may request that items be placed on the agenda and published. Based on the current ownership relations at Software Aktiengesellschaft, the right to make the request requires at least 500,000 shares. Each new agenda item must be accompanied by an explanation or a draft resolution. In addition, the person making the request must prove that he or she held the requisite minimum number of shares since at least 90 days prior to the date on which the request to supplement the agenda is received. For purposes of furnishing proof of share ownership, the entry in the share register will suffice. § 70 AktG governs the calculation of the requisite shareholding period. Under that provision, rights to demand the conveyance of title, as described therein, are deemed the equivalent to actually holding the shares, and any periods of time during which a legal predecessor held the share must be attributed to the shareholder, if the conditions stated therein are met. For purposes of calculating the 90-day period, the day on which the request is received will not be included in that time period. A shifting from a Sunday, Saturday or a holiday to a preceding or following business day is not an option. §§ 187 through 193 of the German Civil Code do not apply *mutatis mutandis*.

To be able to validly submit a request to add items to the agenda, the person making the request must prove that he or she held the minimum number of shares up to the time that the Management Board decides upon the request or, if the Company does not satisfy the request and the person making the request seeks a court decision, then up to the time that the court

issues its decision.

Requests to supplement the agenda (together with an explanation or draft resolution) and - in the Management Board's legal view - proof of the shareholding periods must all be received at least thirty days prior to the Annual Shareholders' Meeting (i.e., on or before 12 midnight (24.00) (CEST) on April 11, 2021) by the Management Board of Software Aktiengesellschaft at the address indicated in the meeting notice as follows:

Software Aktiengesellschaft  
Uhlandstrasse 12  
64297 Darmstadt

Fax: +49 6151 92341669

Some legal commentators contend that compliance with the written form requirement [*Schriftform*] (§§ 126, 126a German Civil Code ("BGB")) is required, while other legal commentators believe that either transmitting the signed request *via* telefax or using the requisite text form (as defined under § 126b BGB) will suffice.

If the seasonably received requests for supplementing the agenda require publication, then they will be published in the Federal Gazette (*Bundesanzeiger*) either at the time that the notice of meeting is published or otherwise without undue delay following receipt of the request and will be disseminated via suitable media and made available on the Company's website: <http://www.softwareag.com/hauptversammlung>. The modified agenda together with the notice of the Shareholders' Meeting will be communicated in accordance with § 125 (1) s. 3 AktG.

The provisions of the German Stock Corporation Act (as applicable from time to time), on which this shareholder right is based, are set forth below:

*§ 122 AktG - Calling a Meeting at the Request of a Minority of Shareholders*

- (1) The shareholders' meeting must be called if shareholders, whose shareholding collectively equals or exceeds one-twentieth of the registered share capital, request such a meeting in writing while stating the purpose and reasons for such meeting; such a request must be directed to the management board. The articles of association could provide that the right to request a shareholders' meeting take another form and require a lower proportion of registered share capital. The shareholders who have made a request must provide proof showing that they have held the shares for at least 90 days prior to the receipt of the request and that they will hold the shares until the management board decides the request. § 121 (7) shall apply mutatis mutandis.*
- (2) In the same manner, shareholders, whose shares collectively amount to no less than one-twentieth of the registered share capital or represent a pro rata amount of the registered share capital corresponding to EUR 500,000, may request that items be placed on the agenda and published. Each new agenda item must be accompanied by an explanation or*

*a draft resolution. The request within the meaning of the first sentence hereof must be provided to the company at least 24 days, in the case of listed companies at least 30 days, prior to the meeting; the date of receipt shall not be included in this calculation.*

- (3) If any such request is not satisfied, then a court may grant the shareholders, who have made the request, the authority to call a shareholders' meeting or publish such agenda item. At the same time, the court may appoint the chairman of the meeting. The notice calling for the meeting or the publication must refer to such authorization. An appeal may be lodged against such a decision. The shareholders who have made the request must provide proof showing that they have been holding the shares until the court has made its decision.*
- (4) The company shall bear the costs of the shareholders' meeting and, in the case of subsection (3), also the court costs, if the court has granted the request.*

