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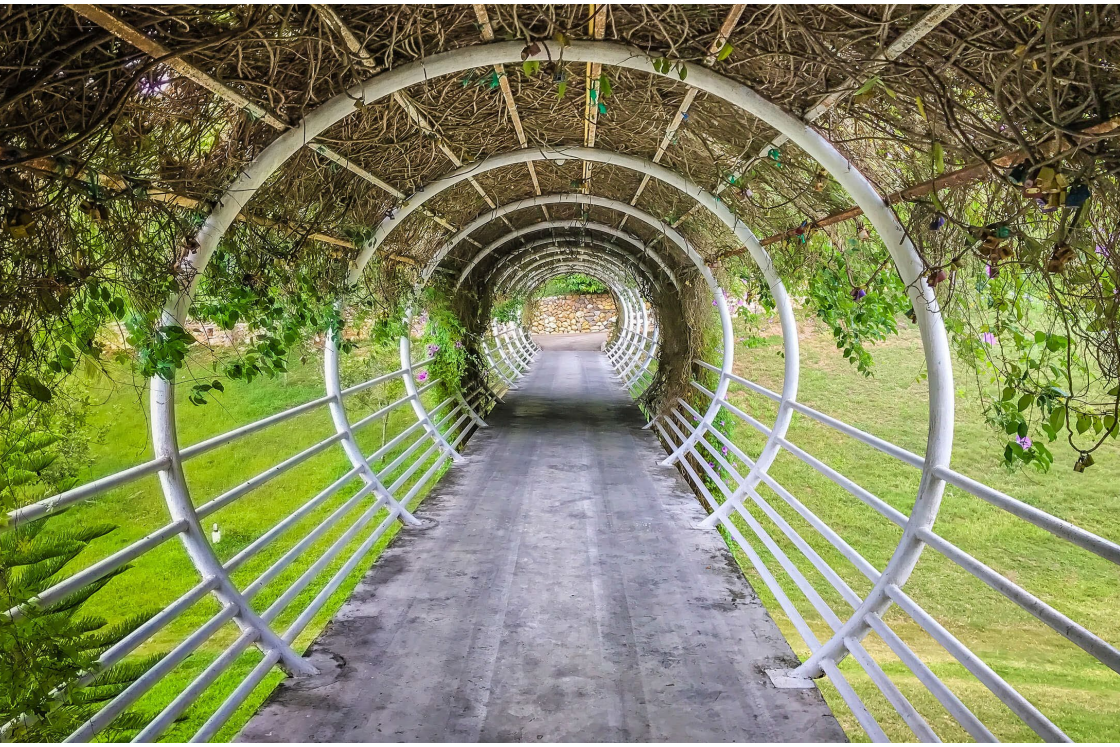

2025 PROXY VOTING GUIDELINES

CORPORATE GOVERNANCE PRINCIPLES

24th edition

The Ethos Foundation is composed of more than 250 tax-exempt Swiss pension funds and institutions. Founded in 1997, its aim is to promote socially responsible investment and to foster a stable and prosperous socio-economic environment.

Signatory of:

PRI Principles for Responsible Investment

Ethos Services provides advisory services in the field of socially responsible investments. Ethos Services offers socially responsible investments funds, analyses of shareholders' general meetings with voting recommendations, a program of dialogue with companies as well as environmental, social and corporate governance ratings and analyses. Ethos Services is owned by the Ethos Foundation and several members of the Foundation.

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INTRODUCTION

Preamble

Institutional investors are entrusted with managing assets on behalf of a large number of beneficiaries. It is therefore their fiduciary duty to protect and enhance the long-term interests of the end-owners they represent. Ethos considers active share ownership as a means of obtaining higher long-term returns and contributing to the efficient functioning of the financial markets. Voting at shareholder meetings and engaging in sustained dialogue with companies are two basic elements of active ownership. This document sets out Ethos' proxy voting guidelines and corporate governance principles. These are the references that under-pin both Ethos' dialogue with investee companies and the vote at shareowners' general meetings.

Ethos considers that best practice in corporate governance is indispensable for the implementation of a strategy based on corporate social responsibility, as well as to ensure adequate mechanisms of control. Ethos' voting guidelines and corporate governance principles are based first and foremost on the main codes of best practice in corporate governance. Adhesion to corporate governance best practice is a fundamental principle of corporate social responsibility and is necessary to ensure adequate control mechanisms and limit risk for investors. The voting guidelines and corporate governance principles are also based on Ethos' Charter, which is grounded in the concept of sustainable development where corporate decisions are shaped not only by financial, but also by social, environmental, and corporate governance considerations. In this respect, Ethos is convinced that loyalty in the relations between a company and its various stakeholders substantially contributes to the company's long-term sustainability and its future value. For this reason, Ethos' approach is resolutely inspired by a long-term vision of a company.

Ethos' proxy voting guidelines and corporate governance principles serve a dual purpose. First, they set out the position on essential issues of corporate governance of an institutional investor committed to sustain-able development and responsible investment. Secondly, they allow a systematic and consistent exercise of shareowner voting rights aiming at promoting the long-term interests of a company's shareowners and other stakeholders.

The proxy voting guidelines provide detailed explanations of Ethos' voting recommendations on the different issues submitted to the vote at general meetings. These recommendations are constructive in spirit since shareowners should be able to trust the board of directors and ratify its proposals. Nevertheless, where careful scrutiny leads to the conclusion that the board's proposals are not in line with the long-term interests of the shareowners and other stakeholders, an abstain or oppose vote might be appropriate.

Ethos' analysis is based on the 'substance over form' principle. Thus, when proposals put to the vote are contrary to Ethos' spirit, as laid down in its Charter, Ethos will oppose them despite an apparent adherence to form. Considering the diversity and complexity of some situations, Ethos reserves the right, should the need arise, to adopt a position not explicitly foreseen in its guidelines. In such cases, a clear and documented explanation of the rationale underlying its position is provided.

This document is divided into ten sections covering the main issues in the field of corporate governance. The principles establish high standards regarding the attitude expected from companies toward their shareholders and other stakeholders. The voting guidelines consider the current state of corporate governance in Switzerland and abroad. Given that corporate governance standards, the legal and regulatory framework, as well as awareness of environmental and social challenges vary considerably from country to country, Ethos can be led to adapt its voting positions to the particularities and realities of each market.

The voting guidelines and principles of corporate governance are revised annually.

2025 edition

The 2025 edition has been reviewed and adapted to the ongoing developments in legislation and best practice in the field of corporate governance, both in Switzerland and internationally.

Ethos has notably updated its guidelines to consider recent developments in the field of votes on corporate sustainability reports. From the 2024 general meetings onwards, companies listed on the Swiss stock exchange with more than 500 employees will be required to put their sustainability report to a mandatory vote. This report addresses environmental matters, in particular CO2 targets, as well as social and employee-related issues, respect for human rights and combating corruption. The obligation to publish a climate report will come into force for Swiss companies from the general meetings 2025 onwards. In addition to the mandatory vote on the sustainability report, companies may propose a specific vote on the climate report (Say on climate).

This 2025 edition also reinforces Ethos' expectations with regard to the maximum number of mandates allowed for the members of the board of directors (see Appendix 2) and female representation on boards of directors (see Appendix 3).

As far as the situation in Switzerland is concerned, the current edition notably takes into account:

- the Swiss Code of Best Practice for Corporate Governance published by economiesuisse in February 2023
- the Swiss Stewardship Code (October 2023)
- the Corporate Governance Directive (CGD) of the SIX Swiss Exchange (January 2023)
- the Swiss Code of Obligations (CO)

2025 PROXY VOTING GUIDELINES

1. Annual Report, Accounts, Dividend and Discharge

Proposals that do not fall under a specific point mentioned below are to be assessed in light of Ethos' Principles of corporate governance.

1.1 ANNUAL REPORT AND ACCOUNTS

VOTE FOR the board of directors' proposal, however:

OPPOSE if one of the following conditions applies:

a. The information presented to the shareholders does not meet corporate governance or sustainability reporting best practice standards.

b. Serious doubts are raised concerning the quality, sincerity and comprehensiveness of the information provided.

c. The annual report or the audited financial statements were not made available sufficiently in advance of the general meeting.

d. The board of directors refuses to disclose important information or responds to legitimate requests for supplementary information in an unsatisfactory manner.

e. There are serious and demonstrable failings in the statement of accounts.

1.2 DISCHARGE OF THE BOARD OF DIRECTORS

VOTE FOR the board of directors' proposal, however:

OPPOSE if one of the following conditions applies:

a. The external auditors' report expresses reservations concerning the board's conduct of the company or reveals serious shortcomings in the exercise of the duties of members of the board of directors or deficiencies of the internal control system.

b. The board of directors refuses to place a validly tabled shareholder resolution on the agenda or refuses to implement a shareholder resolution that received a majority of votes at previous general meetings.

c. The company, the board of directors or any of its members are the subject of an investigation by a competent authority, legal proceedings, or a conviction in connection with the company's business.

d. There is profound disagreement concerning the management of the company's affairs or the decisions of the board of directors or some of its members.

e. Serious shortcomings in corporate governance constitute a major risk for the company and its shareholders.
f. The size of the board of directors has persistently remained below four members.
g. There is a strong deterioration of the company's financial situation due to successive poor financial results, large impairments, or significant new provisions for litigation costs.
h. One of the following points is true and no financing plan is presented to the shareholders:
   - The company is in a capital loss situation.
   - The company is in a situation of over-indebtedness.
   - The company is currently subject to a composition moratorium.
   - There is a material uncertainty about the company's ability to continue as a going concern.
i. The board of directors has made decisions that constitute a major environmental or social risk, or it does not recognise the major environmental/social issues that the company faces.
j. The company is involved in an accident that seriously harmed the employees' health, local communities, or the natural environment.
k. There are well grounded accusations against the company for serious violations of internationally recognised human rights of employees, local communities, or the company is complicit in such violations along the supply chain.
l. The company refuses to recognise the negative impact of some of its products or its operations on humans or the natural environment.

1.3 ALLOCATION OF INCOME AND DIVIDEND DISTRIBUTION

VOTE FOR the board of directors' proposal, however:

OPPOSE if one of the following conditions applies:

a. The proposed allocation of income seems inappropriate, given the financial situation and the long-term interests of the company, its shareholders, and its other stakeholders.
b. The proposal replaces the cash dividend with a share repurchase programme.
c. The dividend is replaced by a reimbursement of nominal value of the shares that substantially deteriorates the shareholders' right to place an item on the agenda of the general meeting.

2. Sustainability

Proposals that do not fall under a specific point mentioned below are to be assessed in light of Ethos' Principles of corporate governance.

2.1 SUSTAINABILITY REPORT

VOTE FOR the board of directors' proposal, however:

OPPOSE if one of the following conditions applies:

a. The report has not been established according to a recognised standard in terms of extra-financial reporting.
b. The report and/or relevant indicators were not verified by an independent third party.
c. The report does not cover all material topics.
d. The company does not publish quantitative indicators for material topics.
e. The company has not set ambitious and quantitative targets for material topics and does not report on its progress against these targets.
f. The company does not consistently meet its targets or there is a deterioration in key indicators on material issues over a three-year period.
g. The company abandons previous commitments to its sustainability strategy without adequate justification.
h. The company has stopped publishing key quantitative indicators on its material topics without adequate justification.
i. The climate strategy is not aligned with the goals of the Paris Agreement.
j. The company does not take adequate measures to reduce its CO2e emissions.
k. There are significant doubts on the quality, veracity and completeness of the information provided.
l. The sustainability report was not made available sufficiently in advance of the general meeting.
m. The board of directors refuses to disclose important information or responds to legitimate requests for supplementary information in an unsatisfactory manner.
n. The company is subject to serious controversies which are not addressed in the sustainability report.

2.2 CLIMATE STRATEGY (SAY ON CLIMATE)

VOTE FOR the board of directors' proposal, however:

OPPOSE if one of the following conditions applies:

a. The company has not set targets for reducing its CO2e emissions which are compatible with a maximum of 1.5° warming, and which cover at least 80% of all its direct and indirect emissions (scope 1, 2 and 3).

b. The CO2e emission reduction targets have not been verified or are not being verified by a recognised body.
c. The company does not publish intermediary reduction targets.
d. The company does not detail the measures to be taken to reduce its CO2e emissions or their contribution to the achievement of its objectives.
e. The measures taken by the company to reduce its CO2e emissions are considered inadequate.
f. The company does not disclose an estimate of the required investment («Capex») and other financial impacts associated with achieving its CO2e reduction targets.
g. The company does not commit to publishing an annual report on the implementation of its strategy.

2.3 CLIMATE REPORT (SAY ON CLIMATE)

VOTE FOR the board of directors' proposal, however:

OPPOSE if one of the following conditions applies:

a. The company's report has not been drawn up in accordance with a recognised standard covering the main issues of climate change (governance, strategy, risks, climate change impacts on its activities, indicators, and targets).
b. The company does not publish its CO2e emissions in accordance with the GHG Protocol or its report does not cover at least 90% of direct and indirect emissions linked to the life cycle of products (supply chain, transport, travel, use of products corresponding to scope 3 of the GHG Protocol).
c. The company has not set targets for reducing its CO2e emissions which are compatible with a maximum of 1.5° warming, and which cover at least 80% of all its direct and indirect emissions (scope 1, 2 and 3).
d. The CO2e emission reduction targets have not been verified or are not being verified by a recognised body.
e. The climate strategy has not been published or updated over the past three years.
f. The company does not publish intermediary reduction targets.
g. The company does not communicate on the progress that were made regarding its climate targets.
h. The company is not taking adequate measures to reduce its CO2e emissions.
i. The company does not consistently meet its targets or there is a deterioration in key indicators over a three-year period.
j. The company does not disclose the investments («Capex») and other financial impacts associated with achieving its CO2e reduction targets.

3. Board of Directors

Proposals that do not fall under a specific point mentioned below are to be assessed in light of Ethos' Principles of corporate governance.

3.1 ELECTION OR RE-ELECTION OF NON-EXECUTIVE DIRECTORS

VOTE FOR the board of directors' or shareholders' proposal, however:

OPPOSE if one of the following conditions applies:

a. Insufficient information is provided concerning the nominee or the information does not allow evaluating their expected contribution to the board of directors.

b. The nominee was implicated in a serious controversy in the past, their activities and attitude are not irreproachable, or their election could negatively impact the company's reputation.

c. The number of mandates held by the nominee is excessive in light of the type of mandates and the maximum limit required by national standards on corporate governance (for Switzerland, see Appendix 2).

d. The nominee has been a member of the board for 16 years or more and there is no valid reason to justify his or her (re)election (e.g., founding member, shareholder with a significant stake, specific competencies or functions, etc.).

e. The nominee is 75 years or older, or 70 years or older upon first appointment and there is no substantial justification for their (re)election.

f. The nominee does not meet Ethos' independence criteria (see Appendix 1) and the board of directors does not comprise enough independent members with respect to national standards of corporate governance.

g. The nominee has a major conflict of interest that is incompatible with their role as a member of the board of directors.

h. The nominee is a representative of an important shareholder who is sufficiently represented on the board of directors. Under no circumstances should a shareholder control the board of directors.

i. The nominee has held an executive function in the company during the last three years and the board of directors includes too many executive or former executive directors with respect to national standards of corporate governance.

j. The nominee has held executive functions in the company during the last three years and they will sit on the audit committee.

k. The nominee chairs a key committee (nomination, audit, risk, sustainability or remuneration in cases where elections of members of the remuneration committee are not subject to a specific vote) and one of the following points is true:
   - The nominee is not independent according to the criteria mentioned in Appendix 1 and the committee does not have enough independent members with respect to national standard of corporate governance.
   - The functioning of the key committee is not considered satisfactory.
   - The company is facing problems for which the responsibility lies with a key committee by virtue of the criteria mentioned in Appendix 3.

l. The nominee is chair of the sustainability committee of a company with high greenhouse gas emissions and one of the following points is true:
   - The company does not plan a vote on the sustainability or climate report.
   - The company has not made any changes as a result of a significant shareholder opposition to a vote on the sustainability report, the climate report or as a result of strong support for a shareholder resolution on the company's climate strategy[1].

m. The nationality/origin/domicile of the person newly proposed for election is overrepresented on the board of directors without justification.

n. The nationality/origin/residence of the person newly proposed for election differs from the country where the company is incorporated, and the board of directors does not include any member with nationality/origin/residence in/of the country of incorporation.

o. The nominee was employed by the audit firm as partner in charge of the audit of the company's accounts (lead auditor) during the past two years.

p. The nominee has attended too few meetings of the board of directors (in principle less than 75%) without any satisfactory explanation from the company.

q. The nominee is the main independent member (lead director), but does not meet Ethos' independence criteria (see Appendix 1); in particular due to a conflict of interest.

3.2 ELECTION OR RE-ELECTION OF EXECUTIVE DIRECTORS

VOTE FOR the board of directors' or shareholders' proposal, however:

OPPOSE if one of the following conditions applies:

a. In Swiss companies or in companies listed in Switzerland, the nominee to the board of directors is also a permanent member of the executive management or has operational functions within the company, providing the national standards of corporate governance do not provide otherwise.

[1] In principle, when the level of opposition exceeds 20%.

b. Insufficient information is provided concerning the nominee.
c. The nominee was involved in a serious controversy in the past or does not have a good reputation or their activities and attitude are not irreproachable.
d. The nominee chairs or will chair the board of directors permanently and the shareholders cannot vote separately on the election of the chair of the board.
e. The nominee serves or will serve on the audit committee, or the remuneration committee and the shareholders cannot vote separately on the election to the committee.
f. The nominee chairs or will chair the nomination committee.
g. The nominee serves or will serve on the nomination committee when the overall composition of the latter does not guarantee the committee's independence (in principle when the majority of its members are not independent, or it already includes an executive director).
h. The board of directors includes too many executive and former executive members with respect to national standards of corporate governance.
i. The board of directors does not include enough independent members with respect to national standards of corporate governance and the shareholder structure.
j. The nominee is a representative of an important shareholder, and this shareholder is already sufficiently represented on the board of directors. In no case should a shareholder control the board of directors.

