

BVI ANALYSIS GUIDELINES FOR GENERAL MEETINGS OF SHAREHOLDERS 2023

The BVI Analysis Guidelines for General Meetings of Shareholders – 2023 give guidance to BVI's members for the independent analysis of proposed resolutions at general meetings of shareholders of listed and unlisted companies. They are applicable from 1 January 2023. Whenever critical factors are met, the investment management company should consider rejecting the relevant board proposal when put to the vote.

1. Executive/Management board / supervisory board / board of directors

Responsible management and supervision of the company aimed at long-term value creation is in the interest of its shareholders. The composition, activities and remuneration of the executive bodies should reflect this. Appropriate transparency and open communication should make this clear to shareholders.

1.1 Election

The critical factors for electing the members of the executive and non-executive supervisory board or board of directors are listed below:

- no comprehensive description of the qualification of the candidates on the basis of meaningful curriculum vitae, in particular:
 - career (including current main professional activity),
 - age,
 - nationality,
 - date of initial appointment,
 - beginning and end of current appointment,
 - other board positions held, stating whether the relevant companies are listed and/or affiliated.

The information should be published permanently and updated on the internet;

- missing clear allocation of the required qualifications, as indicated in the profile of competencies of the supervisory board, to the individual candidates in the form of a qualification matrix;
- lack of diversity, especially with regard to gender (e.g. no member of the under-represented gender on supervisory boards with four or fewer members, or less than 30 percent representation where there are more than four members), age or qualifications;

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

The office of a chairperson counts twice; the position for which the candidates are running must be included in the count; any further executive activities in non-group companies are prohibited; several board positions within a group count as one single position but only if they are clearly identified; positions on the boards of foreign companies must be taken into account; comparable activities, such as being a member of a board of directors or of an advisory council (other than in an honorary capacity), also count as board positions; board positions that are not specified in greater detail will automatically be counted as full board positions; any other full-time activities must be clearly identified;

- for companies with a one-tier organisational structure: chief executive and chairperson are one and the same person;
- fewer than half of the shareholder representatives in the supervisory board/entire board are independent; i.e. in this case, the election or reelection of any candidates that are not independent is deemed to be critical;
- members appointed to committees are not sufficiently qualified and the majority are not independent;
- the chair of the audit committee is not independent;
- the chair of the remuneration committee is not independent;
- no independent member of the supervisory board has expertise in the areas of accounting or auditing;
- for instance, in the following cases a member is deemed not to be independent:
 - the member has been on the board for more than ten years,
 - the member is the representative of a shareholder who holds more than 10 percent of the voting rights,

- the member was formerly on the executive/management board of the company, regardless of when the member resigned,
- the member has an additional relationship with the executive/management board, the supervisory board or the company,
- the member is delegated, i.e. certain shareholders have special rights, or rights to appoint representatives;
- a member of the executive/management board moves to the supervisory board as its chairperson, even after a cooling-off period; a longstanding successful member of the executive/management board may become an ordinary member of the supervisory board after a cooling-off period of two years or upon the proposal of shareholders with more than 25 percent of the voting rights;
- block voting;
- in the event of re-election:
 - in the case of members of the remuneration committee, poor response or no response to significant shareholder criticism of the remuneration system (e.g. acceptance rate is less than 75 percent),
 - no individual disclosure of participation in meetings of the supervisory board, i.e. of the entire board and the committees,
 - participation in less than 75 percent of the meetings, in each case without sufficient grounds,
 - a member has been in a position for more than 15 years,
 - the supervisory board chair and the chair of the audit committee are held by the same person.
- non-compliance with statutory provisions and/or 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;
- zero percent target for appointments of women to the relevant board or, in the case of the executive/management board, also in the two management levels below the executive/management board;
- failure to meet the self-defined corporate diversity goals;
- failure to nominate an executive member to be responsible for ESG issues;
- significant and sustained breaches of generally accepted socially responsible investment (SRI) or environmental, social and governance (ESG) guidelines;
- missing sustainability reporting;
- no vote on the remuneration system for the executive/management board and the supervisory board in the event of changes or at least every four years;
- the interests of minority shareholders can be shown to be adversely affected;
- in the event of virtual meetings of shareholders in accordance with section 118a of the German Stock Exchange Act (AktG):
 - undue restriction of the right of each shareholder to ask questions in advance of the shareholders' meeting,
 - definition of a maximum number of permitted questions for all shareholders in advance of the shareholders' meeting,
 - restriction of the right to ask questions and the right to information in the meeting of shareholders to follow-up questions (section 131 paragraph 1d of the German Stock Exchange Act - AktG) and questions on new issues (section 131 paragraph 1e of the above Act);
- no participation of individual members of management/executive boards and/or supervisory board members during the entire period of the meeting of shareholders;