#### *§ 121 AktG - General Provisions (Excerpt)*

*(1) - (6) [...]*

- (7) For deadlines and scheduled dates that are calculated backwards from the date of the meeting, the date of the meeting itself will not be included in the calculation. Shifting the meeting from a Sunday, Saturday or a holiday to a preceding or following business day will not be an option. §§ 187 through 193 of the German Civil Code will not apply mutatis mutandis. With respect to companies that are not publicly listed, the articles of association may prescribe a different calculation of the deadline period.*

#### *§ 70 AktG - Calculation of the Shareholding Period*

*If exercising rights connected with a share requires that the shareholders be the holder of that share for a specified period of time, then the right to demand a conveyance of share ownership from a credit institution, financial services institution or an enterprise operating under § 53 (1) s. 1 or § 53b (1) s. 1 or (7) of the German Banking Act will be deemed equivalent to actual share ownership. The period during which the share was owned by a legal predecessor shall be attributed to the shareholder, if he or she has acquired the share gratuitously (for no consideration) from his or her fiduciary (Treuhand), has acquired it as a universal successor (by operation of the law), has acquired it in connection with a dissolution of a collective organization, or acquired it as a result of a transfer of assets (Bestandsübertragung) pursuant to § 13 of the German Insurance Supervision Act or § 14 of the Building Loan Association Act.*

## **2. Shareholder Motions and Nominations (§§ 126 (1), 127 AktG)**

Each shareholder has the right to submit a countermotion challenging the proposals made by the Management Board and/or the Supervisory Board with respect to an item on the agenda. If the shareholder wishes to have the countermotions be made available by the Company prior to the Shareholders' Meeting, then he or she must comply with the requirements under § 126 AktG as explained below. Any shareholder countermotions, which are to be made available, must be received by the Company at the address indicated in the notice of the meeting:

Software Aktiengesellschaft  
Uhlandstrasse 12  
64297 Darmstadt

Fax: +49 6151 92341669  
Email: [hauptversammlung@softwareag.com](mailto:hauptversammlung@softwareag.com)

on or before 12 midnight (24.00) (CEST) on April 27, 2021, together with an explanation and the name of the shareholder. In case countermotions need to be published, they must be made available without undue delay on the website: <http://www.softwareag.com/hauptversammlung>, including the name of the shareholder, the explanation and any position taken by management.

Shareholder countermotions do not need to be made available,

1. to the extent that the Management Board would make itself criminally liable by doing so;
2. if the countermotion would lead to a shareholder resolution that violates the law or the articles of association;
3. if key aspects of the explanation contain manifestly false or misleading statements or are libelous;
4. if a shareholder countermotion based on the same set of facts has already been communicated with respect to a shareholders' meeting of the Company pursuant to § 125 AktG;
5. if the same countermotion of the shareholder on essentially identical grounds has already been communicated pursuant to § 125 AktG at a minimum of two of the Company's shareholder meetings over the past five years and at such shareholders' meetings, less than one-twentieth of the registered share capital represented there voted in favor of such countermotion;
6. if the shareholder indicates that he or she will neither attend, nor be represented at, the shareholders' meeting; or
7. if within the past two years at two shareholders' meetings, the shareholder has neither made, nor caused to be made on his or her behalf, a countermotion that had been communicated by him or her.

The explanations for the countermotions will not need to be made available if they total more than 5,000 characters. If two or more shareholders make countermotions regarding the same agenda item that is subject to a resolution, then the Management Board may summarize (condense) the countermotions and their explanations.