3.3 ELECTION OR RE-ELECTION OF THE CHAIR OF THE BOARD OF DIRECTORS

VOTE FOR the board of directors' or shareholders' proposal, however:

OPPOSE if one of the following conditions applies:

a. Ethos could not support the election or re-election of the nominee to the board of directors.
b. The nominee has operational duties or is also member of the executive management and the combination of functions is for an undetermined term, or one deemed too long.
c. The corporate governance of the company is unsatisfactory and the dialogue with the shareholders is difficult or does not lead to the desired outcomes.
d. The board of directors refuses to place a validly tabled shareholder resolution on the agenda or to implement a shareholder resolution that received support from a majority of votes during previous general meetings.

e. The board of directors has not established a nomination committee and one of the following is true:
   - Renewal of the board of directors is insufficient.
   - The composition of the board of directors is unsatisfactory.
   - The board of directors does not have enough women compared to market practice with a minimum level of 30% without adequate justification.

f. The board of directors of a company with high greenhouse gas emissions lacks a sustainability committee, does not foresee a vote on the sustainability or climate report and has not adopted a compelling climate strategy.

g. The board of directors has not made any improvements considered satisfactory on a subject that was strongly opposed[2] at a previous general meeting.

h. The company's financial performance has been unsatisfactory for several years.

3.4 ELECTION OR RE-ELECTION OF THE MEMBERS OF THE REMUNERATION COMMITTEE

VOTE FOR the board of directors' or shareholders' proposal, however:

OPPOSE if one of the following conditions applies:

a. Ethos could not support the election of the nominee to the board of directors.

b. The number of mandates held by the nominee is excessive considering the types of mandates and the maximum limit required by national standards on corporate governance (for Switzerland see Appendix 2).

c. The nominee is not independent according to the criteria in Appendix 1and the committee does not include at least 50% independent members.

d. The nominee does not meet Ethos' independence criteria (see Appendix 1), and the committee includes all members of the board of directors.

e. The nominee receives a remuneration that is excessive or not in line with generally accepted best practice standards (see Appendix 4).

f. The nominee holds an executive function in the company.

[2] In principle when the level of opposition exceeds 20%.

g. The nominee was a member of the remuneration committee during the past financial year and one of the following points is true:
   - The remuneration system of the company is deemed very unsatisfactory.
   - The transparency of the remuneration report is deemed very insufficient.
   - Unscheduled discretionary payments were made during the year under review.
   - The amounts paid out are not in line with the company's performance or with the remuneration components approved by the annual general meeting.
   - The exercise conditions for a variable remuneration plan were modified over the financial year.
   - The remuneration committee has not made any improvements that were deemed satisfactory following a strongly contested vote on remuneration at a previous general meeting[3].

h. The nominee was a member of the remuneration committee in the past when this committee made decisions fundamentally in breach with generally accepted best practice standards.

3.5 GROUPED ELECTIONS OR RE-ELECTIONS OF MEMBERS OF THE BOARD OF DIRECTORS

VOTE FOR if there is no major objection to the nominees standing for (re)election.

OPPOSE if the (re-)election of one or more members is considered detrimental to the interests of the company and its shareholders.

[3] In principle when the level of opposition exceeds 20%.

4. Audit Firm

Proposals that do not fall under a specific point mentioned below are to be assessed in light of Ethos' principles of corporate governance.

4.1 ELECTION OR RE-ELECTION OF THE AUDIT FIRM

VOTE FOR the board of directors' proposal concerning the election or re-election of the external audit firm, however,

OPPOSE if one of the following conditions applies:

a. The name of the audit firm is not disclosed before the annual general meeting.
b. The audit firm has been in office for 20 years or more or the term of office exceeds the length foreseen by national standards of best practice.
c. The breakdown of the services provided by the audit firm is insufficient to allow an informed assessment of the auditor's independence.
d. The fees paid to the audit firm for non-audit services exceed audit fees, absent compelling justification by the company.
e. The aggregate fees paid to the audit firm for non-audit services during the most recent three years exceed 50% of the aggregate fees paid for audit services during the same period.
f. The independence of the audit firm could be compromised by links between partners of the audit firm and/or the auditors in charge of the audit of the accounts and the company being audited (its members of the board of directors, shareholders with a significant stake, audit committee members, senior executives).
g. The fees paid by the company to its audit firm exceed 10% of the external audit firm's turnover.
h. The lead auditor has recently been severely criticised in connection with their handling of a similar mandate.
i. The company accounts or the auditing procedure determined by the audit firm have been subject to severe criticism.
j. The auditor failed to identify fraud or proven weaknesses in the internal control system that have had a significant negative impact on the company's financial results.
k. The audit report does not include material key audit matters.

5. Board and Executive Remuneration

Proposals that do not fall under a specific point mentioned below are to be assessed in light of Ethos' principles of corporate governance.

5.1 REMUNERATION SYSTEM AND INCENTIVE PLANS

VOTE FOR the board of directors' proposal, however:

OPPOSE if one of the following conditions applies:

a. The information provided to the shareholders is insufficient to assess the principles, structure, and components of the remuneration system (see Appendix 4 and Appendix 5).

b. The structure of the remuneration is not in line with generally accepted best practice standards (see Appendix 4 and Appendix 5).

5.2 REMUNERATION REPORT

VOTE FOR the board of directors' proposal, however:

OPPOSE if one of the following conditions applies:

a. The remuneration report does not respect the rules in Appendix 4 concerning transparency, structure, or the pay-for-performance connection.

b. The non-executive directors receive remuneration other than a fixed amount paid in cash or in shares.

c. The use of the remuneration approved is not considered as being in line with the proposal put forward at the previous general meeting.

5.3 TOTAL REMUNERATION AMOUNT FOR THE BOARD OF DIRECTORS

VOTE FOR the board of directors' proposal, however:

OPPOSE if one of the following conditions applies:

a. The information provided by the company is insufficient to assess the appropriateness of the requested global amount, in particular when the amount requested largely exceeds the amounts paid out.

b. The maximum potential payout is significantly higher than the amount requested at the general meeting.

c. The remuneration planned for or paid out to one or several members is significantly higher than that of the peer group.
d. The proposed increase relative to the previous year is excessive or not justified.
e. The non-executive directors receive remuneration other than a fixed amount paid in cash or in shares.
f. Non-executive directors may receive or receive consultancy fees in a regular manner, or the fees received are too high.
g. The remuneration of the non-executive chair largely exceeds that of the other non-executive board members without adequate justification.
h. The remuneration of the chair or another member of the board of directors is higher than the average remuneration of the executive management without adequate justification.
i. The remuneration of the executive members of the board (excluding the executive management) is excessive or is not in line with generally accepted best practice standards (see Appendix 4).

5.4 AMOUNT OF FIXED REMUNERATION FOR THE EXECUTIVE MANAGEMENT

VOTE FOR the board of directors' proposal, however:

OPPOSE if one of the following conditions applies:

a. The information provided by the company, in particular regarding the different components of the fixed remuneration or the number of beneficiaries, is insufficient, in particular when the requested amount largely exceeds the amounts paid out during the past year.
b. The fixed remuneration planned for or paid out to one or several members is significantly higher than that of a peer group.
c. The proposed increase relative to the previous year is excessive or not justified.

5.5 MAXIMUM AMOUNT OF VARIABLE REMUNERATION (PROSPECTIVE OR RETROPROSPECTIVE VOTE)

VOTE FOR the board of directors' proposal, however:

OPPOSE if one of the following conditions applies:

a. The information provided is insufficient for shareholders to assess the plans' features and functioning, in particular when the amount requested is significantly greater than the amounts paid during the past year.
b. The maximum amount calculated based on the information available would make it possible to pay significantly higher remuneration than the remuneration paid by a benchmark group made up of companies of similar size and complexity.

c. The maximum amount that can be potentially paid out is significantly higher than the amount requested at the general meeting.

d. The structure and conditions of the plans do not respect generally accepted best practice standards (see Appendix 5).

e. Past awards and the amounts released after the performance/blocking period, described in the remuneration report, do not allow confirmation of the link between pay and performance.

f. The remuneration committee or the board of directors have excessive discretion about awards and administration of the plan, for example in re-adjusting the exercise price, extension of the exercise period, amendment to the performance criteria or in replacing one plan by another, without prior shareholder approval.

g. The requested amount does not allow to respect the principles mentioned in Appendix 4, in particular the maximum proportion between fixed and variable remuneration.

5.6 TOTAL REMUNERATION AMOUNT (FIXED AND VARIABLE) FOR THE EXECUTIVE MANAGEMENT

VOTE FOR the board of directors' proposal, however:

OPPOSE if one of the following conditions applies:

a. The information provided is insufficient for shareholders to assess the relevance of the maximum requested amount.

b. The total amount calculated on the basis of available information allows for the payment of significantly higher remunerations than those of a peer group.

c. The maximum amount that can be potentially paid out is significantly higher than the amount requested at the general meeting.

d. The remuneration structure and the maximum requested amount are not in line with generally accepted best practice standards (see Appendix 4).

e. Past awards and the amounts released after the performance/blocking period described in the remuneration report do not allow confirmation of the link between pay and performance.

f. The remuneration committee or the board of directors have excessive discretion about awards or have paid out undue remuneration during the previous financial year.

5.7 LENGTH OF EMPLOYMENT CONTRACTS AND PERIODS OF NOTICE FOR MEMBERS OF THE EXECUTIVE MANAGEMENT

VOTE FOR the board of directors' proposal, however:

OPPOSE if one of the following conditions applies:

a. The employment contracts and notice periods exceed one year.

b. The formulation of the contract allows for the payment of severance payments higher than those prescribed by best practice.

c. The contracts include non-compete clauses that could lead to excessive payments.

6. Capital Structure and Shareholder Rights

Proposals that do not fall under a specific point mentioned below are to be assessed in light of Ethos' principles of corporate governance.

6.1 CHANGES IN THE CAPITAL STRUCTURE

VOTE FOR the board of directors' proposal, however:

OPPOSE if one of the following conditions applies:

a. The amendment contravenes the «one share = one vote» principle unless the company's long-term survival is seriously undermined.

b. The amendment is intended to protect management from a hostile takeover bid that is compatible with the long-term interests of the majority of the company's stakeholders.

6.2 CAPITAL FLUCTUATION MARGIN

VOTE FOR the board of directors' proposal, however:

OPPOSE if one of the following conditions applies:

a. The authorisation allows a capital increase without pre-emptive rights exceeding 10% of the issued capital.

b. The authorisation allows a capital increase exceeding 20% of the issued capital.

c. If the capital fluctuation margin is approved, the aggregate of all authorities to issue shares for general financing purposes without pre-emptive rights would exceed 20% of the issued capital.

d. The main features of an incentive plan that could be financed by the fluctuation margin are not in line with Ethos' guidelines for such plans (see Appendix 5).

e. The authorisation allows a capital reduction of 5% of the issued capital without adequate justification.

f. The capital reduction provided by the fluctuation margin is inappropriate in view of the company's financial situation or prospects.

g. The dilution due to capital increases without pre-emptive rights in the past three years is excessive or the use of the fluctuation margin has been incompatible with the long-term interests of the shareholders.

6.3 CAPITAL INCREASE WITHOUT SPECIFIC PURPOSE

VOTE FOR the board of directors' proposal, however:

OPPOSE if one of the following conditions applies:

a. The requested authority to issue shares, with pre-emptive rights, for general financing purposes, exceeds 33% of the issued capital or the maximum percentage accepted by national standards of corporate governance.

b. In case of approval of the request, the aggregate of all authorities to issue shares with pre-emptive rights for general financing purposes would exceed 40% of the issued share capital or the maximum percentage accepted by national standards of corporate governance.

c. The requested authority to issue shares, without pre-emptive rights, for general financing purposes, exceeds 10% of the issued capital or the maximum percentage accepted by national standards of corporate governance.

d. In case of approval of the request, the aggregate of all authorities to issue shares without pre-emptive rights for general financing purposes would exceed 20% of the issued share capital.

e. The dilution due to the capital increases without pre-emptive rights in the past three years has been excessive.

f. The length of the authorisation exceeds the length foreseen by local standards of best practice.

6.4 CAPITAL INCREASE FOR A SPECIFIC PURPOSE

VOTE FOR the board of directors' proposal, however:

OPPOSE if one of the following conditions applies:

a. The information provided to shareholders so that they can assess the terms, conditions and the purpose of the capital increase is insufficient.

b. The purpose of the proposed capital increase (for example an acquisition, merger, or a share issue for employee incentive plans) or the financial instrument's conversion terms are incompatible with the long-term interests of the majority of the company's stakeholders, regarding the amount of new capital requested and the financial situation of the company.

c. The proposed capital increase exceeds the maximum percentage accepted by local standards of best practice, or the company's needs, given the relevance of the pursued objective.

d. The purpose of the proposed increase includes the possibility of placing the shares with a strategic partner to counter a hostile takeover bid.

e. The amount requested or the dilution of existing shareholders is too high considering the stated purpose.

f. The capital requested is intended to fund a share-based incentive plan the main characteristics of which are incompatible with Ethos' guidelines for such plans (see Appendix 5).

6.5 SHARE REPURCHASE WITH CANCELLATION OR CAPITAL REDUCTION VIA REIMBURSEMENT OR PAR VALUE

VOTE FOR the board of directors' proposal, however:

OPPOSE if one of the following conditions applies:

a. The principle of equal treatment of shareholders is not respected.
b. The amount of the repurchase/reimbursement is inappropriate given the financial situation and perspectives of the company.
c. The company may undertake selective share repurchases.
d. The shareholders' right to place an item on the agenda of the general meeting is significantly undermined.
e. The company proposes to cancel shares despite its significant capital need.
f. The share repurchase replaces the cash dividend.
g. The ability of the company to pay a dividend is critically undermined by the repurchase of the shares.

6.6 SHARE REPURCHASE WITHOUT CANCELLATION

VOTE FOR the board of directors' proposal, however:

OPPOSE if one of the following conditions applies:

a. The amount to be repurchased exceeds a given percentage of the share capital established in accordance with the rules of corporate governance in the relevant country (in principle 10%).
b. The repurchase price is too high.
c. The share repurchase replaces the dividend in cash.
d. The ability of the company to pay a dividend is critically undermined by the repurchase of the shares.
e. The company can proceed to selective share repurchases.
f. The length of the authorisation exceeds 24 months, or the length prescribed by the national standards of best practice.
g. The purpose of the repurchase is incompatible with the long-term interests of minority shareholders or with those of the majority of the company's stakeholders.
h. The main features of an incentive plan that will be financed by the shares repurchased are not in line with Ethos' guidelines regarding such plans (see Appendix 5).

6.7 CAPITAL REDUCTION VIA CANCELLATION OF SHARES

VOTE FOR the board of directors' proposal, however:

OPPOSE if the capital reduction is incompatible with the long-term interests of the majority of the company's stakeholders.

6.8 CANCELLATION OR INTRODUCTION OR A CLASS OF SHARES

VOTE FOR the cancellation of a class of shares and **OPPOSE** the introduction of a new class of shares, unless one of the following conditions applies:

a. The long-term survival of the company is threatened.
b. The proposal is contrary to the long-term interests of most of the stakeholders of the company.

6.9 REMOVAL OR INTRODUCTION OF A LIMIT ON VOTING RIGHTS

VOTE FOR the cancellation of a class of shares and **OPPOSE** the introduction of a new class of shares, unless one of the following conditions applies:

a. The long-term survival of the company is threatened.
b. The proposal is contrary to the long-term interests of most of the stakeholders of the company.

6.10 REMOVAL OR INTRODUCTION OF AN OPTING-OUT OR OPTING-UP CLAUSE

VOTE FOR the removal and **OPPOSE** the introduction of an opting-out or opting-up clause. The replacement of an opting-out clause with an opting-up clause can be accepted.

6.11 INTRODUCTION OR RENEWAL OF ANTI-TAKEOVER PROVISIONS

OPPOSE the board of directors' proposal, unless the company provides a convincing explanation that the proposed measure is one-time-only, necessary to preserve the long-term survival of the company and in line with the long-term interests of the majority of the company's stakeholders.

7. Mergers, Acquisitions, Spin-Offs, Relocations, and Delistings

Proposals that do not fall under a specific point mentioned below are to be assessed in light of Ethos' principles of corporate governance.

7.1 MERGERS, ACQUISITIONS, SPIN-OFFS, AND RELOCATIONS

VOTE FOR the board of directors' proposal, however:

OPPOSE if one of the following conditions applies:

a. Given the scale of the proposed transaction, the acquisition, merger, spin-off, or relocation is not consistent with the long-term interests of the majority of the company's stakeholders.

b. The information regarding the transaction, in particular the «fairness opinion» issued by a third party is not sufficient to make an informed decision.

c. The legislation and the corporate governance standards of the new place of incorporation significantly deteriorate the rights of the shareholders and other stakeholders.

d. The governance of the new company is clearly worse than before.

e. The new company's practices (or products) do not comply with international standards in respect of human and labour rights or the environment.

7.2 DELISTINGS

VOTE FOR the board of directors' proposal, however:

OPPOSE if one of the following conditions applies:

a. The delisting of the company's shares is not consistent with the long-term interests of the majority of the company's stakeholders.

b. The delisting is not accompanied by a public takeover offer.

c. The terms of the public tender offer are not satisfactory.

