

BVI ANALYSIS GUIDELINES FOR SHAREHOLDER MEETINGS 2018

Convenience Translation

The BVI Analysis Guidelines for Shareholder Meetings 2018 (ALHV) give guidance to BVI's members for the independent analysis of proposed resolutions at shareholder meetings of listed companies as well as companies that are not listed on any stock exchange. These Guidelines will enter into effect on 1 January 2018. Whenever critical factors are met, the investment management company should consider rejecting the relevant board proposal when put to the vote.

1. Executive board / supervisory board / board of directors

1.1 Election

The critical factors for electing the members of the executive board, the supervisory board or the board of directors are listed below (insofar as such election falls within the competence of the shareholder meeting):

- Keine umfassende Darlegung der Qualifikation der Kandidaten mit insbesondere
 - career,
 - age,
 - nationality,
 - date of initial appointment,
 - beginning and end of current appointment, and
 - other mandates held, stating whether the relevant companies are listed and / or affiliated.

This information should be published on the internet. The agenda should contain a note to this effect.

- more than
 - a total of three mandates held by any executive member;
 - a total of five mandates held by any non-executive member who does not hold an executive function in any company, or more than a total of three mandates as a supervisory board member who holds an executive function in any company.

The office of a chairperson counts twice; the position for which the candidate is running must be included; any further executive activities in non- group companies are precluded; several mandates within a group count as one single mandate but only if they are clearly identified;

mandates with foreign companies must be taken into account; comparable activities, such as being a member of an advisory council (other than in an honorary capacity), also count as mandates; mandates that are not specified in greater detail will automatically be counted as full mandates; any other full-time activities will also be counted.

- For companies with a monistic organisational structure: chief executive and chairperson are one and the same person.
- Less than half of the shareholder representatives in the supervisory board / board of directors are independent; for example, in the following cases, a member is not deemed to be independent if:
 - the member has been acting in this function for more than ten years;
 - the member is the representative of a shareholder who holds more than 10 per cent of the voting rights;
 - the member sat on the executive board of the company;
 - the member has an additional business relationship with the executive board, the supervisory board or the company.
- Executive directors, particularly the CEO or the CFO, automatically become chairperson of the supervisory board or the board of directors. A director who has successfully held the office of chairperson of the executive board may become a member of the supervisory board, so long as the member complies with the recommendations of the German Corporate Governance Code.
- The members of the committees do not possess the requisite qualifications and/or the majority are not independent directors; this is all the more critical if the chairperson does not possess the requisite qualifications and/or the chairperson is not an independent director.
- No independent member of the supervisory board has expertise in the areas of accounting or auditing.
- Certain shareholders have special rights or rights to appoint shareholder representatives.
- In the event of re-election:
 - insufficient monitoring of remuneration, particularly in the case of rising remuneration for executive directors when corporate results are deteriorating;

- no disclosure of participation in meetings of the supervisory board, the board of directors or the committees, or participation at less than 75 per cent of the meetings, in each case without sufficient grounds.

1.2 Discharge

The critical factors for discharge of the members of the executive board, the supervisory board or the board of directors are listed below:

- Conflicts of interest and lack of independence
 - Inadequate risk controlling and auditing processes
 - Non-compliance with statutory provisions and company or intra-group guidelines (compliance)
 - Incorrect declaration of compliance (*Entsprechenserklärung*)
 - Pending legal proceedings (e.g. contestation of balance sheet, insider dealing, corruption or antitrust breaches)
 - Significant and persisting breaches of generally accepted Social Responsible Investment (SRI) or Environmental Social Governance (ESG) guidelines, including failure to nominate an executive member to be responsible for ESG issues
 - No regular consultation (at least every five years) on the remuneration system for the executive board, or failure to consult in the event of changes
 - The interests of minority shareholders are verifiably impaired
 - More than
 - a total of three mandates held by any executive member;
 - a total of five mandates held by any non-executive member who does not hold an executive function in any company, or more than a total of three mandates as a supervisory board member who holds an executive function in any company.
- The office of a chairperson counts twice; the position for which the candidate is running must be included; any further executive activities in non-group companies are precluded; several mandates within one group count as one single mandate but only if they are clearly identified; mandates with foreign companies must be taken into account; comparable activities, such as being a member of an advisory council (other than in an honorary capacity); mandates that are not specified in greater detail will automatically be counted as full mandates; any other full-time activities will also be counted
- For companies with a monistic organisational structure: chief executive and chairperson are one and the same person.
 - No excess has been stipulated for any financial loss liability insurance policy of supervisory board members.
 - There is no regular age limit for members of the executive board, the supervisory board or the board of directors.
 - No subsequent improvement or statement if approval was granted by less than 75 per cent of the voting rights present at the previous year's shareholder meeting.
 - For executive members:
 - continuously poor results compared to peer companies;
 - non-compliance with material transparency standards (e.g. failure to publish the profiles of executive members)
 - For non-executive members:
 - failure to exercise supervisory duty vis-à-vis executive members;
 - non-compliance with material transparency standards (e.g. failure to permanently publish up-to-date profiles of non-executive members on the website, showing the criteria for presenting qualifications in connection with elections, articles of association and the composition of the committees by stating their members by name);
 - failure to provide comprehensive individualised reporting on the attendance of supervisory board members at supervisory board and committee meetings

1.3 Remuneration

The critical factors for the remuneration of the members of the executive board, the supervisory board or the board of directors are listed below (these factors are also critical for any voting on the remuneration system and discharge as well as any elections to said bodies):