Furthermore, each shareholder has the right to make proposals in text form (as defined in § 126b BGB) to the Company regarding the appointment of the Company's annual financial statements auditor and the election of the Supervisory Board members (hereinafter referred to as "Nominations"). Each shareholder therefore has an opportunity to nominate auditors who are not the ones proposed by the Supervisory Board. The selection of the annual financial statements auditor is stipulated in Agenda item 5. Elections for positions on the Supervisory Board are not on the Agenda.

If the shareholder wishes to have the Nominations made available by the Company prior to the Shareholders' Meeting, then he or she must comply with the requirements under § 127 AktG as explained below. The shareholder Nominations do not require an explanation. Any shareholder Nominations to be made available must be received by the Company at the address indicated in the notice of the meeting:

Software Aktiengesellschaft  
Uhlandstrasse 12  
64297 Darmstadt

Fax: +49 6151 92341669  
Email: [hauptversammlung@softwareag.com](mailto:hauptversammlung@softwareag.com)

on or before 12 midnight (24.00) (CEST) on April 27, 2021, together with the name of the shareholder. Any Nominations to be made available, including the name of the shareholder, any explanation and any position taken by management, must be made available without undue delay on the website: <http://www.softwareag.com/hauptversammlung>.

Shareholder Nominations do not need to be made available:

1. to the extent that the Management Board would make itself criminally liable by doing so;
2. if the Nomination would lead to a shareholder resolution that violates the law or the articles of association;
3. if key aspects of the explanation contain manifestly false or misleading statements or are libelous; in that case, the Management Board shall decide about publishing the Nomination without an explanation;
4. if the shareholder indicates that he or she will neither attend, nor be represented at, the shareholders' meeting; or
5. if within the past two years at two shareholders' meetings, the shareholder has not made, nor caused to be made on his or her behalf, a Nomination communicated by him or her.

If the Nomination has been explained (substantiated), then the explanation will not need to be made available if it totals more than 5,000 characters.

The exceptions to the publication requirement are set forth in § 127 AktG in combination with § 126 (2) AktG. In the Management Board's view, the other exceptions, which are regulated under § 126 (2) nos. 4 and 5 AktG, do not apply to Nominations.

The Management Board also does not need to publish shareholder Nominations if they fail to contain the name, profession and residence (in the case of the proposed candidates) or the registered name and place of business (in the case of auditing firms). Publishing or making available Supervisory Board nominations also requires that such nomination be accompanied by information about the nominee's membership on other legally prescribed supervisory boards.

Pursuant to § 1 (2), s. 2 COVID-19 Act in conjunction with Article 11 (1) no. 1 b) of the Amendment Act, any shareholder motions or nominations, which must be accessible under § 126 and § 127 AktG, shall be deemed to have been made in the meeting, if the shareholder making the motion is duly legitimized and registered for the Shareholders' Meeting.

The provisions of the German Stock Corporation Act and the COVID-19 Act (as applicable from time to time), on which these shareholder rights are based, are set forth as follows:

#### *§ 126 AktG - Shareholder Motions*

*(1) Shareholder motions together with the shareholder's name, the explanation and any position taken by the management shall be made available to the persons described in § 125 (1) - (3) subject to the conditions stated therein, if at least 14 days prior to the meeting, the shareholder sends to the address indicated in the notice of the meeting a motion countering the proposal of the management board and supervisory board regarding a certain item on the agenda. The date of receipt will not be included in determining compliance with the foregoing deadline period. In the case of publicly listed companies, access shall be provided via the Company's website. § 125 (3) shall apply mutatis mutandis.*