1.2 Discharge

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

- no appropriate measures to identify, prevent, manage and/or disclose conflicts of interest;
- inadequate internal control system and/or risk management system and/or insufficient description of adequacy and effectiveness;

- for companies with a one-tier organisational structure: chief executive and chairperson are one and the same person;
- no rectification or comment on resolutions of the general meeting of shareholders on remuneration (system and report) and discharge that are approved by less than 75 percent of the voting rights represented at the general meeting of shareholders in the previous year;
- for executive members:
 - continuously poor results compared to peer companies,
 - non-compliance with key 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,
 - a company has not set any limits to terms of office, or does not disclose them,
 - the supervisory board chair and the chair of the audit committee are held by the same person,
 - fewer than half of the shareholder representatives on the supervisory board/entire board and major committees are independent,
 - the chair of the audit committee is not independent,
 - failure to state the names and specific qualifications of financial experts,
 - lack of expertise of the supervisory board in relation to sustainability issues and/or failure to disclose sustainability expertise in the form of a qualification matrix,
 - no ESG targets as part of the remuneration of the executive/management board,
 - no fixed aged limit has been set and published for members of the executive/management board, supervisory board and/or board of directors,
 - non-compliance with key 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 names of the members of the committees,

- failure to provide clear reporting on the attendance of individual supervisory board members at supervisory board and committee meetings.

1.3 Remuneration

1.3.1 Remuneration system for the executive/management board

The following should be considered as critical factors for the vote on the remuneration system for the executive/management board and the executive members:

- in determining the remuneration system and the specific total remuneration, the company has deviated from the relevant recommendations of the German Corporate Governance Code of 28 April 2022 (G.1 – G.5);
- the fixed remuneration component exceeds the specified short-term and long-term variable remuneration;
- the short-term remuneration component, in particular the annual variable remuneration component, exceeds the long-term variable remuneration component;
- the performance parameters for determining the variable remuneration:
 - are not determined for each member of the executive/management board for the coming financial year and are not aligned to strategic targets,
 - are linked to the share price only, particularly in the case of share options and other share-based remuneration components,
 - do not indicate any emphasis on sustainability; in particular, no explicit ESG factors are considered in the short-term or long-term achievement of targets,
 - do not differ in the criteria chosen for STI and LTI,
 - do not include at least two criteria for STI and LTI respectively;
- subsequent adjustment of performance parameters that facilitate the achievement of pre-defined targets;

- the amount of the variable component of the remuneration where there are share-based components is linked to the dividend amount, except in the case of a relative total shareholder return (TSR) component;
- no clearly defined and comprehensible bonus or negative incentive components;
- no claw-back mechanism for remuneration components paid out;
- option to grant special bonuses over and above the remuneration obligations assumed;
- no share ownership guidelines;
- share option plans are set up jointly for members of the executive/management board and staff members;
- share option plans exceed a dilution level of 10 percent;
- discretion can be exercised, e.g. discretionary factors in the annual bonus which exceed 20 percent addition or deduction, or are not included in the maximum remuneration;
- vote on the remuneration systems in relation to the two executive bodies in a single agenda item;
- lack of transparency, e.g.:
 - failure to disclose clearly and intelligibly all performance parameters for remuneration,
 - in the disclosure of share option programmes;
- increasing remuneration, or failure to reduce remuneration appropriately, in the event of deteriorating company results;
- remuneration or severance payments of any kind either not in line with performance or disproportionate; absence of bonus/negative incentive system.

- they are linked to the dividend or comparable short-term parameters,
- they are not geared to the long-term development of the company.