8. Amendments to the Articles of Association

Proposals that do not fall under a specific point mentioned below are to be assessed in light of Ethos' principles of corporate governance.

8.1 VARIOUS AMENDMENTS TO THE ARTICLES OF ASSOCIATION

VOTE FOR the board of directors' proposal, however:

OPPOSE if one of the following conditions applies:

a. The company fails to provide sufficient information to enable the shareholders to assess the impact of the amendment(s) on their rights and interests.
b. The amendment has a negative impact on the rights or interests of all or some of the shareholders.
c. The amendment has a negative impact on the long-term interests of the majority of the company's stakeholders.
d. The amendment has a negative impact on the governance of the company.
e. The amendment constitutes a risk for the going concern.
f. Several amendments are submitted to shareholder approval under a bundled vote and have positive, negative, and neutral impacts on shareholders' rights and interests and other stakeholders, but the negative impacts outweigh all others.
g. The amendment allows the company to organise a virtual general meeting without any adequate justification.

8.2 FIXING OF THE MINIMUM AND MAXIMUM BOARD SIZE

VOTE FOR the proposal of the board of directors or of shareholders unless the number proposed is not adequate for the size of the company and considering the national standards of corporate governance.

8.3 MODIFICATION OF THE LENGTH OF THE MANDATE OF DIRECTORS

VOTE FOR the proposal of the board of directors or of shareholders to decrease the length of the mandates unless the proposal threatens the long-term survival of the company.

OPPOSE the proposal of the board of directors or of shareholders to increase the length of the mandates.

8.4 MODIFICATIONS OF THE ARTICLES OF ASSOCIATION RELATED TO REMUNERATION

VOTE FOR the board of directors' proposal, however:

OPPOSE if one of the following conditions applies:

a. Several amendments are submitted to shareholder approval under a bundled vote and have positive, negative, and neutral impacts on shareholders' rights and interests, but the negative impacts outweigh all others.

Modalities of the vote on remuneration by the general meeting

b. The proposed voting modalities stipulate a prospective vote on the maximum amount and the remuneration system described in the articles of association does not include caps on the variable remuneration, or these caps exceed those of Ethos (see Appendix 4 and Appendix 5).

c. The proposed voting modalities include the possibility to vote on changes to the remuneration retrospectively, even though the maximum amount has already been accepted prospectively.

d. The board may propose that in case of refusal by the shareholders, a new vote will be held at the same general meeting, even though the second proposal is not known to the shareholders who are not physically present at the meeting.

Remuneration structure

e. The structure of the remuneration is not in line with generally accepted best practice standards (see Appendix 4).

f. The non-executive directors may receive remuneration other than a fixed amount paid in cash or shares.

g. The information provided is insufficient for shareholders to assess the variable remuneration plans' features and functioning (see Appendix 5).

h. The structure and conditions of the variable remuneration plans do not respect generally accepted best practice standards (see Appendix 5).

i. The remuneration committee or the board of directors have excessive discretion regarding awards and administration of the plan, for example in re-adjusting the exercise price, extension of the exercise period, amendment to the performance criteria or in replacing one plan by another, without prior shareholder approval.

Reserve for new hires in the executive management

j. The amount available for new members of the executive management is excessive.

Non-compete clauses

k. The articles of association include the possibility of introducing non-compete clauses into employment contracts of the members of the executive management and one of the following conditions is met:
   - The maximum duration of the non-compete is not specified or is excessive.
   - The maximum amount to be paid in consideration of the non-compete is not specified or can be assimilated to a severance payment.

8.5 INTRODUCTION OF A MAXIMUM NUMBER OF MANDATES FOR MEMBERS OF THE BOARD OF DIRECTORS AND THE EXECUTIVE MANAGEMENT

VOTE FOR the board of directors' proposal unless the maximum number of mandates is considered excessive, i.e. it does not guarantee sufficient availability to fulfil the mandate with the required diligence (see Appendix 2).

9. Shareholder Resolutions

Proposals that do not fall under a specific point mentioned below are to be assessed in light of Ethos' principles of corporate governance.

VOTE FOR a resolution submitted by a shareholder or a group of shareholders if the following conditions apply:

1. The resolution is clearly phrased and properly substantiated.
2. The resolution respects the principles of best practice in corporate governance or aims to improve corporate governance or the company's social and environmental responsibility practices (see examples in Appendix 6).
3. The resolution is in line with the long-term interests of the majority of the company's stakeholders and complies with the principles stipulated in Ethos' Charter, which is grounded in the concept of sustainable development.

10. Other Business

Proposals that do not fall under a specific point mentioned below are to be assessed in light of Ethos' principles of corporate governance.

10.1 RESOLUTIONS NOT FEATURED ON THE AGENDA

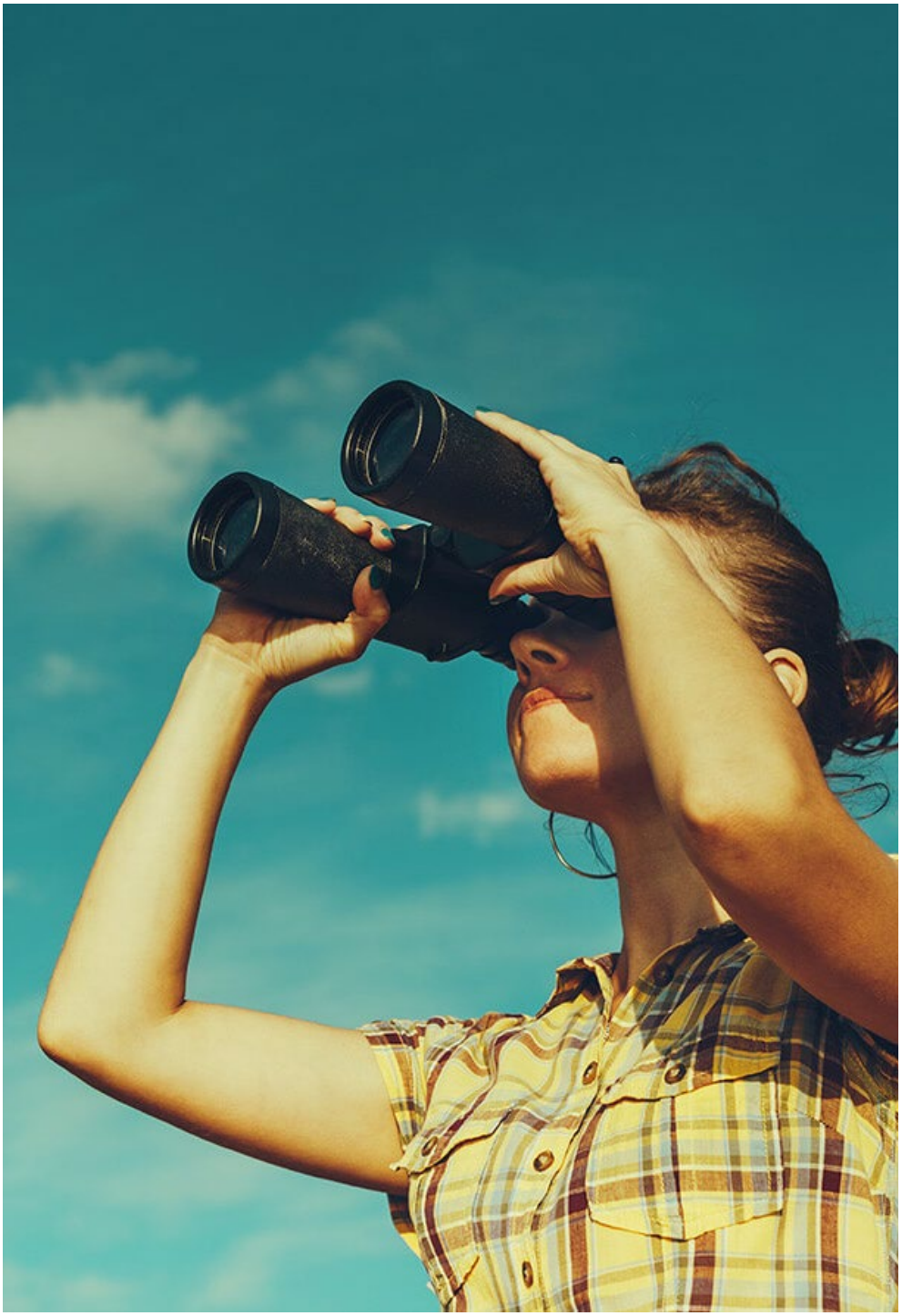
OPPOSE any motion by the board of directors or shareholders to vote on a proposal under the heading «Other Business» (or «Miscellaneous») if the proposal was not disclosed and described in the agenda before the annual general meeting. When it is not possible to oppose, vote abstain.

10.2 ELECTION OR RE-ELECTION OF THE INDEPENDENT REPRESENTATIVE

VOTE FOR the board of directors' proposal, however:

OPPOSE if one of the following conditions applies:

a. Insufficient information is provided concerning the nominee.
b. The nominee does not have a good reputation, or his activities and attitude are not irreproachable.
c. The nominee's independence is not guaranteed.



APPENDICES

Appendix 1: Independence Criteria for the Members of the Board of Directors

In Ethos' view, a member of the board of directors is deemed independent if he/she:

a. Is not an executive director or employee of the company or a company of the same group and has not held such a position in the past five years.
b. Is not or does not represent an important shareholder, a consultant of the company or another significant stakeholder in the company (employees, suppliers, customers, public bodies, the State, etc.).
c. Has not held executive functions at a business partner, consultant, or an important shareholder of the company during the last 12 months.
d. Has not been involved in auditing the company accounts during the previous five years.
e. Has not been a partner or a director of the audit firm that audits the financial statements of the company during the previous three years.
f. Is not a close relative of or does not have business relations with a member of the founding family, an important shareholder, or an executive of the company.
g. Does not have any permanent conflicts of interest.
h. Does not hold any conflicting office or cross-directorship with another member of the board of directors or with a member of the executive management.
i. Does not hold an executive position in a political institution or non-profit organisation to which the company makes or from which it receives substantial donations in cash or kind.
j. Does not regularly receive any material direct or indirect remuneration from the company apart from fees as a member of the board of directors.
k. Has not been sitting on the board of directors or has not been linked to the company or its subsidiaries for more than twelve years (or less, depending on the codes of best practice that apply in the country).
l. Does not receive remuneration relating to their mandate as a member of the board of directors corresponding to an amount that could compromise their independence.
m. Does not receive variable remuneration or options that represent a substantial part of his total remuneration and does not participate in the company's pension scheme (unless participation is compulsory for the member).
n. Does not hold options with an intrinsic value or shares with a market value that is substantial.
o. Is not considered non-independent by the company.

Appendix 2: Maximum Number of Mandates on Boards of Directors

To make sure that members of the board of directors have sufficient availability, Ethos has set limits on the maximum number of mandates that a person can hold. Generally speaking, when the person does not have an executive activity, they will be able to take on more mandates than when he/she has an executive activity.

Ethos is aware that certain tasks within the board of directors can entail a particularly high workload, for example serving as chair of the audit committee. In these situations, Ethos will assess on a case-by-case basis whether the nominee has sufficient availability.

The following rules apply for the limits on the number of mandates set out below:

- Chair positions in companies with a commercial purpose (including listed and very large companies) count as two mandates.
- Mandates in companies belonging to the same group count as a single directorship.

The following limits apply to the number of mandates a person may hold in boards of directors:

- for a person without executive function in a company pursuing a commercial purpose: 5 mandates in listed or very large companies*, of which 4 in listed companies.
- for a person holding an executive office in a listed or very large company*: 1 mandate in a listed or very large company.

The number of mandates and executive positions held in companies with a commercial purpose (other than listed or very large companies*) are also considered on a case-by-case basis when assessing the availability of the person.

**Very large companies meet the criteria of the CSDDD (Corporate Sustainability Due Diligence Directive), i.e. sales above EUR 450 million and more than 1'000 employees.*

Appendix 3: Requirements regarding Committee Management

Ethos considers that the board of directors' key committees play an essential role. Therefore, when a company is facing serious problems in a key committee's area of responsibility, the re-election of its chair cannot be supported. This is particularly the case in the following situations:

a. The candidate chairs the audit committee, and the company is facing serious problems relating to the accounts, the internal control system or the internal or external audit.
b. The candidate chairs the audit committee and there are significant doubts as to the independence of the external auditor.
c. The candidate chairs the risk committee, and the company is facing serious problems relating to risk management, the granting of loans, the internal control system, business ethics or climate change risks.
d. The nominee chairs the remuneration committee, the elections of the members of the remuneration committee are not subject to a specific vote and there is a failure to comply with one of the elements in point 3.4 of the voting guidelines.
e. The candidate chairs the nomination committee and one of the following points is true:
    - The renewal of the board of directors is insufficient.
    - The composition of the board of directors is unsatisfactory.
    - There are not enough women on the board of directors in accordance with the national standard, with a minimum of 30% without adequate justification.

Appendix 4: Requirements regarding the Remuneration Report or System

Transparency

Approval of the remuneration report *(r)* or system *(s)* requires that the following elements should be disclosed in principle*:

a. A detailed description of the principles and mechanisms of the remuneration policy *(r+s)*.
b. A detailed description of each of the components of remuneration, in particular the bonus system and the long-term variable remuneration plans paid in equity, options or in cash (see Appendix 5) *(r+s)*.
c. The amounts of the different components of remuneration at grant, calculated at their market value, as well as their total sum, should be disclosed in a table with separate columns *(r)*.
d. The detailed description of the degree of achievement of the performance targets for the bonus and the long-term incentive plans. A presentation in the form of a table with separate columns showing the amounts corresponding to the different payments during the year under review as well as their sum total is expected *(r)*.
e. A summary of the retirement plans of executive management *(r+s)*.
f. A description of the employment contracts of members of executive management, including the sign-on and termination conditions for each member, in particular in case of change of control or non-compete clauses.
g. The market value at date of grant of each remuneration component.

**Items marked (r+s) apply to the approval of the remuneration report and system, while items marked (r) apply only to the approval of the remuneration report.*

Structure (for the board of directors)

Approval of the remuneration report or system requires that the following rules should apply in principle for the remuneration of the board of directors:

a. The remuneration of the board members must be in line with that paid at companies of a similar size and complexity.
b. The remuneration of the non-executive chair should not significantly exceed that of the other non-executive members without adequate justification.

c. The remuneration of the chair of the board of directors or of another director should not exceed the average remuneration of the members of the executive management without adequate justification.

d. Potential year-on-year increases proposed should be limited and duly justified.

e. The non-executive directors should not receive remuneration other than a fixed amount in cash or shares.

Structure (for the executive management)

Approval of the remuneration report or system requires that the following rules should apply in principle for the remunerations of the executive management:

a. The amount of remuneration, granted and realised, should be adapted to the size, the complexity, the performance, and the outlook of the company. They should be compared to those paid out by a peer group.

b. The base salary should not exceed the median of the company's peer group.

c. The connection between the realised remuneration and the company's performance must be clearly demonstrated.

d. On-target variable remuneration should not exceed the following values:
   - for the members of the executive management other than the CEO: 100% of the base salary.
   - for the CEO: 1.5 times the base salary.

e. The maximum variable remuneration (for overachievement of targets) should not exceed the following values:
   - for the members of the executive management other than the CEO: 2 times the base salary.
   - for the CEO: 3 times the base salary.

f. The higher the variable remuneration, the more it should depend on the achievement of performance objectives thus established:
   - clearly defined, transparent, challenging and compared to a peer group
   - measured over a sufficiently long period (in principle, at least three years)

If the above conditions are satisfied or if part of the variable remuneration is based on quantitative and ambitious environmental or social targets, payments in excess of the values stipulated under points (d) and (e) above could be exceptionally accepted.

g. The remuneration of the highest paid person of the executive management must not be disproportionate compared to that of the other members.
h. Long-term incentive plans paid in shares, options or in cash should be in line with best practice standards (see Appendix 5).
i. Executive remuneration should not systematically increase disproportionately to the remuneration of other employees.
j. No sign-on bonuses (golden hellos) nor replacement payments without performance conditions for vesting were paid out during the period under review.
k. No severance payments (golden parachutes) were awarded during the period under review.
l. There must be a clawback clause regarding variable remuneration acquired in a fraudulent manner or by manipulation of the company's financial statements.

Working contracts

For the approbation of the remuneration report or system, the following rules on working contracts of executive management should in principle be respected:

a. The employment contracts and notice periods should in principle not exceed one year or market practice.
b. The contracts should not include non-compete clauses that could lead to excessive payments.
c. Executive contracts should not include sign-on bonuses or severance payments.

Appendix 5: Requirements regarding variable Remuneration (Bonus and long-term Incentive Plans)

Transparency

Approval of the incentive plans requires that the following elements should be disclosed:

a. eligibility to participate in the plan.
b. the type of award (cash, shares, options).
c. for share-based plans, the capital reserved for the plan.
d. the performance and vesting conditions and the exercise price.
e. the total duration of the plan, the performance, vesting and blocking period.
f. the vesting conditions and number of matching shares (if any) to be received at the end of the blocking period.
g. the individual caps, preferably as a % of the base salary.
h. the upside/downside potential of the shares/options awarded conditionally, depending on the level of achievement of performance targets fixed when the plan was launched.