- Overall remuneration, including variable remuneration components, is not capped
- Variable remuneration components are not linked to the longer-term success of the company or to published long-term success factors
- Subsequent adjustment of performance parameters that facilitate the achievement of pre-defined targets
- Performance parameters to determine variable remuneration are solely tied to the share price
- Stock option plans whose redemption does not exceed the contract term
- The variable remuneration component for options on virtual shares (phantom shares) is tied to the dividend
- Lack of transparency, e.g.:
 - The remuneration of executive board and/or supervisory board members is not shown on an individualised basis
 - Insufficient disclosure of objective performance parameters for remuneration
 - Failure to disclose stock option plans
 - Exercise of discretion by a corporate body is unclear from an outside perspective
- No subsequent improvement or statement if the executive board's remuneration system was approved by less than 75 per cent of the voting rights present at the previous year's shareholder meeting
- For executive members:
 - Increasing remuneration, or failure to reduce remuneration appropriately, in the event of deteriorating corporate results
 - Remuneration or severance payments of any kind either not in line with performance or disproportionate; absence of bonus/malus payment system
- Failure to report in the form of the sample tables attached as schedules to the German Corporate Governance Code
- For non-executive members:
 - The variable remuneration component is tied to the dividend.
 - The remuneration is not appropriate relative to comparable companies and, for the most part, is not fixed.

2. Capital measures and repurchase of shares

2.1 Capital increase

The critical factors for resolutions regarding any and all capital increases (including any approved or contingent capital increases) are listed below:

- Initial issue of preference shares.
- subscription rights not tradable at the stock exchange.
- Lack of substantiation and lack of information on the company's long-term strategy with regard to capital measures.
- Ordinary capital increases are not used to increase the company's return opportunities unambiguously and on a long-term basis.
- The amount of the entire remaining reserve capital and its percentage share in the capital stock is not stated in the documents for the shareholder meeting.

The critical factors for anticipatory resolutions (authorised or contingent capital increases) are listed below:

- The proposed capital increase exceeds 40 per cent of the capital stock.
- The proposed capital increase exceeds 20 per cent of the capital stock; in addition, subscription rights are excluded. In this context, all subscription right exclusions are taken into account (except the compensation of fractional amounts). Any and all exclusions of subscription rights must be viewed on a cumulative basis; any anticipatory resolutions provided for in the articles of association must be taken into account.

2.2 Repurchase of shares

The critical factors for the repurchase of shares are listed below:

- The company making the proposal is in financial difficulties.
- Proposals for the repurchase of shares without substantiation and information on the company's long-term strategy with regard to capital measures.
- The rules governing the repurchase of shares are not the same for all investors. Individual shareholders are advantaged.
- The price at which shares are repurchased exceeds the relevant market price by 10 per cent.
- The repurchase volume exceeds 10 per cent (anticipatory resolution) or the authorisation period is longer than five years.
- Authorisation to re-issue repurchased preference shares.

3. Profit appropriation

The critical factors for profit appropriation are listed below:

- Compared with industry peers, the dividend is inappropriate and not in line with the company's financial results.
- Except in justified exceptional cases, the dividend is paid out of the company's assets.

4. Auditors

The critical factors for the appointment of the auditing firm are listed below:

4.1 Audit of financial statements

- Doubts as to the accuracy of the audit of the financial statements
- Pending legal proceedings against the auditing firm or the responsible auditor

4.2 Independence

- The independence of the auditing firm or the responsible auditor in connection with preparing and presenting the financial statements is not ensured on a permanent basis. Advisory activities are not identified to a sufficient degree (for example by way of a negative declaration) to prove independence.
- The responsible auditor is not expressly identified in the annual report. Any indirect identification by way of the audit opinion is not sufficient.
- The responsible auditor has been retained for more than five years. Information regarding the period of retention of the relevant auditing firm and the responsible auditor must be disclosed in the annual report or permanently on the company's website.

4.3 Remuneration

- The remuneration has not been disclosed and/or is not appropriate.
- The remuneration for the audit of the annual financial statements has not been disclosed separately from the other fees, the advisory fees (so-called non-audit fees) in particular.
- The non-audit fees repeatedly or disproportionately exceed the audit fees, without plausible justification.

5. Mergers and acquisitions

The critical factors are listed below:

- The offered purchase price is not in line with the sustainable corporate value; lack of sophisticated corporate governance.
- Shareholder approval by way of a shareholder meeting is not sought for transactions that exceed 30 per cent of the stock market value of the acquiring company. The premium should relate to the three-month average stock market price.
- Measures to prevent acquisitions (so-called poison pills).

6. Shareholder interests

The critical factors are listed below:

- non-compliance with the "one share, one vote" principle;
- multiple voting rights, voting right restrictions (voting caps) and special rights (e.g. rights to appoint shareholder representatives, loyalty dividends or loyalty shares for long-term shareholders);
- amendments to articles of association that impair shareholder rights.

7. Corporate Governance Code and best practice

The following standards shall apply:

- The standards for the analysis of the critical points in the proposals for shareholder meetings are always set out in the country-specific codes; in the case of issuers listed on a German stock exchange, the applicable requirements are contained in the German Corporate Governance Code. In addition, the material elements of recognised principles (e.g. OECD, ICGN) must be taken into account when examining critical points.
- Any proposed amendments to the articles of association must be substantiated.
- Any corporate governance situations not expressly mentioned in the preceding sections must be examined on the basis of best practices that are customary in the market.
- The development of best practices for good corporate governance and SRI/ESG issues must be promoted.
- The company's diversity policy must be formulated and published. Periodic reports must be submitted on the progress of implementation.

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