1.3.3 Remuneration report

The following should be considered critical factors for the vote on the remuneration report:

- the remuneration report is based on a remuneration system that breaches the previous points under paragraphs 1.3.1 and/or 1.3.2;
- the remuneration report does not make any statements of compliance with the relevant remuneration system;
- the remuneration report does not contain all relevant information in relation to the remuneration paid and owed to each individual current or former member of the executive/management board and supervisory board of the company in the previous financial year;
- the remuneration report does not contain all information on fixed and variable remuneration components, in particular transparent details of the relevant target definition and on the degree to which the targets themselves have been met;
- the remuneration report does not contain any comparative statement of the annual change in the remuneration, the trend in the company's earnings or the average remuneration of employees observed in the last five financial years;
- the remuneration report does not contain any full details of share option programmes, in particular on tranches from which share options are exercised during the period under review and on future programmes;
- the remuneration of the relevant executive bodies is not disclosed individually in the remuneration report;
- a disclosure, e.g. in the form of the sample tables attached to the German Corporate Governance Code in the version dated 7 February 2017, is desirable.

1.3.2 Supervisory board remuneration system

The following should be considered critical factors for votes on the remuneration system for the supervisory board, or non-executive members:

- the remuneration is not in line with that of comparable companies;
- the remuneration is not predominantly fixed;
- where there are variable remuneration components:

2. Corporate actions and repurchase of shares

Corporate actions and share buybacks are in the interests of shareholders if they enhance the long-term prospects of the company. Shareholders can only judge this if companies explain their financing strategy. Legitimate interests in protecting confidential business information must be taken into account.

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:

- issuance of preference shares;
- issuance of profit participation rights;
- subscription rights not tradeable on the stock exchange;
- no reasons or information provided on the long-term strategy of the company with regard to corporate actions;
- ordinary capital increases are not clearly aimed at increasing the company's earnings potential on a long-term basis;
- the amount of the total remaining reserve capital and the percentage of the capital stock it represents is not stated in the documents for the general meeting of shareholders.

The following should be considered as critical factors for anticipatory resolutions on approved and conditional capital increases:

- the proposed capital increase exceeds 20 percent of the capital stock;
- the total of anticipatory resolutions cumulatively exceed 40 percent of the capital stock;
- the proposed capital increase exceeds 10 percent of the capital stock; in addition, subscription rights are excluded; in this context, all disapplications of subscription rights are taken into account (except the elimination of fractional amounts); disapplication of subscription rights must be viewed on a cumulative basis, taking into account any anticipatory resolutions provided for in the articles of association;
- limit on disapplication of subscription rights is only governed by a self-commitment, which is not recorded in the articles of association.

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 providing reasons and information on the company's long-term strategy with regard to corporate actions;
- the rules governing the repurchase of shares are not the same for all investors, and there are advantages for individual shareholders;
- the price at which shares are to be repurchased exceeds the relevant market price by 10 percent;
- the repurchase volume exceeds 10 percent for anticipatory resolutions;
- the authorisation period is longer than two years, with the exception of share repurchase programmes intended solely for remuneration purposes;
- authorisation to issue repurchased preference shares.

3. Profit appropriation

The dividend policy should be in line with the long-term corporate strategy and appropriate.

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 (in general 20-100 percent based on earnings per share);
- except in exceptional cases and with proper justification, the dividend is paid out of the company's assets;
- where the use of bonus shares (scrip dividends) is authorised, no option to receive a cash dividend is provided.

4. Auditors

The annual financial statements should give a true and fair picture of the company's assets, financial position and income position. The auditor and the audit company must therefore be independent and impartial, including with regard to remuneration.

The critical factors for the appointment of the audit firm are listed below.

4.1 Audit of financial statements

- Doubts as to the accuracy of the audit of the financial statements;
- Doubts as to the quality assurance measures applied to audit procedures;
- Doubts or lack of transparency with regard to selecting and dealing with the focuses of the audit;
- Pending legal proceedings against the audit firm or the auditor responsible for the company's audit.