*(2) A countermotion and its explanations do not need to be made available:*

- 1. to the extent that the management board would make itself criminally liable by doing so;*
- 2. if the countermotion would lead to a shareholder resolution that violates the law or the articles of association;*
- 3. if key aspects of the explanation contain manifestly false or misleading statements or are libelous;*
- 4. if a shareholder countermotion based on the same set of facts has already been communicated with respect to a shareholder meeting of the company pursuant to § 125 AktG;*
- 5. if the same countermotion of such shareholder on essentially identical grounds has already been communicated pursuant to § 125 AktG at a minimum of two of the company's shareholder meetings over the past five years and at such shareholder meetings, less than one-twentieth of the registered share capital represented there voted in favor of such countermotion;*
- 6. if the shareholder indicates that he or she will neither attend, nor be represented at, the shareholders' meeting; or*
- 7. if within the past two years at two shareholders' meetings, the shareholder has neither made, nor caused to be made on his or her behalf, a countermotion communicated by him or her.*

*The explanations will not need to be made available if they total more than 5,000 characters.*

*(3) If two or more shareholders make countermotions regarding the same agenda item that is subject to a resolution, then the management board may condense the countermotions and their explanations*

*§ 127 AktG - Nominations by Shareholders (Excerpt)*

*§ 126 shall apply mutatis mutandis to a shareholder's nomination of a person to serve on the supervisory board or his or her nomination of annual accounts auditors. Such nomination does not require an explanation. The management board also does not need to make such nomination available, if such nomination fails to contain the information required under § 124 (3) s. 4 and § 125 (1) s. 5. [...]*

*§ 124 AktG - Publication of Requests to Supplement the Agenda; Proposals for Resolutions (Excerpt)*

*(1) [...]*

*(2) [...]*

*(3) With respect to each item on the agenda that the shareholders' meeting should decide, the management board and the supervisory board - but when resolving according to § 120a (1) s. 1 and when electing members of the supervisory board and auditors, only the supervisory board - shall propose the respective resolutions in the publication. For companies that qualify as capital-market oriented companies (kapitalmarktorientierte Gesellschaft) within the meaning of § 264d of the German Commercial Code, CRR-credit institutions (CRR-Kreditinstitute) within the meaning of § 1 (3d), s. 1 of the Banking Act, except for institutions specified in § 2 (1) nos. 1 and 2 of the Banking Act, or insurance undertakings (Versicherungsunternehmen) within the meaning of Article 2 (1) of Council Directive 91/674/EEC, the supervisory board's proposal regarding the election of the annual accounts auditor shall be based on the recommendation of the audit committee. S. 1 shall not apply if the shareholders' meeting is bound by the nominations for the election of members of the supervisory board pursuant to § 6 of the Coal and Steel Co-Determination Act or if the subject matter of the resolution has been put on the agenda at the request of a minority of shareholders. The proposal for the election of members of the supervisory board or annual accounts auditors shall state the candidate's name, profession and place of residence. If the supervisory board must also include employee representatives, then any supervisory board resolution regarding proposals for the election of the members of the supervisory board shall require only the majority of the votes of the representatives of the shareholders who sit on the supervisory board; § 8 of the Coal and Steel Co-Determination Act shall remain unaffected.*

*(4) [...]*

*§ 125 AktG - Communications to the Shareholders and to Members of the Supervisory Board*

*(1) The management board of a company that has issued not exclusively registered shares must communicate the notice of the shareholders' meeting at least 21 days prior to that meeting to the following:*

- 1. the intermediaries that are in custodial possession of the company's shares,*
- 2. the shareholders and intermediaries who have requested the communication, and*
- 3. the shareholder associations that have requested the communication and have exercised voting rights in the most recent shareholders' meeting.*

*The date on which the notice is communicated shall not be included in determining compliance with the aforementioned deadline period. If the agenda requires an amendment pursuant to § 122 (2), then with respect to publicly listed companies, such amended agenda must be communicated. Such communication must note the prospect that the voting right could be exercised by an authorized agent (proxy) or a shareholder's association. For publicly listed companies, details about membership on other legally mandated supervisory boards must be added to any nomination of supervisory board members; details about their membership on comparable domestic and foreign governing bodies of enterprises should be added.*