Structure

1. Approval of all variable remuneration plans requires that the, the principles mentioned in Appendix 4 as well as the following elements should apply:

a. The plan must not be open to non-executive directors.
b. Individual awards at grant and at vesting should not be excessive with regard to best practice rules and the company's results. The total amount received from participation in the company's various plans should also be taken into account.
c. The plan should not offer excessive or asymmetric leverage.
d. The exercise conditions of the plan should not be amended during the life of the plan.
e. The plan must include a contractual clause stipulating that in case of fraudulent behaviour or manipulation of the accounts, a clawback is possible.
f. The capital reserved for the plan and all other plans (be they broad-based or not) should remain within the limits set by the standards of best practice, i.e., in principle 10% of issued capital in a 10-year rolling period. However, 5% of additional capital can be set aside for employee savings-related plans open to all employees. Capital reserved for executive incentive plans should not exceed 5% of issued capital. Those limits may be exceeded following an in-depth analysis of the situation, notably in the case of «start-ups», growing companies or companies in sectors with long research cycles.

g. The purchase price of shares for employee savings-related plans should not in principle be lower than 80% of the market price at date of grant.

h. The exercise price of the options should not be less than the share price at date of grant.

2. Approval of the short-term incentive plans requires that the following principles should notably be applied:

a. The bonus payments must be conditional upon the achievement of pre-determined and stringent performance conditions, aiming to align the interests of the beneficiaries with those of the shareholders. Those performance conditions must be in line with the strategic objectives of the company and set at the beginning of the period.

b. The annual bonus must vary in line with company performance. The amounts effectively paid out must be justified in light of the degree of achievement of the different performance targets fixed at the beginning of the period.

c. Part of the annual bonus must be deferred (in form of restricted shares for example) in particular when the annual bonus represents the majority of the variable remuneration. The blocking period must be sufficiently long (in principle 3 years).

d. When part of the bonus is paid in restricted shares or options, additional awards (matching shares) at the end of the blocking period should only be linked to the achievement of additional performance targets.

3. Approval of the long-term incentive plans requires that the following elements should apply in principle:

a. The incentive plans with narrow eligibility should vest subject to the achievement of pre-determined and sufficiently stringent performance targets to align the interests of the beneficiaries with those of the shareholders.

b. The targets should be both absolute and relative compared to company peers. This is especially important when the grants include a high leverage potential at the end of the performance period. In case of serious absolute or relative underperformance, the number of shares released and/or exercisable options should be reduced to nil.

c. The period of performance testing or blocking should be long enough (in principle at least three years).

d. The amounts effectively paid out at the end of the performance period should be justified in light of the degree of achievement of the different performance objectives fixed at the beginning of the period.

Appendix 6: Shareholder Resolutions

Ethos recommends supporting shareholder resolutions that aim at improving corporate governance or enhancing the social and environmental responsibility of the company. In general, Ethos approves, among others, resolutions such as those mentioned below. However, Ethos assesses each resolution in its specific context, which could lead to different voting recommendations.

Corporate Governance Resolutions

a. separate the functions of chair and CEO.
b. introduce annual elections for members of the board of directors.
c. introduce majority vote for electing members of the board of directors.
d. report on political contributions and lobbying.
e. elect an independent director with confirmed environmental expertise.
f. link the grant of options to the achievement of performance targets.
g. adopt an annual «Say on Pay».
h. link variable remuneration to clearly established and disclosed performance criteria.
i. remove classes of preferred shares.
j. allow minority shareholders to propose candidates for the board of directors.
k. align the political contributions of the company with its values.

Environmental Resolutions

a. prepare a sustainability report including the targets set by the company with regard to greenhouse gas emissions reduction.
b. prepare and adopt an annual «Say on Climate».
c. adopt quantitative targets for reducing total greenhouse gas emissions from the company's operations, supply chain and products, in particular if the targets are consistent with limiting the average global temperature increase to 1.5°C.
d. report to shareholders on the financial risks related to climate change and its potential impact on long-term shareholder value.
e. report on long-term environmental, social, and economic risks associated with the oil extraction from oil sands.
f. stop oil extraction from oil sands.
g. report on risks related to unconventional oil extraction and gas production.
h. report on risks related to shale gas extraction.

i. report on risks related to deepwater drilling.
j. report annually on the measures taken to minimise deforestation due to palm oil production.

Social Resolutions

a. prepare a report on diversity within the company.
b. establish a human rights committee.
c. disclose company policies on lobbying.
d. establish a policy aiming at maintaining affordable prices for medicines.

CORPORATE GOVERNANCE PRINCIPLES

1. Annual Report, Accounts, Dividend and Discharge

1.1 ANNUAL REPORT

The annual report enables shareholders and other stakeholders to follow a company's financial situation and to be informed of corporate strategic orientations. It gives the board of directors the opportunity to present and comment upon its activities during the financial year and to put forward future strategies and objectives. Consequently, the quality and sincerity of the information contained in this document are crucial to ensure investor confidence.

During the annual general meeting, the annual report is presented to the shareholders, who may subsequently call upon the board of directors and address queries or express concerns. Afterwards the annual report is generally put to the vote of the shareholders. In some countries it is accompanied by a request to discharge the board of directors or the supervisory board for their management of the company during the year under review.

The annual report traditionally includes financial information at company and group level. It should also include the management commentary, as well as extra-financial information, pertaining to the company's corporate governance as well as environmental and social responsibility.

Management commentary

The management commentary is a complement to the financial statements and should be published in a separate chapter of the annual report. In the commentary, the management should disclose important information regarding the company's financial situation, as well as the company's strategies and objectives.

In particular, the management commentary should include information on the company's activities and resources, strategic orientation, identification and evaluation of major strategic risks, relations with stakeholders, actual results compared to objectives, main financial and non-financial indicators, and perspectives of the company.

Information on Corporate Governance

More and more companies are including a chapter dedicated to corporate governance, which has the advantage of combining all relevant information. In most countries, the standards regarding corporate governance disclosure are similar.

In Switzerland, for instance, listed companies must describe their corporate governance practices in a concise and intelligible way. They should present the shareholding structure of the company, the capital structure, the composition and functioning of the board of directors and the executive management, the remuneration policy of the management, the shareholder rights, anti-takeover measures if any, information about

the external auditor, as well as the company's information policy towards its shareholders.

Information on environmental and social responsibility

Corporate environmental and social responsibility is integrated into the considerations of the vast majority of investors when analysing the companies in which they are invested or wish to invest. Chapter 2 of this document presents in detail Ethos' expectations regarding corporate sustainability reporting.

1.2 FINANCIAL REPORT OF A COMPANY AND GROUP

The financial report of a company, be it a separate or integral part of the annual report, is the document whereby shareholders and other stakeholders can obtain a comprehensive overview of the company's financial situation, past developments, and future prospects.

The financial statements (balance sheet, income statement, shareholders' equity, cash flow statement, notes to the financial statements, etc.) essentially fulfil two purposes. First, they trace the company's financial evolution; secondly, they provide input for share valuation and for investor decisions concerning the acquisition, retention, sale and exercise of the rights and obligations attached to such shares.

Accounting rules therefore require a presentation of the company's financial statements according to the «true and fair view» principle. The integrity of financial information is a prerequisite to the sound functioning of financial markets. Thus, companies should publish in due time all relevant financial statements in conformity with internationally accepted accounting standards (e.g., IFRS or US-GAAP standards). Furthermore, additional information recommended by codes of best practice in corporate governance should also be available. Comparability of the financial statements published by companies is of paramount importance to investors. The adoption by companies of standardised accounting practices has brought an answer to the problem, but there are still differences among companies as to the implementation of those practices and the quality and extent of the information disclosed.

The consideration of future events is a key element of accounting standards to ensure that the accounts do not misrepresent the value of a company's assets.

Under international accounting standards, the value of assets depends on their future ability to generate cash flows. It is now generally accepted that climate change poses physical, transitional, and legal risks for businesses.

When preparing their financial statements, companies make assumptions (e.g., about the life of assets and the revenues they will generate) that allow them to value balance sheet positions and to recognise the related costs (depreciation and amortisation). Ethos expects that climate risks and their impacts on the financial statements are incorporated into the assumptions made and that these are disclosed in a transparent manner in the notes to the financial statements. Indeed, when a company declares that it wants to reduce its emissions in a way that is compatible with a warming of 1.5°C, the assumptions used in the preparation of the financial statements must consider the costs of achieving such an objective. They must also consider the impact on the company's operations if a higher warming scenario were to occur.

In addition, the report must include a statement that the members of the board of directors have taken climate risk into account when signing the financial statements. Finally, the report must disclose how the accounting assumptions were tested against credible eco-nomic scenarios that are consistent with achieving zero net carbon emissions by 2050. Reports that do not take these material impacts into account may not meet the fundamental accounting principle of «true and fair view» by misrepresenting information and therefore misdirecting capital for both the company's management and shareholders.

A company's financial statements must be disclosed to its shareholders at least once a year; however, they are often issued on an interim basis. All shareholders should receive financial statements simultaneously to ensure the principle of equal treatment. In addition, they should receive them sufficiently in advance to vote knowledgeably at annual general meetings. The efficient and timely publication of results following the closure of accounts is paramount to the principles of best practice in corporate governance.

In Switzerland, as of the 2023 financial year, large listed companies are obliged to disclose their non-financial data and the sustainability report will be subject to a mandatory vote. Just as for financial statements, extra-financial data must be disclosed sufficiently in advance for shareholders to be able to vote in full knowledge of the facts at the annual general meeting (see chapter 2 below).

In most countries, companies are required to submit their annual accounts, duly certified by an external audit firm appointed by the shareholders, for approval at the annual general meeting. Even where the company's articles of association or national legislation do not require shareholder approval of the company report and accounts, it is nevertheless best practice for the board to request such approval at the annual general meeting. It is in fact better if the general meeting is allowed to vote separately on the annual report and the financial statements.

1.3 ALLOCATION OF INCOME AND DIVIDEND DISTRIBUTION

The auditors' comment on the board of director's proposals concerning the allocation of income before they are submitted to the shareholders. In general, the board proposes that the net income be used to set up reserves and to pay out a dividend.

Sometimes, instead of paying a dividend, or in addition thereto, Swiss companies propose to reimburse part of the nominal value of the shares. In other cases, companies opt for share repurchase plans to return excess capital to the shareowners instead of (or in addition to) paying a dividend (see point 6.4 of the corporate governance principles). Share buybacks cannot be considered as equivalent to a dividend as they are a reimbursement of a part of the capital to shareholders. Since 2011, Swiss companies may also distribute cash (as a dividend) from a reserve of paid-in capital (share premiums or agio) established since 1 January 1997. These dividends are exempt from Swiss withholding tax and, for Swiss resident shareholders, from income tax.

Since the entry into force of the federal law on tax reform and AHV financing (STAF) on 1 January 2020, listed companies distributing dividends from reserves from capital contributions (tax-free) generally have to distribute an equivalent taxable dividend from retained earnings.

When distributing profits, the Board of Directors must set the dividend within a reasonable range, taking into account the company's financial situation and prospects. Shareholders may request further information.

Income distribution policies depend on several factors and therefore vary according to the country, the economic sector and the company's stage of development. Start-ups and growing companies may deem it preferable to allocate income to the financing of their development rather than to pay a dividend.

Given that the total shareholder return (TSR) is equal to the sum of the dividend yield and the annual share price growth, many companies consider it important to pay a stable dividend, and trust that the increase in share value will enhance the shareholders' long-term returns.

One of the means of evaluating income distribution is the pay-out ratio, which is defined as the proportion of consolidated net income distributed in the form of a dividend and/or reimbursement of the nominal share value. The pay-out ratio therefore depends on the economic sector to which the company belongs and the type of company. Lower pay-out ratios may be justifiable in the case of high-growth companies that set aside profits for future investment. However, mature companies are expected to offer higher pay-out ratios. The ratio would nevertheless remain comparatively lower in countries where companies pay low dividends traditionally or for fiscal reasons.

The pay-out ratio and any fluctuations in it must be explained by the company. Investors, especially institutional investors, need regular inflows of cash and therefore appreciate the payment of even a modest dividend. Therefore, a «zero-dividend» policy cannot be approved in the long-term, unless the company finds itself in a particularly difficult situation.

Some companies replace the payment of a dividend by the operation of share buyback programmes. Contrary to a dividend, this is equal to a reimbursement of a part of the capital to investors, which have to sell their shares to benefit from such programmes while at the same time decreasing their participation, however this is not optimal for long-term investors who in addition incur transaction fees (see 6.3.1 principles of corporate governance).

Ethos considers that it is normal to reduce or withhold the dividend in case companies post losses. Given that many companies opt for a stable dividend policy, it may nevertheless be acceptable, in the case of exceptional losses, for a company to pay the dividend by releasing the amount from its reserves, provided that it has sufficient liquidity to do so. This practice cannot be justified, however, in the case of recurrent or substantial operational losses resulting, for example, from strategic problems for the company, or from an economic downturn. Under such circumstances, paying out the dividend would contribute to drain the company's reserves and give the shareholders a false impression of its real financial situation.

Furthermore, the payment of dividends in such situations could harm the balance of interests among the various stakeholders.

As a rule, the board of directors' proposals for the allocation of income and dividend distribution should appear on the agenda as an item that is distinct from the request for approval of the accounts and discharge of the board of directors. Although there are many cases where the law or the articles of association of the company do not require the shareholders to vote on income allocation, codes of best practice consider that shareholders should give their opinion in a matter that is of direct concern to them.

1.4 POLITICAL AND CHARITABLE DONATIONS

Political Donations

In general, company funds should not be used for political purposes, like the financing of political campaigns or elections. There are however countries where companies are allowed to make such donations, not only directly to people involved in politics or to parties, but also to organisations that in turn finance these candidates or parties. In this case, companies must demonstrate greater transparency, not only in disclosing the donations, but also put in place rules and procedures regarding the allocation of contributions, in the company's code of conduct.

Where political donations are made, it is important that they are in line with the strategic interests and values of the company and its stakeholders. Such donations must not just serve the short-term interests of members of the executive management and certain shareholders. In some countries, the maximum authorised donation is put to vote. The donations must be disclosed and justified in the company's annual report or on the website so that shareholders can evaluate the use of funds.

Political donations are classified by type. There is a distinction between direct donations (to a person involved in politics or to a political party) or indirect donations (to business federations or lobbying organisations).

Charitable donations

With the understanding that a company has a social responsibility toward society in general, a company may make charitable donations. To avoid conflicts of interest, the companies should also establish precise and transparent attribution procedures and rules and procedures, which should be written in their code of conduct. These donations, approved by the board, should be subject to a formal and transparent selection procedure and approved by the board of directors.

1.5 DISCHARGE OR THE BOARD OF DIRECTORS

The discharge (or «quitus» in France) granted to the board is all too often considered a mere formality. Yet, from the perspective of corporate governance, shareholders should appreciate the true value of this procedure. Discharge constitutes formal acceptance of the facts presented. As such, it is the shareholders' endorsement of the board of directors' management of the company affairs during the financial year under review.

In Switzerland, for example, discharge is one of the shareholder general meeting's inalienable rights. It constitutes a declaration that no legal proceedings shall be instituted against the discharged body for its conduct of business during the period under review. The approval of the annual report and accounts does not automatically entail discharge.

Discharge is valid only for the facts revealed and exempts the discharged members of the board from prosecution by the company for gross negligence. Shareholders who grant a discharge lose their right to obtain reparation for indirect prejudice. In Switzerland, any shareholders who withhold the discharge retain their right to file lawsuits against the directors for damages within a period of six months.

Generally, the discharge is restricted by law to the members of the board of directors. A situation may arise, however, where the discharge may be extended to other persons closely connected with the management of the company, such as members of the executive management and trustees.

Persons who have participated, in any way whatsoever, in the management of corporate affairs should not vote on the discharge to the board of directors. If a person is excluded, then so are his representatives. The overriding doctrine dictates that a legal entity owning shares in the company is prevented from voting the discharge if the said entity is controlled by a member of the board requesting discharge.

Given that the discharge entails a formal acceptance of revealed facts and a release by the shareholders of the board of directors for the management of the company, Ethos considers that the principle of discharge should therefore also be extended to the management of the extra financial challenges of the company. The shareholders should therefore not grant the discharge when certain elements of the governance of the company constitute a significant risk for the company's shareholders and other stakeholders.

Refusal to grant discharge is therefore also justified when:

- The board of directors has made decisions that constitute a major environmental/social risk or fails to recognise the major environmental/social issues facing the company;
- The company is involved in an accident that has caused serious harm to the lives or health of employees, the communities in which it operates, or the natural environment;
- The company is substantively accused of systematic violations of internationally recognised human rights of employees, local communities or the company is complicit in such violations along the supply chain;
- The company refuses to acknowledge the negative impact of some of its products or operations on humans or the natural environment.

2. Sustainability

Corporate environmental and social responsibility is now integrated into the considerations of the vast majority of investors when they analyse the companies in which they are invested or wish to invest. For investors, including Ethos, corporate environmental and social responsibility is part of the foundation of long-term shareholder value.

In this context, Ethos believes that companies must take into account not only the impact of their commercial activities on the environment and society, but also the impact of extra-financial elements on their own operational activities. This is known as double materiality.

In this respect, non-financial information is of particular importance and the sustainability report is an important communication tool enabling companies to publish information about their sustainable development strategy and the basis of their environmental and social policy in a transparent manner. Several reports may be submitted to shareholders for approval at the general meeting:

- The sustainability report (section 2.1 below): this report gives an account of all the company's environmental, social and governance (ESG) issues.
- The climate strategy report («say on climate», section 2.2 below): this report sets out the company's short-, medium- and long-term strategy to make its activities compatible with a world of zero net CO2e emissions by 2050.
- The climate report («say on climate», section 2.2 below): this report gives an account of the company's climate behaviour as a whole, i.e. both in the past (to demonstrate the progress made) and in the future (including its climate strategy).