4.2 Independence

- The independence of the audit 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 auditor responsible for the company's audit is explicitly not identified by name in the annual report. Indirect identification by way of the audit opinion is not sufficient;
- The auditor responsible for the company's audit has been retained for more than five years. Information regarding the period of retention of the relevant auditing firm and the auditor must be disclosed in advance 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, particularly the advisory fees (non-audit fees);
- The advisory fees repeatedly or disproportionately exceed the audit fees, without plausible justification.

5. Mergers and acquisitions

Mergers and acquisitions are in the shareholders' interest if they are in line with the company's long-term strategy. Shareholders can only judge this if companies provide background information. Legitimate interests in protecting confidential business information must be taken into account.

The critical factors are listed below:

- the purchase price offered is not in line with the long-term value of the company; lack of sophisticated corporate governance;
- shareholders' approval by way of a general meeting of shareholders is not sought for transactions that exceed 30 percent 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 (referred to as 'poison pills').

6. Shareholder interests

The rights of shareholders should be protected in compliance with the principle of equal treatment of all shareholders. Special rights and measures which impair shareholders' rights are not in the interest of shareholders.

The critical factors are listed below:

- breach of 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;
- amendments to the articles of association to introduce virtual general meetings of shareholders, if
 - the amendment to the articles of association is to be limited to a period of more than two years, or
 - no written statement is included in the justification for the proposed amendment to the articles of association as to whether and under what conditions the

management/executive board's authorisation is to be exercised in the future, or

- no written statement is given in relation to the precise arrangements regarding shareholders' rights at future virtual general meetings of shareholders, guaranteeing, in particular, that the right of each shareholder to ask questions in advance of the shareholders' meeting is not unduly restricted and that no total maximum number of permitted questions is determined in advance, and that the right to ask questions and the right to information in the general meeting of shareholders is not restricted to follow-up questions (Section 131, paragraph 1d of the German Stock Corporation Act (AktG)) and questions on new issues (Section 131, paragraph 1e of the above Act) (see section 1.2);
- not providing documents, or only providing part of such documents, on the company's website from the time of convention;
- no archive of at least five years with all documents related to general meetings of shareholders, i.e. the removal of documents after the general meeting of shareholders;
- no timely publication of the sample voting card on the website along with the agenda.

7. Corporate governance code and best practice

Responsible management in compliance with nationally and internationally recognized corporate governance standards is in the shareholders' interests.

The following standards apply:

- the analysis of the critical points in the proposals for general meetings of shareholders is always based on the country-specific codes; in the case of companies 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, UN Global Compact) must be taken into account when examining critical points and be applied in relation to the relevant agenda items such as discharge, votes and shareholder motions;
- reasons must be given for any proposed amendments to the articles of association;

- any motions lodged after the deadline, which consequently cannot be analysed in depth (ad hoc applications) should be seen as a critical factor;
- any corporate governance issues not explicitly mentioned in the preceding sections must be examined on the basis of best practices for the industry; this can also include other motions, e.g. for a special audit;
- the development of best practices for good corporate governance and SRI/ESG issues must be promoted; non-financial reporting should also be based on the EU guidelines on reporting climate-related information;
- the company's diversity policy must be formulated and published; periodic reports must be submitted on the progress of implementation.

8. Reports and motions

8.1 Approval of reports

The following should be seen as critical factors:

- pending legal proceedings (contestation of balance sheet, other illegal activities);
- insufficient disclosure;
- the company does not report according to internationally recognised standards (in particular: *Global Reporting Initiative (GRI)*; Task Force on Climate-related Financial Disclosures (TCFD); Sustainability Accounting Standards Board (SASB)), or does not publish key information by an internationally recognised method (website, annual report);
- there are concerns with regard to the audit methods;
- the audit opinion is not unqualified.

8.2 Motions for additions and special audits

The following should be seen as critical factors:

- costs disproportionate to benefits;
- restriction of shareholders' rights or discrimination against shareholders, particularly minority shareholders;
- motion leads to deterioration in corporate governance;
- failure to state reasons, or reasons stated are incorrect.

The German version of this document is the governing version and shall prevail whenever there is any discrepancy between the German version and the English version. The Association cannot be held responsible for any misunderstanding or misinterpretation arising from the convenience translation in English language.

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