- (2) The management board of a company that has issued registered shares shall provide the same notice to persons entered in the share register at the beginning of the 21st day preceding the shareholders' meeting, as well as to shareholders and intermediaries who requested the communication and to shareholder associations that requested communication or that exercised voting rights at the most recent shareholders' meeting.*
- (3) Each member of the supervisory board can request that the management board send the same communications to such member.*
- (4) The resolutions adopted at the shareholders' meeting shall be communicated to each member of the supervisory board and each shareholder upon request.*
- (5) The requirements of Commission Implementing Regulation (EU) 2018/1212 shall apply to the substance and format of the minimum information content of the notices communicated pursuant to subsection 1 s. 1 and subsection 2. § 67a (2), s. 1 applies mutatis mutandis to subsections (1) and (2). Intermediaries that hold shares of a listed company in a custodial capacity shall forward and transmit the information pursuant to subsections (1) and (2) in accordance with §§ 67a and 67b, unless the intermediary is aware that the shareholder has received such information from another source. The same shall apply to unlisted companies, subject to the proviso that the provisions of Implementing Regulation (EU) 2018/1212 are inapplicable.*

*§ 1 COVID-19 Act (as amended pursuant to the Amendment Act)*

*- Stock Corporations; Partnerships Limited by Shares;  
European Companies (SE);  
Mutual Insurance Associations (Excerpts)*

- (1) ...*
- (2) The management board may decide that the meeting must be held in the form of a virtual shareholders' meeting without requiring shareholders or their authorized representatives to be physically present, provided that*
  - 1. the audio and video broadcast transmission is carried out for the entire shareholders' meeting*
  - 2. provision is made for shareholders to exercise their voting right by means of electronic communication (absentee voting or electronic participation) and to grant a proxy,*
  - 3. shareholders are afforded an opportunity to pose questions via electronic communication,*
  - 4. shareholders who exercised their voting rights in accordance with no. 2 are afforded the option of objecting to a resolution adopted by the shareholders' meeting in derogation of § 245 no. 1 of the Stock Corporation Act while not having to be physically present at the shareholders' meeting.*

*The management board decides how to answer questions at its dutiful, free discretion; it can also stipulate that questions must be submitted by electronic communication no later than one day before the meeting. Any motions or nominations by shareholders, which must be rendered accessible in accordance with § 126 or § 127 of the Stock Corporation Act, will be deemed to have been made at the meeting, if the shareholder who made the motion or nomination is duly legitimized and registered for the shareholders' meeting.*

*(3) –(9) ...*

### **3. Shareholder Right to Pose Questions**

Duly registered shareholders and their proxies (except for proxies of the Company) have a right to pose questions by way of electronic communication pursuant to § 1 (2) s. 1, no. 3 of the COVID-19 Act in combination with Art. 11 (1) no. 1) a) of the Amendment Act. Questions may be submitted on or before 12 midnight (24.00) (CEST) on May 10, 2021 exclusively via electronic means either through the shareholder portal at [www.softwareag.com/hauptversammlung](http://www.softwareag.com/hauptversammlung) or by email sent to [hauptversammlung@softwareag.com](mailto:hauptversammlung@softwareag.com).

Duly registered shareholders may use their access data, which were sent to them with their meeting invitation, to submit questions electronically through the shareholder portal. Proxies of duly registered shareholders shall also use the received access data to submit questions via the shareholder portal on [www.softwareag.com/hauptversammlung](http://www.softwareag.com/hauptversammlung).

Under sentence 2 of § 1 (2) of the COVID-19 Act in combination with Art. 11 (1) no. 1) b) of the Amendment Act, the management board decides how to answer questions at its dutiful, free discretion. In doing so, it may combine questions.