2.1 SUSTAINABILITY REPORT

The Swiss case

In Switzerland, as of the 2023 financial year, the Code of Obligations obliges the largest listed companies to disclose a report on non-financial issues (art. CO9641a to 964c). This report has been the object of a mandatory vote from the 2024 seasons of general meeting onwards. The provisions of the Swiss Code of Obligations stipulate that companies must publish information on environmental matters, in particular CO2 targets, as well as social and employee-related issues, respect for human rights and combating corruption.

Companies subject to the obligation to publish a sustainability report must meet the following criteria:

- An annual average of 500 full-time jobs over two consecutive financial years.
- Turnover in excess of CHF 40 million OR balance sheet total in excess of CHF 20 million.

The Code of Obligations is not very prescriptive in terms of the number of indicators that need to be published.

However, the Federal Council has clarified the obligations of companies in terms of climate information. A specific ordinance on climate disclosures was published in December 2022, specifying that the reports must follow the recommendations of the Task Force on Climate-Related Financial Disclosures (TCFD). However, this ordinance will only come into force for the 2024 financial year, with publication requirement in 2025.

In 2024, the Federal Council launched a consultation process on amending the Swiss Code of Obligations with regard to «transparency in sustainability issues», with the aim of aligning legislation with the developments of European law (CSRD).

Ethos' expectations with respect to sustainability

Ethos' voting guidelines clarify the relevant criteria for the approval of the sustainability report. In particular, Ethos expects the sustainability report to be prepared in accordance with a recognised extra-financial reporting standard (such as GRI or SASB), which enables stakeholders to evaluate and compare the sustainability reports of different companies more effectively. Ethos also expects the sustainability report to be verified by an external auditing body. It is essential that the company's shareholders and other stakeholders can rely on reliable and verified information. In the short term, it is anticipated that the verifications carried out will be «limited assurance» rather than the «reasonable assurance» to which financial data is subject.

In terms of content, the sustainability report must cover all the material issues specific to the company, whether in the environmental, social or governance fields.

As far as the company's activities are concerned, the environmental aspect must include data on water consumption, waste management, biodiversity, and the company's climate strategy. For the social factor, the company must provide information on its impact on local communities and on the measures it has put in place to guarantee the human rights of all its staff and external service providers. With regards to governance, this includes the management of business ethics by the governing bodies and the policies put in place on important issues specific to their company, such as corruption, money laundering or clinical trials, as well as the implementation of these policies. Each material issue must be accompanied by objectives and contain quantitative indicators to measure progress over several years (minimum three years). Ethos may, for example, reject the sustainability report if it does not cover the material issues with quantitative indicators, does not set ambitious targets, does not systematically meet its objectives or if there is a deterioration of key indicators over a three-year period.

Finally, the report must be published sufficiently in advance of the general meeting so that shareholders can vote in full knowledge of the facts at the general meeting.

2.2 CLIMATE STRATEGY AND REPORT (SAY ON CLIMATE)

With the obligation for the largest Swiss companies to disclose their sustainability reports from the 2024 general meeting season, the Federal Council also wanted to strengthen the requirements for climate reporting and published a specific ordinance in December 2022. This ordinance on reporting on climate issues came into force on 1 January 2024, with the aim of publishing climate reports for the first time in 2025, one year after the provisions of the Swiss Code of Obligations on reporting on non-financial issues. The purpose of the ordinance is to clarify the application of Art. 964b of the Swiss Code of Obligations on climate change, the main points of which concern the principle of dual materiality (the financial risk to which a company is exposed as a result of climate change, as well as the climate impact of the company's business activities). The ordinance is based on the TCFD's recommendations and provides for publication in a format that can be read by both man and machine.

In recent years, Say on Climate resolutions have appeared on the agendas of listed companies' general meetings, particularly at the request of large institutional investors. Say on Climate calls for greater transparency on the part of companies in terms of climate strategy and reporting, and a non-binding annual vote by shareholders at the AGM.

Say on Climate thus aims to promote robust net-zero transition plans and to give investors the opportunity to vote on these climate action plans.

It has encouraged targeted companies to disclose CO2e reduction targets, climate action plans, measures to reduce emissions as well as climate-related risks and opportunities in accordance with the Task Force on Climate-related Financial Disclosures (TCFD) reporting framework.

A distinction is made between the vote on the climate strategy and the climate report. While the vote on climate strategy focuses on the objectives and measures to be taken to achieve the climate transition, the climate report deals with the progress made so far in achieving the objectives set.

Several key elements are taken into account within company climate action plans:

- The company must publish its CO2e emissions in accordance with the Greenhouse Gas Protocol (GHG), which is a set of internationally recognised guidelines and standards for the accounting and management of greenhouse gas (GHG) emissions. In particular, companies should publish direct (scope 1) and indirect (scope 2 and 3) CO2e emissions. Scope 3 includes indirect emissions linked to the life cycle of products (supply chain, transport, travel, use of products).
- The company must have put in place targets for reducing CO2e emissions that are compatible with a maximum warming of 1.5°C in 2050. It is important that these targets are compatible with science and verified by a recognised body (such as the Science Based Target Initiative) in order to make them credible.

- In addition to its 2050 reduction targets, the company must also publish intermediate CO2e reduction targets for the short term (e.g. by 2030) in order to strengthen its climate strategy.
- The company must also publish appropriate measures to be taken to reach its CO2e reduction targets for the short, medium, and long-term, as well as and their contribution to the achievement of its reduction targets.
- The company must disclose the investments required (Capex) to achieve its CO2e reduction targets, in order to demonstrate that the costs generated by the climate transition are taken into account in the company's investment strategy.
- The company must commit to publish an annual report on the implementation of its strategy to enable stakeholders to regularly assess the progress made.

3. Board of Directors

3.1 BOARD DUTIES

The board of directors must be an active, independent, and competent body that is collectively accountable for its decisions to the shareholders that have appointed it. In Switzerland, the competencies of the board are defined in company law (Art. 716 CO).

In general, Ethos considers that the board of directors has the following duties:

- play a predominant role in defining the company's strategic orientations and its implementation.
- take the necessary measures to meet the targets set, control risk.
- monitor the implementation and the results of the strategy.
- organise the company at the highest level: recruitment, monitoring, remuneration and succession planning of members of the executive management.
- ensure that the accounting and audit principles are respected. Assess the quality of the information provided to shareholders and the market when preparing the annual report and accounts for which they are responsible.
- make sure that the company is compliant with corporate governance best practice and disclose it to the shareholders.
- integrate the notion of environmental and social responsibility in the company's strategy and risk management policy (see point 3.2).
- organise and convene the annual general meeting and implement its decisions.

To carry out its mandate actively, independently, and competently, the board must have a number of characteristics:

- It must have an adequate composition (see point 3.4 below).
- It must receive exact and relevant information in a timely manner.
- It must have access to the advice of independent consultants if necessary.
- It must establish key committees in charge of certain matters, in particular audit, risk, nomination, remuneration and sustainability.
- It must regularly assess its overall performance and the individual performance of each board member (in particular the chair) and of the CEO.
- It must be regularly renewed.

3.2 BOARD DUTIES WITH REGARDS TO SUSTAINABILITY

Institutional investors have a fiduciary duty to integrate sustainability criteria into their investment policies as well as in their voting decisions at general meetings. As such, investors expect boards of directors to take sustainability criteria into account in the decision-making process.

In particular, members of the board of directors have a fiduciary duty to act in good faith, with the care and loyalty necessary to promote the long-term success of the company with a view to creating long term value. The boards of directors are therefore accountable of the governance of sustainability in the company and its integration into strategy, innovation, and risk management. The board must consider the short- and long-term interests of the company and its stakeholders to create a positive material impact on society and the environment.

In general, Ethos considers that the board of directors has the following duties:

- identify, address and report on environmental and social risks relevant to the company
- oversee the company's approach to managing human rights and modern slavery issues in its operations and supply chain
- ensure that the risks related to the safety of personnel in its operations and its supply chain are identified and mitigated
- assess the impact of the company on the environment and the biodiversity and determine the adaptation measures to respect the relevant planetary boundaries
- assess the impact of the company in terms of climate change and determine the adaptation measures to be taken to meet the needs of a net zero economy by reducing greenhouse gas emissions

3.3 BOARD STRUCTURE

Companies may adopt a board of directors including both executive and non-executive directors or a supervisory board including non-executive directors only and an executive board. Most countries opt for a system where the board may include executive and non-executive members. However, in Germany and Austria, a system of governance with a supervisory board is mandatory. In France and in the Netherlands, the law allows companies to choose between the two systems.

In countries where it is mandatory to establish dual structures comprising a supervisory board and an executive board (Austria and Germany), the supervisory board does not include executive members, who can only sit on the executive board. The advantage of this system is that there is clear separation of the roles of CEO and chair of the board of directors (see 3.8 below).

3.4 BOARD COMPOSITION

The composition of the board of directors is fundamental to ensure its good functioning. The board should make sure that its composition is adequate in terms of competencies, independence, diversity, and availability of its members.

Competencies

The members of the board of directors should have a complementary balance of competencies, education, and professional backgrounds, so as to be able to discharge their multiple duties in the best interests of the company. They are frequently chosen for the position they occupy in economic, scientific, legal, political, and academic circles.

Similarly, they may be selected to represent certain interests such as those of an important shareholder, the State, or personnel as a whole.

A board of directors should include members with a wide range of skills, particularly in terms of knowledge of the industry, financial management, auditing, or operational management of a company of similar complexity. In addition, given the increasing importance of the digital economy, digitalisation skills are also becoming crucial for companies and should be present and integrated at board level.

Finally, sustainability expertise is an undeniable asset, considering the board's duties in the area of sustainability (point 3.2 above).

In light of the complexity of their mission and the responsibility it entails, directors should receive induction on nomination, as well as regular training during the course of their mandate.

Independence

Overall, the board composition should be balanced to ensure that its mission is fulfilled independently, objectively and in the interests of all shareholders. To achieve this, the board of directors must include a sufficient number of independent members. There are three types of members:

- independent members, whose sole connection with the company is their membership of the board of directors;
- affiliated members, who do not hold executive positions and do not fulfil the requirements for independence stipulated in point 3.6 hereafter.
- executive members, who are employed in an executive capacity by the same company.

To be considered sufficiently independent, the board should include at least 50% independent directors (more than 50% in cases where the offices of chair of the board and CEO are held by the same person).

Companies with one major shareholder (or group of shareholders) must be viewed differently. This is especially true of «family» businesses in which the founder and/or family members are actively involved at the financial and management levels.

In such cases, the composition of the board of directors must be analysed keeping in mind the company's history. It should however be noted that overrepresentation of important shareholders at board level is not desirable. This could lead to such a shareholder controlling not only the general meeting but also the board, which carries serious risks for minority shareholders and other stakeholders of the company.

In countries such as Germany and France, the law requires the presence of members who represent either employees or employee share ownership. In Germany, half the members of the supervisory board of a company with a payroll of over 2,000 must represent the employees. These members may be members of the company's personnel or of trade unions.

In France, the board of directors must appoint representatives of employee-shareholders when the employees collectively own 3% or more of the company's share capital. Below this 3% threshold, the board of directors of any French company may also decide to include members of personnel or people representing them (a maximum of five or one third of members of the board of directors).

Diversity

Diverse skills and sufficient independence are essential for an effective board. Board diversity is also an important element, as it enhances the quality of board deliberations.

It is thus important to ensure that the board includes not only women, but also members of different ages, racial or ethnic backgrounds, distinctive networks, or professional experience, particularly in industries and regions of the world where the company has significant operations.

Expectations for racial and ethnic representation at the board and senior management level are increasing, particularly in the United States, where in August 2021 the Securities and Exchange Commission (SEC) approved the Nasdaq Board Diversity Rule, which requires at least two members from diverse backgrounds, including one woman and one member of an underrepresented or LGBTQ+ minority.

In the United Kingdom, the Parker Report recommends increasing ethnic diversity on boards by proposing that every FTSE 100 board have at least one member from an ethnic minority by 2021 and every FTSE 250 board by 2024. In countries where the collection of data on racial and ethnic origin is prohibited, boards of directors should find other ways to promote diversity and inclusion.

Gender

Since the 2000s, the underrepresentation of women in senior management, executive and board of director membership positions in listed companies has been a much-debated issue. It is obvious that the achievement of equal representation in the workplace is a long-term undertaking that requires the establishment of structures that encourage and allow women to climb the corporate ladder. The feminisation of boards is a very serious challenge for companies that are under increasing pressure from civil society and, therefore, from the legislator asking for more women directors on corporate boards.

Faced with the realisation that self-regulation alone could not effectively promote the appointment of women to boards of directors, several European Union member states have for several years adopted a quota for female representation or gender representation in their legislation. The first to take this step was Norway in 2003, followed by several other countries in 2011. The positive effect of quotas has been demonstrated in countries that have adopted them.

In June 2022, the European Parliament adopted a directive requiring large European companies to have 40% of their non-executive board members or 33% of their total board members be women by mid-2026. Member states will have to transpose the directive within two years of its adoption.

In Switzerland, the Code of Obligations also contains a quota provision, which came into force on 1st of January 2021. Companies subject to an ordinary audit have 5 years to comply with the 30% quota with regards to the board of directors and 10 years to comply with the 20% quota for the executive committee. Companies that do not reach those quotas will have to provide an explanation and the measures taken to reach the target (comply or explain).

To reach those diversity targets, the listed companies must urgently put in place policies encouraging the professional advancement of women. To reach the executive level, women need to be able to progress in the hierarchy. The implementation of concrete strategies and tools to achieve gender diversity in teams and avoid the regular decrease of the number of women in higher positions should be a priority for the departments of human resources.

Age

It is important that the board of directors has a good range of different ages among the members. Too many members over the legal retirement age present problems for succession and renewal of ideas and competencies. In fact, younger nominees can have a more modern and innovative view of business. The boards of directors should therefore include a diversity of members in terms of age, with particular emphasis on the board's succession plan. To ensure regular renewal of the board, certain companies set age or term limits for the exercise of their role as members of the board of directors in terms of the number of successive mandates that a member may serve (see point 3.11).

Diversity of origin

The presence of local members with extensive experience of the company's country of domicile is fundamental. So is the presence of a certain number of members of other origins or having lived or worked in other regions of the globe, especially in countries where the company has important operations and business connections. Their contribution becomes increasingly important in light of the globalisation of the economy.

Availability

In order to fulfil their duties with the required diligence, in particular in a period of crisis, the members of the board of directors should have sufficient time to devote to their directorships.

It is therefore important to pay particular attention to the overall time commitments of the members, in particular when these members also perform executive duties in a company (see point 3.11)

3.5 BOARD SIZE

While the overall composition of the board is an essential consideration, so too is its size. A board with too many members can become cumbersome, but a board that is too small may lack competent members and diversity and be unable to establish separate key committees made up of sufficient independent and different persons, which leads to a risk for the company and its minority shareholders. What constitutes a reasonable number of members depends on the specific size and situation of each company. For large listed companies, Ethos considers that a reasonable number would be between eight and a maximum of 15 members; for medium-sized companies, it would be between seven and nine members, and for small companies between five and seven.

Experience has shown that when the board is too small (four members or less), the directors tend to act in an executive capacity. In such cases, the distinction between management and oversight could become blurred, making it more difficult to ensure a division of responsibilities at the head of the company.

3.6 INDEPENDENCE OF MEMBERS OF THE BOARD OF DIRECTORS

An independent member is a person free of any link with the company that could compromise their objective participation in the board's activities and not exposed to conflicts of interest. They must be capable of expressing disagreement with other members' decisions if they consider that these run counter to the interests of the shareholders.

A person's independence is fundamentally a question of character, and it is often difficult for shareholders to assess this element, especially in the case of new nominees. It is thus necessary to evaluate the independence of board members against generally accepted objective criteria.

According to Ethos, a member is considered independent when all criteria listed in Appendix 1 of Ethos' voting guidelines are met.

The laws and best practice codes of many countries consider that a director is no longer independent when their mandate exceeds a certain duration. For example, the European Union, France and Spain foresee a limit of 12 years, Finland has set a limit of 10 years, while Great Britain and Italy are stricter with 9. In Germany, there is no specific limit in the best practice code or in the law. In the Netherlands, the mandate duration is not considered as an affiliation reason, but the code of best practice stipulates a maximum mandate duration of 12 years for members of the board of directors of listed companies. In the United States, the mandate duration is not a condition of independence.

With regards to significant shareholders and their representatives, the shareholding threshold required to consider them has having a significant stake, and thus as non-independent members, varies from country to country. A threshold of 10% is used in France and the Netherlands to consider a shareholder as having a significant stake and thus as non-independent. Great Britain and Spain are stricter with a threshold of 3%. In the United States, a member of a board of directors is considered as non-independent when they hold more than 50% of the voting rights in the company.

Decisions on the independence of members must be guided by the above criteria of best practice, but the information provided by the company on its members is crucial. To this effect, some codes of best practice require companies to make substantiated statements of independence regarding the directors.

3.7 BOARD OF DIRECTORS COMMITTEES

General characteristics

Specialised board of directors' committees are a fundamental aspect of corporate governance. Indeed, because the board of directors performs a large number of widely varying tasks, the issues to be dealt with are complex and the members cannot all be expected to have the same degree of expertise in all fields. Furthermore, the board will gain in efficiency if the work is shared among its members; this is important in larger and more diversified companies. Lastly, in some areas in which conflicts of interest are likely to arise (audit, sustainability, remuneration, nomination, and risk), independent members play a key oversight role.

The establishment of separate and focused board committees is one means of addressing such concerns. However, these committees do not replace the board with regard to matters that fall within the remit of the board as a whole.

The specific tasks of each committee depend on the number of committees in a company and may vary from country to country. Nevertheless, it is possible to identify the general trends described below.

