

## **Annual General Meeting season 2020: Shareholder rights still not sufficiently re- spected – BVI calls for improvement in 2021**

Frankfurt – 30 September 2020. There were fundamental restrictions on shareholders' rights in the 2020 annual general meeting (AGM) season. Most companies held their AGMs online. A dialogue between owners and company management was virtually possible. Shareholders were only able to ask questions in the run-up to the AGM, but had no right to information or to submit requests. During the AGM, they were in most cases unable to put any questions spontaneously to the management. "The AGM as the supreme control body and mouthpiece of the shareholders has suffered massively due to the COVID 19 emergency legislation. Virtual AGMs in this form can therefore only be of a temporary nature," says Thomas Richter, Chief Executive Officer of the German fund association BVI. "Should the emergency legislation be extended, the rules for the 2021 AGM season must be improved in order to restore shareholder rights.

In order to have security in their forward planning, many listed companies are seeking an extension of the emergency legislation until the end of 2021. They want to have online formats approved for their AGMs and have applied for amendments to their articles of association. In most cases, however, significant restrictions on shareholders' rights remain in place.

This is unfortunate, because the upcoming 2021 AGM season will be enormously important from the shareholders' perspective. In accordance with the rules for implementing the EU Shareholder Rights Directive in ARUG II, they will have for the first time the opportunity to vote on the manner of remuneration for the Board of Management and Supervisory Board. The voting result is initially not binding. However, in conjunction with a preceding general debate, it will operate to send a clear signal of approval or disapproval from shareholders. They must therefore also have the possibility to exercise their right to speak in the virtual general meeting.

### **The main criticisms in 2020:**

The main point of criticism (2019 figures in brackets) is still **the lack of regular shareholder voting on the remuneration system for the Management Board**. This is the result of the analysis of the 2020 annual general meeting season by the shareholder service provider IVOX Glass Lewis based on the analysis guidelines (ALHV) of the BVI. According to the ALHV, the shareholders should vote on this at least every four years at the Annual General Meeting, and only then can the Management Board and the Supervisory Board be given a discharge. In the 2020 season, only 58 companies failed to meet this requirement. In 2019, the figure was significantly higher at 70. In total, of the 160 companies examined 58 (82) of the Management Boards and 89 (102) of the Supervisory Boards should not have been given a discharge.

In **elections to the Supervisory Board**, there was a slight year-on-year improvement in the principles of good corporate governance. The number of objections regarding the number of mandates, age limits and independence, for example, fell from 60 to 51. This positive development is particularly noticeable among SDAX companies.

There was a positive development in the number of **independent supervisory board members**. The ALHV requires that half of the shareholder representatives be independent. A candidate who has already served on the supervisory board for 10 years or a candidate who is nominated by a shareholder with a voting interest of more than 10 percent is not considered independent. Only 20, instead of 24 companies in the previous year, were unable to show a sufficient number of independent candidates.

There was little change in the ALHV's demand to limit the **number of supervisory board mandates** to five. This requirement was met by 42 companies. There was also little improvement in respect of an age limit for members of the Management and Supervisory Boards: 34 (36) companies do not provide for this for their Management or Supervisory Board members or do not publish details. In 26 companies, this applies to the Supervisory Board and in 30 cases to the Management Board.

<b>BVI Analysis Guidelines: cases judged as critical</b> (based on data from 160 companies)			
Items on agenda		2020	2019
	<b>Total</b>	<b>58</b>	<b>82</b>
<b>Discharge of management board members</b>	DAX (30)	4	6
	MDAX (60)	20	29
	SDAX (70)	34	47
	<b>Total</b>	<b>89</b>	<b>102</b>
<b>Discharge of supervisory board members</b>	DAX	9	11
	MDAX	34	35
	SDAX	46	56
	<b>Total</b>	<b>51</b>	<b>60</b>
<b>Elections of Supervisory board members</b>	DAX	10	14
	MDAX	28	21
	SDAX	13	25
	<b>Total</b>	<b>51</b>	<b>60</b>

**Explanatory example** on the information on 'Discharge of supervisory board members': according to the BVI Analysis Guidelines for Shareholder Meetings, in 89 of the 160 companies analyzed a discharge could have been refused in this round of shareholder meetings.

**About the BVI Analysis Guidelines for Shareholder Meetings**

The BVI Analysis Guidelines for Shareholder Meetings (ALHV) represent the key points of good corporate governance from the viewpoint of BVI. They do not set mandatory requirements for investment companies' voting behaviour at general meetings of shareholders, but they have become a minimum standard in the sector. Members of the BVI hold German companies' equities valued at EUR 159 billion in their investment funds. The investment companies act as the trustees of the investors in their dealings with these companies, and exercise the shareholders' rights for them. They are guided by recognised standards for the sector such as the BVI Rules of Conduct and the EFAMA Stewardship Code.

The BVI examines with the support of the shareholder service provider IVOX Glass Lewis annually the past general meeting season for compliance with the ALHV. Specifically, the 160 companies of the DAX family (DAX, MDAX and SDAX) are audited.