The provision of the COVID-19 Act, on which this shareholder right is based, in combination with Art. 11 (1) no. 1) b) of the Amendment Act, is set forth as follows:

*§ 1 COVID-19 Act (as amended pursuant to the Amendment Act)*

*- Stock Corporations; Partnerships limited by shares;*

*European Companies (SE);*

*Mutual Insurance Associations (Excerpt)*

*(1) [...]*

*(2) The management board may decide that the meeting must be held in the form of a virtual shareholders' meeting without requiring shareholders or their authorized representatives to be physically present, provided that*

- 1. the audio and video broadcast transmission is carried out for the entire shareholders' meeting,*
- 2. provision is made for shareholders to exercise their voting right by means of electronic communication (absentee voting or electronic participation) and to grant a proxy,*
- 3. shareholders are afforded an opportunity to pose questions via electronic communication,*

4. *shareholders who exercised their voting rights in accordance with no. 2 are afforded the option of objecting to a resolution adopted by the shareholders' meeting in derogation of § 245 no. 1 of the Stock Corporation Act while not having to be physically present at the shareholders' meeting.*

*The management board decides how to answer questions at its dutiful, free discretion; it can also stipulate that questions must be submitted by electronic communication no later than one day before the meeting. Any motions or nominations by shareholders, which must be rendered accessible in accordance with § 126 or § 127 of the Stock Corporation Act, will be deemed to have been made at the meeting, if the shareholder who made the motion or nomination is duly legitimized and registered for the shareholders' meeting.*

*(3)-(9) [...]*

#### **4. Opportunity to object to resolutions**

Without being physically present at the Shareholders' Meeting and in deviation of § 245 no. 1 AktG, the duly registered Shareholders, who have cast their vote through absentee ballots or through proxies, may pursuant to § 1 (2) s. 1, no. 4 of the COVID-19 Act in combination with Art. 11 (1) no. 1) b) of the Amendment Act – either in person or through proxies and using the access data – lodge objections (for entry in the meeting minutes) during the virtual Shareholders' Meeting via the shareholder portal at [www.softwareag.com/hauptversammlung](http://www.softwareag.com/hauptversammlung) to resolutions that are adopted at the virtual Shareholders' Meeting.

The provision of the COVID-19 Act, on which this shareholder right is based, in combination with Art. 11 (1) no. 1) b) of the Amendment Act, is set forth as follows:

*§ 1 COVID-19 Act (as amended pursuant to the Amendment Act)  
- Stock Corporations; Partnerships limited by shares;  
European Companies (SE);  
Mutual Insurance Associations (Excerpt)*

*(1) [...]*

*(2) The management board may decide that the meeting must be held in the form of a virtual shareholders' meeting without requiring shareholders or their authorized representatives to be physically present, provided that*

1. *the audio and video broadcast transmission is carried out for the entire shareholders' meeting,*
2. *provision is made for shareholders to exercise their voting right by means of electronic communication (absentee voting or electronic participation) and to grant a proxy,*
3. *shareholders are afforded an opportunity to pose questions via electronic communication,*
4. *shareholders who exercised their voting rights in accordance with no. 2 are afforded the option of objecting to a resolution adopted by the shareholders' meeting in derogation of § 245 no. 1 of the Stock Corporation Act while not having to be physically present at the shareholders' meeting.*

*The management board decides how to answer questions at its dutiful, free discretion; it can also stipulate that questions must be submitted by electronic communication no later than one day before the meeting. Any motions or nominations by shareholders, which must be rendered accessible in accordance with § 126 or § 127 of the Stock Corporation Act, will be deemed to have been made at the meeting, if the shareholder who made the motion or nomination is duly legitimized and registered for the shareholders' meeting.*

*§ 245 no. 1 AktG – Standing to Object (Excerpt)*

*The following persons will have standing to institute an objection:*

- 1. any shareholder who appears at the shareholders' meeting and had already acquired the shares prior to the publication of the agenda and who has his objection to the resolution entered into the minutes;*

*2. - 5. [...]*

*This document is a convenience translation of the German original. In the event of any conflict or inconsistency between the English and the German versions and for purposes of interpretation, the German original shall prevail.*