Each company can establish as many committees as it deems necessary for the conduct of its business. Codes of best practice nevertheless recommend a minimum of three committees (hereinafter referred to as «key committees»): the audit committee, the nomination committee, and the remuneration committee.

The Swiss Code of Obligations requires listed companies to set up at least a remuneration committee, whose members are elected annually and individually (see introduction to this document).

Large companies sometimes set up other committees such as the chair's committee, the risk committee, the compliance committee (which ensures the company's compliance with the laws, regulations, and statutory requirements), or the sustainability committee in charge of the company's environmental and social strategy.

The corporate governance committee is generally responsible for evaluating the size, organisation and operation of the board and its committees for ensuring that the board maintains good quality engagement with the shareholders and that the company abides by the law and all relevant regulations.

Each committee should consist of at least three but not more than five members, in order not to become unwieldy. The list of members and the name of the chair of each committee should be made public. The most efficient way of doing this is to post the information on the company's website, which should be regularly updated.

Matters relating to audit as well as the nomination and remuneration of members of the company's board of directors and of the executive management require independent judgment that is free of conflicts of interest. They should therefore be entrusted to board committees comprising only non-executive and mostly independent members.

Audit committee

The board of directors is responsible for the integrity of the financial information disclosed by the company and must therefore set up an audit committee whose tasks are the following:

- oversee the accounting process and approve the assumptions made by senior management (particularly those relating to the impact of climate change)
- be responsible for the reliability and integrity of the company's accounting policies, financial statements, and reporting
- ensure that the impact of environmental and social factors is taken into account in the valuation of the company's assets and in its accounts
- ensure the effectiveness and coordination of internal and external audits
- verify the independence of the external auditor
- authorise the external auditor to provide non-audit services and to approve the corresponding amount
- monitor the company's internal control and risk management systems
- review and approve the internal and external audit reports and put in place the required improvements
- conduct a critical survey of the financial report and accounts and issue a recommendation to the board of directors concerning their presentation to the annual shareholders meeting
- ensure that the sustainability report is independently verified by an external auditor

The performance of these tasks has led to increasingly professional audit committees whose members have extensive and up to date expertise in accounting, control, and auditing, as well as in-depth knowledge of the company's industry. The audit committee members are in principle independent and should have sufficient time to carry out their assignments with due diligence.

To avoid conflicts of interest, audit committee members should in principle be independent members. Time-limited exceptions can be made where it is in the company's best interest to rely upon the competencies and experience of a non-independent member. Notwithstanding the foregoing, the audit committee must never comprise executive members or persons having acted in an executive capacity in the previous three years.

Members of the audit committee must have the opportunity to meet with and monitor the people responsible for the establishment and the control of the company's accounts in the absence of executive members.

Nomination committee

The role of the nomination committee is to identify and propose the most suitable nominees for election to the board and for appointment to senior management positions.

It therefore plays a crucial role in ensuring a balanced board of directors and efficient senior management. It also establishes the succession planning for the CEO, the company's top executives and the members of the board, as well as expressing its opinion on feminine representation. To propose the most appropriate people, the committee must adopt selection procedures that take into consideration the company's specific needs. These procedures must be rigorous, transparent, and disclosed to the shareholders. Furthermore, it falls to this committee to regularly assess the appropriateness of the size and composition of the board of directors.

Lastly, the nomination committee must establish a regular process by which to appraise the performance of board members and of the company's executive management. To guarantee objectivity, this task can be carried out in co-operation with an external consultant. The members of the nomination committee must in principle not occupy an executive position and be mostly independent.

Remuneration committee

The remuneration committee determines the company's remuneration policy. It is also responsible for establishing share-based incentive plans, which are suitable to the company and considered fair.

Remuneration has become a very complex affair, and most members of the committee must therefore have experience in this field and have regular access to the advice of external remuneration consultants independent from executive management, with whom they must not have business relations that could give rise to conflicts of interest.

To avoid any conflicts of interest, the remuneration committee should consist entirely of non-executive directors who are also in principle independent.

In Switzerland, since the entry into force of the Ordinance against Excessive Compensation (Code of Obligations since 1 January 2023), the principles governing the tasks and powers of the remuneration committee must be included in the articles of association and therefore be approved by the general meeting. In addition, the members of the remuneration committee are elected annually by the general meeting.

Sustainability committee

The task of the sustainability committee is to participate in the development of the company's sustainability strategy, the policies for its implementation and the monitoring of this implementation. It is important that the sustainability strategy is an integral part of the company's strategy and that it is decided at the highest level of the company.

It is essential that the sustainability strategy covers the material issues of the company and defines key performance indicators and targets to be achieved in the short, medium, and long term. In view of the climate emergency, climate change should be an integral part of any sustainability strategy. It is essential that companies communicate clearly and transparently about their sustainability strategy and its implementation.

In view of the challenges of sustainability for companies and their stakeholders, the sustainability committee should include at least one member with specific expertise in the field of sustainability.

3.8 SEPARATE OFFICES OF CHAIR OF THE BOARD AND CHIEF EXECUTIVE OFFICER (CEO)

Chairing a board of directors and running a company are two very important but distinct tasks. The separation of the offices of chair of the board and Chief Executive Officer is designed to ensure a balance of power within the company. It reinforces the board's ability to make independent decisions and to monitor the conduct of business by executive management.

The combination of the functions of chair of the board of directors and CEO varies widely from country to country. For example, in the United States it is still common (although increasingly called into question) for the same person to combine the positions. In the United Kingdom and in Switzerland, in particular in large corporations, the two offices are generally separate.

Should the board nevertheless opt for the combination of functions, it must provide a detailed and substantial justification for this situation, which should be considered temporary.

When there is combination of functions, the board must take steps to offset such concentration of power. In particular, the chair/CEO must not be a member of any key committee.

Furthermore, in case of combination of functions, the board should also appoint a «senior independent board member», or «lead director», with the following tasks:

- put in place a structure that promotes an active role for independent members. To that end, they must co-ordinate the activities of the other independent board members, ensure that their opinion is taken into consideration and organise working sessions among non-executive members
- discuss directly with independent members any matters that were not adequately dealt with by the board and make sure that they receive the information they need to perform their duties
- convene the board, whenever required, in the absence of the chair/CEO, in particular for a periodic assessment of the latter's performance
- collaborate with the chair/CEO in drafting the agenda for board of directors' meetings
- facilitate relations with investors
- sit on key board committees and, in principle, chair the nomination and remuneration committee

The corporate governance section of the annual report should include a brief description of the role and duties of the lead director.

3.9 INFORMATION ON NOMINEES PROPOSED FOR ELECTION TO THE BOARD OF DIRECTORS

One of the most important shareholder rights is to elect the members of the board. To be able to vote in an informed manner on each nominee, shareholders must receive information concerning nominees well before the annual general meeting. In particular, they should be informed of each nominee's identity, nationality, age, education and training, recent professional experience, length of tenure on the board, and, most importantly, any positions (whether as executives or on boards of directors) held in other companies or organisations.

For new nominees, the company should indicate the particular reasons that led to their nomination (competencies, in-depth knowledge of the company industry or region, business connections, etc.).

Before re-electing members of the board of directors, the shareholders must have all the relevant information to assess each member's contribution to the success of the board, as well as their rate of attendance of board meetings. To that end, the company should indicate, in its annual report, the number of board and committee meetings each member has attended. Nominees who were absent too often, without due justification, should not be re-elected.

3.10 BOARD'S ELECTION MODALITIES

Members of the board of directors must be elected individually. When shareholders are called upon to ratify all the people submitted for (re)election in a group vote, they are faced with a delicate task. If they are opposed to one or more candidates, they are obliged to oppose all the candidates submitted for (re)election, or in some cases the board as a whole, which could destabilise the company.

Due to pressure from the authorities, codes of best practice and shareholders, (re)elections of members of the board of directors of listed companies are carried out individually in several countries.

However, when companies proceed to group elections, as a sign of protest against the continuation of a bad practice, Ethos advocates a negative vote when the (re)election of one or more members is deemed prejudicial to the interests of the company and its shareholders. Since 2014, in Switzerland, the Ordinance against Excessive Compensation (the Swiss Code of Obligations since 1 January 2023), obliges Swiss listed companies to elect annually and individually the members of the board of directors, as well as to elect annually the chair of the board by the general meeting.

All nominees should in principle be elected by the shareholders. Notable exceptions to the rule are Austria, France, Germany, Norway and Sweden.

In Austria, Germany, Norway and Sweden, representatives of personnel are elected directly by the personnel or their unions.

In France, employee representatives are chosen by the personnel. The representatives of employee-shareholders are first designated by the employee-shareholders or by the supervisory boards of employee-shareholder funds. Afterwards the shareholders are required to vote, choosing from the proposed nominees who will finally sit on the board.

In the case of companies that have a supervisory board as well as a management board, the shareholders elect either the members of the supervisory board, who then nominate the members of the management board (Germany, France, the Netherlands), or the members of both the supervisory and at times the management board (Netherlands, under the structured regime).

3.11 CHARACTERISTICS OF BOARD OF DIRECTORS MEMBERSHIP MANDATES

Term

Each member of the board of directors is accountable to the shareholders and must therefore make himself available regularly for re-election at the annual general meeting. Annual elections allow continuous assessment of directors' performance and increased accountability to shareholders. In several countries, however, especially in continental Europe (France, the Netherlands, Germany, and Spain), directors' mandates are of three years or more. In such cases, staggering the members' terms ensures that part of the board is re-elected each year thereby avoiding that the entire board be re-elected simultaneously. In Switzerland, since 2014 the Ordinance against Excessive Compensation (the Code of Obligations since 1st of January 2023), requires the annual and individual election of members.

The board must be regularly renewed to ensure a constant flow of new ideas and maintain a critical spirit. This is particularly relevant in the case of independent members. Ethos considers, as do several codes of best practice, that a director who has sat on the board for over twelve years can no longer be deemed independent. During such a long period, they will have participated in many projects and decisions that could compromise their objectivity and critical thinking. If they remain on the board, they must be considered an affiliated member, which does not prevent them from sitting on the board if the board independence is sufficient.

Number of mandates and availability

A member must have sufficient time to devote to his duties, and this is particularly relevant in a situation of crisis. In Switzerland, for example the Code of Obligations requires that Swiss listed companies fix in their articles of association the maximum number of mandates that members of the board and members of the executive management can hold.

In other countries, some codes of best practice in corporate governance set a maximum number of mandates. In the United States, for example, the Council of Institutional Investors (a non-profit association of public, union, and corporate pension funds, including an increasing number of non-US investors) considers that a full-time executive cannot hold more than two outside mandates. The CEO should not hold more than one outside mandate.

Moreover, a member whose sole activity consists of sitting on various boards of directors should hold no more than five mandates in profit-making companies.

In the United Kingdom, the UK Corporate Governance Code stipulates that a full-time executive member of a FTSE 100 company should not sit on the board of more than one other FTSE 100 company and should do so only as a member.

In France, a member may hold no more than five mandates in public companies on French soil.

In Germany, the corporate governance code limits the number of supervisory board membership mandates to three for persons exercising executive functions within a company.

In the Netherlands, the code of best practice limits the number of board of directors' membership mandates to two for persons exercising executive functions and the latter should not chair the board. For non-executive directors, the aggregate number of mandates should not exceed five, with chair positions counting double.

When codes of best practice do not include limits, Ethos considers that a member with executive functions (or a full-time position) should not, in principle, hold more than one mandate in a listed or very large company outside his company (see Appendix 1 of the voting guidelines). For non-executive members, the total number of mandates in listed or very large companies should be five, of which a maximum of four in listed companies. This limit also depends on their roles as chair or member, as well as their participation in key board committees. In particular, Ethos considers that mandates as chair of the board correspond to a workload of two mandates of member of the board.

A member's availability can also be assessed by his attendance of board meetings. A member who, without good reason, has failed in one year to attend at least 75% of the meetings of the board or of the committees on which he serves should not be proposed for re-election.

Age limit and maximum term of office

Certain companies, especially in continental Europe, set a statutory age limit of 70 to 72 years beyond which a member must retire from the board. In North America, however, such practice might contravene anti-discrimination laws.

For companies where no age limit exists, a nomination and re-appointment must be examined in the light of the board's explanations, their competencies, tenure, the length of the incoming term and, above all, the overall composition of the board of directors.

In principle, Ethos considers that a member should not be proposed for re-election when they reach the age of 75. Moreover, a nominee should be less than 70 years old on first appointment.

Some companies also set a statutory limit to the number of successive terms a member can serve. The aim, obviously, is to renew the board regularly, and such limits can therefore be considered to promote fresh input and new competencies. Ethos set a 16-year mandate limit in its voting guidelines to ensure board refreshment is satisfactory.

4. Audit Firm

4.1 FAIRNESS OF THE ACCOUNTS

One of the fundamental responsibilities of the board of directors is to provide a «true and fair view» of the company's financial situation and perspectives by ensuring the integrity of the accounts and any financial information disclosed by the company. To that end, the board must set up an internal and an external monitoring system. It must guarantee the quality, transparency, and continuity of financial statements in order to provide the shareholders with a realistic view of the company's financial situation.

Within the framework of this mission, the board of directors must therefore appoint an independent external audit firm. The role of this audit firm (external auditor or statutory auditor, depending on the country) is to provide neutral and objective auditing of the company's annual accounts and financial statements and to confirm that its income allocation complies with the relevant legal requirements.

4.2 APPOINTMENT OF THE EXTERNAL AUDIT FIRM

Given the importance of the audit for shareholders, in most countries they are entitled to approve the appointment of the auditing company proposed by the Board of Directors at the Annual General Meeting. In principle, this is based on a recommendation from the Audit Committee.

The board of directors often treats the approval of the audit firm as a matter of routine. It is however of crucial interest to the shareholders to ascertain that the firm chosen is entirely independent of the company to be audited, so that the fundamental principle of an objective judgment is respected. To protect their rights, shareholders should only approve the board's proposal after taking into account the criteria for independence required by the codes of best practice for external auditing.

4.3 INDEPENDENCE OF THE EXTERNAL AUDIT FIRM

General considerations

The audit firm must be independent if it is to be credible in the eyes of investors. Independence is a dual concept, corresponding on the one hand to effective independence, linked to the person of the auditor; and on the other to visible independence, which implies displaying an attitude such that third parties cannot question the audit firm's objectivity.

Codes of best practice in corporate governance require that the external audit firm be independent of the company's board of directors, management and any major shareholder or group of shareholders. The principle of independence applies to the external audit firm's board of directors, its executives and any employee directly involved in the auditing of the accounts.

Independence is a legal requirement in several countries, including Switzerland. The relevant Swiss legislation defines independence as «freedom from instructions, freedom of judgment and independence in decision». The audit committee must scrupulously and systematically take these concepts into account when considering whether to appoint or re-appoint the external audit firm.

The independence of the audit firm can be compromised when there are personal or professional ties between the audit firm and the company to be audited. This is also the case for small audit firms when the fees received from a single client constitute a substantial proportion of their turnover. In order to ensure the external audit firm's independence, international audit standards stipulate that fees paid by a single company to its external auditors should not exceed 10% of the audit company's total turnover.

It is the role of the audit committee to ensure that the audit firm's independence is not compromised for any of the above-mentioned reasons, taking into account the auditors' professional standards and the generally accepted rules of best practice.

The regular rotation of the persons in charge of the audit mandate also contributes to ensuring the independence of the external audit firm. For example, EXPERTsuisse and the new European regulation recommend that the company's lead auditor, who signs the audit of the accounts, be replaced at least every seven years, whereas the Sarbanes-Oxley Act in the United States stipulates a change every five years.

Limits on non-audit services

Given the importance of the principle of independence of the external audit firm, it is now generally acknowledged that the latter cannot perform, for the companies whose accounts it audits, a number of services that could impair its independence. The Sarbanes-Oxley Act (which was introduced in July 2002 and applies to all companies listed in the United States and to their auditors) groups such services into nine categories of tasks that are not compatible with the role of external auditor: bookkeeping, the establishment and development of financial information systems, valuation or appraisal activities, internal audits, legal advice and other forms of non-audit expert advice, portfolio management and certain human resources management services.

In April 2014, a full 12 years after the introduction of the Sarbanes-Oxley Act in the United States, the European Union adopted a new directive and new regulation concerning the audit of accounts of public-interest entities. Public-interest entities include European companies listed on a European stock exchange, as well as banks, insurance companies and other entities with significant public importance. The new directive and regulation is applicable since June 2016. The new regulatory framework prohibits auditors from providing certain services to the audited companies. In particular, the services prohibited by the Sarbanes-Oxley Act will also be prohibited in the European Union.

The new European regulation goes even further than the Sarbanes-Oxley Act by prohibiting, for example, certain tax services

as well as the conceptualisation and implementation of procedures of internal control or the risk management in connection with the preparation or the control of financial information.

Apart from the services prohibited by the different regulations, there are many services that audit firms provide for clients whose accounts they also audit. Although these services are authorised, they can seriously compromise the external audit firm's independence because of the amount of fees received, which sometimes far exceeds the audit fees.

Thus, to maintain the external audit firm's independence, the new European regulatory framework limits the amount of fees received for non-audit services to 70% of the average audit fees from the last three years.

Generally, according to several corporate governance specialists, an audit firm cannot be considered independent if the fees received for non-audit services exceed a certain threshold in comparison to the fees received for the audit of the company's accounts. This threshold is stipulated in the voting guidelines of the investors or consultants. Ethos considers that the audit firm should not be re-elected when the fees received for non-audit services exceed the fees for audit services, or when for three consecutive years, the cumulative non-audit fees exceed 50% of the aggregate audit fees.

An analysis of the fees paid out over more than one year can reveal a clear trend in terms of the audit firm's fees and therefore enable the shareholders to evaluate its independence vis-à-vis the company. The audit committee should inform the shareholders why the external auditors provide non-audit services for an amount exceeding the limits stipulated above.

In order to ensure the external audit firm's independence, each company's audit committee must draw up a formal policy on authorised non-audit services and the corresponding fees. This policy must be disclosed to the shareholders.

To enable investors to assess the risks to the independence of audit firm, it is essential to analyse the breakdown between fees received for auditing services and fees for other services, in particular consultancy services.

The way fees paid to the audit firm are presented varies widely from one country to another. In some countries, companies present the fees paid to the auditor in clearly distinct categories, indicating the corresponding amounts, while in others there is no obligation to provide that amount of detail.

In Switzerland, Directive on Corporate Governance of the SIX Swiss Exchange requires companies to publish separately the total fees invoiced by the auditor for the audit in the current financial year from the total fees invoiced for other services, with a mention of the nature of the services other than the audit.

Ethos considers that the total amount for other services be broken down into its main components, such as tax advice, legal advice and transaction consulting including due diligence. General and vague formulations such as «various services» are to be avoided as they are boilerplate.

Given the variety of requirements regarding the disclosure of fees paid to the external audit firm, international comparisons are not always easy. Therefore, the investors base their assessment of the external audit firm's independence on the amount of detail provided and on the guidelines each investor follows.

Rotation of the audit firm

Finally, in order to raise the independence of the audit firms by reducing excessive familiarity of the external audit firm with the audited company due to long mandates, the new directive of the European Union introduced the obligation to rotate the audit firm for public-interest entities, in particular listed companies. In fact, audit terms may no longer last more than ten years (20 years if a tender is issued after ten years and 24 years at most if several audit firms are hired and present a joint audit report). These provisions are applicable for new audit mandates as of 2017 with transitional provisions for running mandates.

In Switzerland, the current legislation does not include any provision on the rotation of the audit firm. Nonetheless, Ethos considers that the decisions of the European Union have set up a practice that Switzerland cannot ignore for long. Therefore, since 2017, Ethos applies a maximum 20-year term for audit firms.

4.4 AUDIT REPORT

Materiality threshold and audit scope

The primary objective of an audit of financial statements is to enable the audit firm to express an opinion on the fairness of the information presented. In order to achieve this objective, the auditing body must seek reasonable assurance that the financial statements are free from material misstatement. Such misstatements are considered material if, individually or in the aggregate, they could influence economic decisions made on the basis of the financial statements. In order to determine the extent and nature of the procedures to be performed, the auditor is required to calculate a materiality threshold, which is defined as the threshold above which misstatements are considered material. Thus, if the audit firm believes that the company's accounts present a high risk of misstatement (resulting from error or fraud), it will set a lower materiality level, which will have the effect of increasing the scope of the audit in order to cover a greater part of the company's activities.

The disclosure of the materiality level and the scope of activities covered by the audit procedures is important information for a better assessment of the reliability of the financial statements presented.

Key audit matters

The vast majority of readers are only interested in the audit report when the audit firm expresses reservations or, in certain exceptional cases, refuses to endorse the accounts. This is because the standardised form of the audit reports often does not provide sufficient transparency on the major risks facing the company. However, these reports should help shareholders and other stakeholders to assess the control procedures put in place by the audit firm and the company's management to mitigate these risks. To this end, International Standards on Auditing (ISAs) have introduced, as of 2016, the requirement to include in the audit report key audit matters that are considered relevant.

In parallel, many countries have revised their national auditing standards to introduce these transparency requirements. This was the case for the Swiss auditing standards (NAS) in 2018 and for the US auditing standards (US GAAS), which introduced equivalent requirements in 2017. Key audit matters are significant items that are given special consideration during audit procedures. The significance of the item may be due to its complexity, its importance for the assessment of the economic situation of the company or the discretion of the management as to its valuation. According to the revised standards, the audit firm's report must explain the specific audit procedure applied with reference to additional information in the company's financial statements. However, because the decision to include a risk in the key audit matters is subjective to the auditor, some reports still fail to mention material risks.

The lack of transparency about the specific procedures the auditor has in place regarding these risks prevents the reader of the financial statements from assessing the reliability of the figures presented by the company.

Climate risk assessment

Climate change risks are still very rarely included in the key audit matters. However, given the impact of climate change on companies and the tightening of legislation on greenhouse gas emissions, climate change is a risk for most companies.

On the one hand, companies operating in a climate-sensitive sector will be greatly impacted by the energy transition (transition risk), and on the other hand, companies with high emissions risk being exposed to higher expenses and investments to adapt their activities to a low-carbon economy. Therefore, it is essential for these companies to consider climate risk in their financial statements and the auditor must conduct specific procedures to evaluate the assumptions made by the companies.

In order to achieve a sufficient level of transparency in this respect, especially in companies with high CO2 emissions, the audit report should include confirmation that the valuation of assets and provisions made by the company take into account the climate risk and the company's reduction targets in accordance with the applicable accounting standards.

In addition, the audit firm should inform the shareholders about the adequacy of the assumptions made by the company to meet its climate objectives. Finally, when the auditing body believes that the climate assumptions used in the financial statements do not give a true and fair view of the company's economic situation, the auditor should qualify the audit opinion in order to alert the reader of the financial statements.

5. Board and Executive Remuneration

5.1 REMUNERATION ISSUES

In order to attract, retain and motivate the best staff, a company has to establish a remuneration system that is attractive compared to its competitors. Generally speaking, such a pay system should be designed so as to align the participants' interests with those of the shareholders, contributing to long-term value creation.

The design of the remuneration system is very important, in particular for the following three reasons: First, a remuneration system that yields excessive pay-outs is an important cost that is borne by the company's shareholders. Secondly, the remuneration system can strongly influence the attitude of managers toward risk taking, thereby impacting the strategic orientation of a company. Finally, an inappropriate remuneration system constitutes an important reputational risk that can compromise investors' trust and the motivation of employees.

With regard to executive remuneration, a company should establish guidelines pertaining to:

- the transparency of the remuneration system
- the structure and payouts of the remuneration system
- the competencies with regard to setting executive remuneration

5.2 TRANSPARENCY OF THE REMUNERATION SYSTEM

5.2.1 GENERAL FRAMEWORK

Transparency of the remuneration system is necessary to ensure the shareholders' trust. The system must be described in clear and exhaustive detail, so that the shareholders can assess its benefits in terms of its costs. However, companies should avoid diluting the essential information about the remuneration system in overly detailed descriptions.

To encourage companies to be transparent about the remuneration system, most codes of best practice have introduced specific provisions. However, given that self-regulation rarely works in the field of remuneration, it became necessary to make the publication of certain information about the remuneration system mandatory. Hence, depending on the country, the shareholders should receive information in a special section of the annual report or in the agenda of the annual general meeting.

Generally speaking, the remuneration report should include the following:

a. a detailed description of the principles and mechanisms of the remuneration system and of each of its components (basic salary, annual bonus, long-term incentive plans, benefits in kind, pension fund contributions).

b. the global amount of the remuneration and the value of its various components for each director and member of executive management. Options and shares must be valued at their market value at grant date. To facilitate understanding, a tabular presentation of the amounts under separate columns corresponding to the different types of awards granted during the year under review is indispensable as a complement to the narrative section. The total value of the remuneration should also be featured in a separate column.

c. a separate and detailed description of each incentive plan under which stock options, shares or cash are granted, with the main characteristics thereof in each case (eligibility, performance criteria, grant date, exact grant price, vesting and retention period, upward potential and matching grants if any) and the method of financing (by issuing new shares or by using repurchased shares).

d. the amounts paid out under the variable remuneration, such as the annual bonus, as well as the realised remuneration from long term incentive plans. In order to facilitate understanding, a presentation in the form of a table with separate columns for the amounts corresponding to the different payments during the year under review and their sum total is desirable. This information is important for putting into relationship the remuneration at grant with the realised remuneration and therefore to confirm the good functioning of the system and the connection between pay and performance.

e. a summary of retirement plans for the executive management. For transparency reasons, the amounts involved should be disclosed or easily computable.

f. a description of executive management contracts, including the conditions of appointment and departure and of any non-compete clauses. When provision is made for special compensation in case of change of control, those provisions should also be disclosed in the report. It is indispensable to disclose separately the amounts effectively paid out during the period under review.

5.2.2 THE SITUATION IN SWITZERLAND

In Switzerland, listed companies must provide the following information in a separate remuneration report (previously in the notes to the accounts) that must be audited by the external auditor:

- The individual remuneration of members of the board of directors.
- The aggregate remuneration of the members of the executive management.
- The remuneration of the highest paid executive.

In the notes to the accounts, that must also be audited by the external auditor, the number of shares and options held by each member of the board and the executive management must be published.

Also, all companies subject to IFRS standards must publish, in the notes to the accounts, the parameters used to calculate the fair value of stock options (share price at grant date, exercise price, volatility, risk-free interest rate, expected life and dividend yield).

In addition, the SIX Swiss Exchange, in the comment on the Directive on Corporate Governance (DCG), requires a detailed list of all the indications that companies must provide regarding the principles and components of board and executive remuneration, on the procedures for setting pay and the competencies in this matter.

5.3 STRUCTURE OF THE REMUNERATION SYSTEM

There are significant differences in the remuneration structure of the members of the board of directors and executive management members. When analysing executive pay structure, a distinction must therefore be made between the two.

Regarding personnel, the difference between the highest and lowest remuneration should not only be limited but also duly justified. In addition, the same reasoning should apply to the ratio between the remuneration of the CEO and the remuneration of the persons on the following hierarchical levels.

Executive pay should thus not systematically rise disproportionately to the pay of other staff members, so as not to foster a feeling of injustice within the company that could have a negative impact on employee motivation.

5.3.1 MEMBERS OF THE EXECUTIVE MANAGEMENT

For Ethos, the remuneration structure of executive management should take into account the following principles:

- The maximum amount of each component of the pay package must be fixed, thereby setting a cap on total annual pay. The maximum amount should be determined bearing in mind the company's size and complexity as well as the practice of the peer group.
- The variable component should depend on clearly defined and sufficiently challenging performance criteria, so as to align the interests of executives with those of the shareholders.
- The on-target variable component, in principle should not be more than 1.5 times the base salary for the CEO. For other senior managers, the on-target variable component should not be more than 100% of the base salary.
- The maximum variable remuneration (for overachievement of objectives) should not in principle be more than twice the on-target variable component.

Payments in excess of the values stipulated above could be accepted under exceptional circumstances when the majority of the variable remuneration depends on the achievement of relative performance targets measured over a sufficiently long period and when part of the variable remuneration is based on ambitious quantitative environmental and social targets.

The components of remuneration are as follows:

Base salary

The base salary must take account of the skills and experience of the persons concerned and of the base salaries paid by other listed companies of similar size, structure and complexity that are looking to hire the same profiles. In principle, it should not be set at a level exceeding the median of the company's peer group to avoid an upward ratchet of remuneration levels. Base salary is paid in cash and any increases must be justified.

Annual bonus

The annual bonus is the short-term variable component of remuneration. It is intended to reward performance achieved during the year under review. It should not be awarded automatically, nor should it be considered a fixed form of remuneration, as some companies would have the shareholders believe. The annual bonus is not taken into account to calculate pension benefits and should not be automatically included when calculating severance pay.

Generally speaking, the amount of annual bonus granted depend on the degree of achievement of performance criteria.

The criteria must be in line with the company's strategy and established at the beginning of the period under review. The criteria must also be disclosed in the remuneration report or in the annual report. In order to avoid publication of commercially sensitive information, the company can disclose the specific targets for the bonus ex post.

Regarding top executives (apart from the CEO whose remuneration should only depend on the group's results), performance criteria based on the company's results can be combined with criteria relating to individual performance based on the success of the division or functions exercised by the beneficiary. Furthermore, in addition to these purely financial criteria, key performance indicators (clearly defined and measured) should also be taken into consideration reflecting the company's social and environmental performance, such as safety in the workplace, job security, absenteeism, customer satisfaction, reduced greenhouse gas emissions and waste management.

When it comes to measuring a company's performance, the use of general economic indicators such as stock market indexes should be avoided; such indicators reflect market trends and not necessarily individual company performance.

When part of the bonus is paid in the form of shares or stock options, it takes on a long-term dimension. In principle, the shares must be blocked for several years. When additional grants are to be made at the end of the blocking period, for example if a matching share is obtained for a certain number of shares blocked for three years, the attainment of additional performance targets should be required – blocking the shares is not by itself sufficient justification for additional grants.

The amount of the maximum individual bonus should be limited as a percentage of the base salary, as should any exceptional grants.

To avoid rewarding short-term performance, achieved through excessive risk taking, part of the annual bonus should be deferred and subject to clawback provisions allowing recovery in case of bad financial results in subsequent years, or fraudulent behaviour leading to a restatement of accounts.

Long-term equity-based incentive plans

In principle, long-term incentive plans are based on the award of shares or stock options. They can also grant the equivalent of gains on shares and stock options in cash. In that case, however, the beneficiaries never receive equity, which distorts the plan's initial purpose to enhance participation in the company's capital.

The plans are forward looking, since their aim is to incentivise the participant to create long-term value, thereby aligning their interests with those of the shareholders. Unlike bonuses, they should therefore be structured in such a way as to reward future rather than past performance.

Companies should provide a detailed description of each plan in the remuneration section of the annual report or, in the agenda of the annual general meeting. The description should comprise eligibility, reserved capital, performance criteria, vesting, exercise and retention conditions, any additional grants and the conditions for obtaining them, and target and maximum individual grants. The plans should not be modified in any significant way without prior shareholder approval.

Given the substantial earnings to be made by the participants, and in order to align the interests of the various stakeholders, the final release of awards should be contingent on meeting stringent performance targets tested over a sufficiently long period (minimum three years). Indeed, the exercise of options and the final release of shares should be conditional on the achievement of performance targets. In particular, a rise in the share price above the strike price is not a sufficient condition. Such a rise does not necessarily reflect the company's performance but could be simply due to a general rise in share prices or to the effect of an announcement.

From the perspective of long-term value creation, it is important that the performance objectives are aligned with the company's strategy. Additionally, performance must be tested both in absolute and relative terms (compared to a peer group). The peer group must be relevant, representative and disclosed in the remuneration report.

In order to align interests, no awards should be released at the end of the performance period, if the company performance is below the median of the peer group. In order to assess the link between company performance and remuneration paid, companies should, at the end of the performance period, publish the specific performance objectives and their degree of achievement, as well as the number of shares released and their value.

Just as with the annual bonus, part of the long-term plan should depend on criteria reflecting the social and environmental performance of the companies, clearly defined and measurable (for example, quantified indicators relating to the reduction of emissions).

Participation by the same person in more than one plan must be duly justified and subject to different performance criteria for each plan, in order to ensure that the person does not simply accumulate pay packages. In principle, Ethos considers that it is useless to increase the number of long-term plans as this adds complexity to the remuneration system without necessarily leading to a better alignment of interests.

Given the significant cost of long-term incentive plans, grants should be capped globally (to a percentage of the company's capital) and individually (for example, as a percentage of the person's base salary) to avoid excessive variable remuneration.

All directors and members of the executive management should gradually build up a portfolio of the company's shares that should be kept for the entire period of their employment with the company, in order to ensure that their interests are aligned with those of the shareholders. If the participants receive large numbers of shares or stock options each year but ultimately own very few shares, this form of remuneration will no longer be an incentive to participate in the company's capital but solely an additional form of remuneration.

Pension contributions

Employer contributions to executive management pension schemes are a form of deferred income that has become increasingly important in recent years. The amounts involved can be substantial. These contributions are a form of disguised fixed remuneration, i.e. as unrelated to performance.

It is therefore very important for companies to be particularly transparent about pension fund contributions. They must indicate, individually for each of the persons concerned, the amounts granted during the year under review. In addition, it is considered best practice for the company to disclose annually the total current value of the pension benefits accruing to individuals under such plans.

Employment contracts

Executive contracts also form part of the remuneration system. An annual review of such contracts by the remuneration committee ensures that they continue to be relevant and appropriate.

Best practice recommends one of the following alternatives for executive contracts: indeterminate contracts with notice periods of one year or less, or fixed-term contracts of one year or less. It may be justified, however, on appointment to have an initial notice period of maximum two years to compensate for the risks involved in changing employment, but the subsequent contracts should provide for one year's notice (or less).

There should be no automatic entitlement to bonus, and no provision should be made for special payments in case of change of control, so as not to encourage executives to sell the company just to receive substantial remuneration. The golden parachutes should not be replaced by signing bonuses (golden hellos) without performance conditions.

In Switzerland, the Code of Obligations requires that executive contract length and notice periods do not exceed one year. The law also prohibits anticipated remuneration and severance payments. Signing bonuses and replacement payments are authorised if they are covered by the reserve foreseen in the articles of association for the remuneration of new members of the executive board or if they are approved by the general meeting. Non-compete clauses are also allowed and must be mentioned in the articles of association.

5.3.2 MEMBERS OF THE BOARD OF DIRECTORS

Fees

The remuneration of non-executive members must also be disclosed in the remuneration report. Although it is generally simpler than that of the executive management, it often includes a component paid in securities of the company, most often in shares.

In principle, non-executive members should not receive variable remuneration as it can tie their interests with those of senior management. The board's and management's interests could lead to collusion and loss of the board's objectivity in performing its oversight and control duties. In addition, non-executive members should not receive fees for consulting activities on a regular basis or in amounts that are too high in order not to compromise their independence.

Most codes of best practice recommend that non-executive interest in the company take the form of blocked shares. Stock options must be prohibited as the speculative nature of stock options could prompt the board to take too great an interest in the short-term share price rather than in creating long-term value.

Non-executive members should not be entitled to severance payments or, in principle, to pension benefits.

Holding shares in the company

When non-executive members own shares in the company they prove their attachment to the business, their interest in its long-term success and thus demonstrate that their interests are in line with those of the shareholders and the other stakeholders. According to the International Corporate Governance Network (ICGN) this is a basic principle. Companies should therefore require their members gradually to build up a portfolio of shares that they will keep until they retire from the board. The conditions for this are to be presented in the remuneration report.

In Switzerland, the Code of Obligations requires that each member's holdings be included in the remuneration report.

5.4 COMPETENCIES WITH REGARD TO REMUNERATION

Setting the remuneration system does not fall only to the board of directors but should be shared with the shareholders. The latter should not interfere in the day-to-day running of a business, which is the role of the board and of the executive management. However, given the cost and risks generated by an inappropriate remuneration system, shareholders in their capacity of company owners should also have a say on executive pay.

5.4.1 THE BOARD OF DIRECTORS' COMPETENCIES

Given the complex nature of executive pay, it is best practice for the board of directors to appoint a remuneration committee to deal with remuneration matters. As a rule, it is this committee that proposes the fundamental principles and mechanisms of the remuneration policy to the board, which ultimately approves them. The same applies for share and stock option plans.

The remuneration committee should regularly review the remuneration policy as a whole and incentive plans in particular, to check that they continue to be relevant.

The fees of the remuneration committee members are set by all the other members of the board of directors, who must ensure that those fees are not aligned on the remuneration of the management, so that committee members remain independent and able to fulfil their duties objectively and, in the shareholders' long-term interests.

In Switzerland, the Code of Obligations foresees the creation of a remuneration committee whose tasks and responsibilities must be written down in the articles of association and whose members are elected each year by the general meeting.

5.4.2 THE SHAREHOLDERS' COMPETENCIES

Several countries have introduced strict rules on the transparency of remuneration. As a result, more and better-quality information is disclosed, unveiling pay packages that may appear excessive. Consequently, disclosure must go hand-in-hand with the shareholders' right to have a say on the fundamental principles and mechanisms of executive remuneration in listed companies.

Various countries have gradually adopted rules giving the shareholders competence in matters of remuneration. They have done so either by including the relevant provisions in national codes of best practice or by incorporating them into domestic legislation or into listing rules of stock exchanges. In the European Union, the Shareholder Rights Directive II (2017) comprises obligations for listed companies on remuneration. It establishes the «Say on Pay» principle by requesting an ex-ante vote on the remuneration policy (at least once every four years, advisory or binding) and an ex-post vote on the remuneration report (annual, advisory). The SRD II allows some flexibility in the implementation of those principles.

The table below presents the different systems in place in the main markets concerning the rights of shareholders with regard to setting executive remuneration.

5.4.3 THE SHAREHOLDERS OF SWISS COMPANIES COMPETENCIES

Switzerland has been among the countries where shareholders have the most rights when it comes to setting the remuneration of management bodies. In fact, shareholders now have the non-transferable right to vote the overall amounts of remuneration not only for the board of directors, but also for the executive management and, where applicable, the advisory board.

Swiss-listed companies must submit the amounts of the remuneration of the management bodies to the vote of the shareholders. The law includes three minimum requirements:

- Shareholders must vote annually on the remuneration.
- Shareholders must vote separately on the amounts granted to the board of directors, executive management, and the advisory board.
- The shareholders' vote is binding.

Additional provisions, in particular voting procedures, must be provided for in the articles of association.

In addition, since 2023, Swiss listed companies have been obliged to submit their remuneration report to a consultative vote of their shareholders when the annual general meeting votes prospectively on variable remuneration (see the section on voting methods below).

Voting methods

The voting methods must be fixed in the articles of association. For the remuneration of the board of directors, the companies in principle propose a prospective vote on the fees. For the remuneration of the executive management, companies can offer:

- a single vote on the maximum total amount
- separate votes for the fixed and variable amounts

They can also choose between:

- prospective vote (ex-ante) by requesting a maximum amount
- retrospective vote (ex-post) on the actual remuneration they wish to pay at the end of the period, when the achieved performance is known

Separation of votes

Ethos believes that votes on fixed remuneration should be separated from votes on variable remuneration. Indeed, fixed remuneration is in principle known in advance while variable remuneration should depend on past or future performance.

Furthermore, Ethos considers that it would be preferable to separate the votes on short-term variable remuneration (annual bonus) from votes on long-term variable remuneration (participation plans generally in securities).

When companies ask for a single amount for all of the variable remuneration, it is important that they explain how the amount is split between the short-term bonus and the long-term participation plans.

Time of voting

For fixed remuneration, Ethos believes that a prospective vote is the best solution. It would indeed be difficult to justify that the members of the executive management must wait for the general assembly of the following year to be sure of receiving their fixed base salary for the past period.

For short-term variable remuneration (annual bonus), Ethos considers that it is preferable to provide for a retrospective vote on the amount effectively granted with relation to the performance achieved. Indeed, such a vote allows companies to be precise in their request instead of having to prospectively request a maximum envelope of a relatively high amount, while the amount actually paid is often much lower than the maximum requested amount. At the same time, a retrospective vote allows to avoid the risk for the shareholders of seeing the maximum amount being unduly distributed.

When a company nevertheless wishes to have the maximum amount for the bonus adopted prospectively, it is essential to have a very high level of transparency in terms of the remuneration system. In particular, it is necessary for shareholders to know the precise performance criteria. Unfortunately, this is rarely the case since the precise goals to be achieved are information that companies consider competitively sensitive that they are not prepared to release in advance. In addition, the remuneration system described in the articles of association should specify the maximum multiple of the variable remuneration compared to the fixed salary.

With regard to long-term variable remuneration, the specific performance targets set are generally less sensitive from a competitive point of view and may be based on external conditions over which the company has no influence. Their publication therefore poses fewer problems for companies and the transparency could be sufficient for a prospective vote to be possible. It is necessary not to lose sight of the problem relating to the calculation of the amounts that the companies must request and which, for certain plans, may appear excessive, since they correspond to the maximum potential (theoretical) value that would be due if the beneficiaries exceeded all targets set at the start of the performance measurement period.

Shareholder rights with regard to board and executive remuneration

	Ex-ante vote on the remuneration system of the executive management	Ex-post vote on the remuneration report	Vote of the remuneration of the board of directors	Vote of the remuneration of executive management	Vote of share-based incentive plans
EUROPE					
Austria	advisory (6)	advisory (1)	yes (3)	-	yes
Belgium	binding (6)	advisory	yes	-	yes
Denmark	binding (6)	advisory (1)	yes	-	-
Finland	advisory (6)	advisory	yes	-	-
France	binding (6)	binding	yes (4)	-	yes
Germany	advisory (1)(6)	advisory (2)	yes (3)	-	yes
Italy	binding (5)	advisory	yes	-	yes
Ireland	binding (6)	advisory	yes	-	yes
Netherlands	binding (6)	advisory	yes	-	yes
Norway	binding (6)	advisory (2)	yes	-	yes (3)
Portugal	binding (6)	advisory	-	-	yes
Spain	binding (5)	advisory	yes	-	yes
Sweden	binding (6)	advisory	yes	-	yes (6)
Switzerland	-	advisory (7)	yes	binding	-
UK	binding (5)	advisory	-	-	yes
NORTH AMERICA					
Canada	-	advisory (8)	-	-	yes
USA	-	advisory (9)	-	-	yes
ASIA					
Australia	-	advisory	yes (10)	-	yes (11)
Hong Kong	-	-	yes	-	yes
Japan	-	-	yes (12)	-	yes (13)
New Zealand	-	-	yes	-	-
Singapore	-	-	yes (14)	-	-

(1) Starting in 2021. (2) As of 2022. (3) Binding, unless otherwise specified in the bylaws. (4) Binding. (5) Every three years. (6) Every four years. (7) Only when the annual general meeting takes a prospective vote on variable remunerations. The final allocation of shares must be approved by at least 90% of the votes represented. (8) Introduced voluntarily by some companies. (9) The frequency of the vote (1, 2 or 3 years) is put to a vote and approved by the general meeting. (10) Only in case of change. (11) Only in case of issue of shares within the framework of participation plans for members of the board of directors. (12) For "Kansayaku" companies. (13) Only in case of issue of shares under stock option plans. (14) Shareholders can vote on the total amount to be paid to members of the board of directors.

6. Capital Structure and Shareholder Rights

6.1 SHARE CAPITAL

Decisions regarding share capital are an essential feature of a company's governance. In fact, the share capital structure, which defines certain shareholder rights, including the right to vote, has a direct impact on the exercise of power and the possibilities of takeover.

In most countries, shares are either of the bearer or the registered type. A bearer share enables the shareholder to remain anonymous whereas in the case of a registered share, the shareholder has to register on the corporate share register, in order to be able to exercise the voting rights pertaining to the shares. Registered shares therefore allow the company to know its shareholders. Companies can also issue investment certificates, participation certificates and dividend-right certificates, which confer only pecuniary rights and therefore do not entitle the holder to vote.

Most codes of best practice require that voting rights be exercised on a pro rata basis to the investment in the capital so that proportional participation by all shareholders in the decision-making process is ensured. Hence, the most appropriate capital structure consists of a unique class of shares.

All countries require that a company's capital be set down in its articles of association. However, the system used to establish or modify the share capital may vary according to the relevant national legislation.

Establishment in the articles of association of the maximum capital the company may issue

In the United States, the United Kingdom, the Netherlands, and Japan, for example, the company's articles of association establish a maximum number of shares that the company may issue. The number of shares must be approved by the annual general meeting. The amount of capital actually issued by the company may be below the authorised amount.

Establishment in the articles of association of the issued capital

In other countries, such as Switzerland, France, Germany, Italy, Spain, Sweden, and Finland, the company's articles of association indicate the amount of issued capital.

6.2 CAPITAL INCREASE

6.2.1 GENERAL FRAMEWORK AND PRE-EMPTIVE RIGHTS

When the amount of capital specified in the articles of association is no longer sufficient for the company's needs, the company is compelled to increase it. Authorisation to increase capital may be requested for general or specific purposes.

Given that capital increases entail a dilution of the shareholders' pecuniary rights (right to a dividend) and voting rights, in many countries, including Switzerland, the law offers compensation by granting pre-emptive rights. In other countries, such as the United States, pre-emptive rights are the exception.

Thus, the impact of the capital increase on the shareholders' rights will depend on whether pre-emptive rights are maintained, limited or even waived. As a result, investor decisions regarding capital increases take account of the reason for the increase and whether pre-emptive rights are granted.

Pre-emptive rights enable shareholders to acquire the newly issued shares at a rate that is proportional to their previous holdings. A shareholder who exercises his pre-emptive rights therefore maintains his stake in the capital and suffers no dilution of his profits or voting rights. When pre-emptive rights are endorsed by company law, they can be waived following approval by the shareholders' general meeting under certain conditions.

However, even when capital increases are accompanied by pre-emptive rights, the increase should not be too substantial. The limits in place are designed to protect the shareholders, either from excessive financial pressure for those wishing to maintain their stakes in the company, or from a serious dilution of their rights if they fail to subscribe.

Sometimes, depending on the purpose of the capital increase, companies have to waive their shareholders' pre-emptive rights. Such increases can serve specific purposes, such as the conversion of options granted to employees or the financing of a particular project. Capital increases without pre-emptive rights must therefore remain modest, and the shareholders' decisions depend on their appraisal of the goals presented by the company.

6.2.2 CAPITAL INCREASE FOR GENERAL FINANCING PURPOSES

An increase in capital for general purposes may be requested by the board of directors at an annual general meeting in anticipation of general needs of capital unknown at the moment of request. Following approval, the company may then make use of the capital as circumstances require. This enables it to react quickly to opportunities that may suddenly appear. In such cases, the deadline for calling an extraordinary general meeting could hinder the realisation of transactions that would be beneficial for the company.

When requests for an increase in capital for general purposes are not regulated by the law or by generally accepted best practice standards, institutional investors, and consultants each set their own limits. Hence, the codes of best practice provide for larger authorisations to issue capital when shareholders' pre-emptive rights are guaranteed.

6.2.3 CAPITAL INCREASE FOR SPECIFIC PURPOSES

An increase in capital for specific purposes may be required to finance, for example, a stake in or acquisition of a company or to issue shares following the exercise of employee stock options. In such cases, the capital issued must be used exclusively for the purpose requested.

Requests for an increase in capital for specific purposes must be analysed by applying the same rules as for increases in capital for general purposes; the appropriateness of the reason for the increase (acquisition, employee incentive plans, etc.) must also be analysed. The analysis should consider whether the plan presents a value for the company and serves the long-term interests of the shareholders and other stakeholders. Depending on the purpose of the increase, it may be possible to accept a more substantial dilution of rights than in the case of an increase in capital for general purposes without pre-emptive rights. Such increases must be authorised on a case-by-case basis.

6.2.4 THE SWISS CASE

In Switzerland, in addition to their ordinary capital, companies may have a capital fluctuation margin and conditional capital. Thus, at a general meeting, companies may request to include in their articles of association authorisations to increase ordinary capital, to create or modify a capital fluctuation margin, as well as to create or modify conditional capital. When analysing such requests, shareholders should consider the potential dilution resulting from each authorisation separately and from all authorisations globally. Ethos considers that the aggregate authority to raise capital without pre-emptive rights for general financing purposes should not exceed 20% of issued capital.

As of the 1st of January 2023, the capital fluctuation margin system replaced the authorised capital under Swiss law. However, during a transitional period, the authorised capital will remain valid until its expiration, but it will not be able to co-exist with the capital fluctuation margin. Therefore, if a company wishes to introduce a capital fluctuation margin in its articles of association, it will have to replace any existing authorised capital. This transitional period is limited to two years, which corresponds to the maximum duration of an authorised capital under Swiss law.

Ordinary capital

A company's ordinary capital is set in its articles of association. Any increases in the ordinary capital require the authorisation of the annual general meeting, which allows the board to proceed to a one-time increase of capital by a fixed amount.

The increase will have to be executed in the six months following the decision and the amount of the new capital must be set out in the articles of association.

To avoid dilution of the shareholders' pecuniary and voting rights, ordinary capital increases are in principle accompanied by pre-emptive rights for existing shareholders, unless the increase is to be used for example to acquire another company or for a merger by exchange of shares.

In the case of requests for an ordinary capital increase, the decision of the shareholders depends on the objective pursued by the company and on whether or not the pre-emptive rights are maintained. In the case of requests for general financing purposes, Ethos accepts in principle a capital increase of up to 40% of the issued capital on all authorisations to issue capital (or the maximum percentage permitted by the country's corporate governance standards).if the pre-emptive rights are guaranteed; and 10% if they are limited or waived, unless a higher amount if justified for a duly substantiated purpose.

The capital fluctuation margin

In order not to have to convene an extraordinary general meeting every time it needs to increase the company's capital, the board of directors can ask the annual general meeting for the right to create a capital fluctuation margin (Art. 653s CO). The capital fluctuation margin may be used for general financing purposes or for specific reasons, such as to purchase a company or a stake in a company.

By approving the creation of a capital fluctuation margin, the general meeting gives the board of directors the right to carry out, on its own initiative, successive capital increases or decreases up to the authorised amount, for a maximum period of five years. The upper limit may not exceed one and a half times the share capital entered in the commercial register, and the lower limit is set at half the share capital entered in the commercial register (Art. 653s., para. 2 CO). The articles of association may provide that the fluctuation margin only allows an increase or decrease of the capital (Art. 653s para. 3 CO).

In the case of an application for a capital fluctuation margin, the procedure for increasing the capital is similar to that of the ordinary capital increase, except that the board has a period of five years from the approval to carry out the increase, either en-bloc or in stages. In contrast to the ordinary capital increase, in the case of the capital fluctuation margin, the board does not have the power of execution but has the authority to execute. The board will decide on the timing and the precise amount of the capital increase in function of the company's financing needs. These authorisations give the board the flexibility to quickly seize unforeseen opportunities.

As in the case of the ordinary increase, the pre-emptive rights of existing shareholders are in principle guaranteed. However, should the company need to use the capital fluctuation margin to purchase another company or a stake in a company, the pre-emptive rights may be limited or waived (CO Art. 653t, para. 7).

Each time the board makes a capital increase within the capital fluctuation margin, it must amend the articles of association to set the new ordinary share capital. When the five years are over, it must delete the provision on the capital fluctuation margin from the articles of association. If the company needs a new capital fluctuation margin, the board must submit a new request to the annual general meeting.

For the «increase» part of the capital fluctuation margin, the shareholders' decisions depend on the purpose of the increase and on whether the pre-emptive rights are maintained. When this request does not contain specific objectives, Ethos accepts an authorisation of maximum 20% of the share capital issued at the time of the authorisation (legal limit) if the pre-emptive rights are guaranteed and 10% if they are limited or withdrawn. However, shareholders should be aware of the potential total dilution that could result from the authorisations granted as a whole (share capital, capital fluctuation margin and conditional capital).

Conditional capital

Swiss law also authorises companies to have what is known as conditional capital (CO Art. 653), which serves exclusively to convert:

- convertible bonds held by bondholders
- options held by company employees or others

According to Swiss law, the amount of the conditional capital must be approved by the annual general meeting and may not exceed 50% of the existing share capital (CO Art. 653a).

The company's ordinary share capital gradually increases as the bondholders convert their bonds and the employees exercise their options. Thus, contrary to an ordinary or authorised capital increase, the shareholders' pre-emptive rights are waived. Because of this, a conditional capital increase entails a dilution of the existing shareholders' rights. The ceiling of 50% authorised under Swiss law is therefore too high, and Ethos decides how to vote on a case-by-case basis after having analysed the amounts requested and the underlying reasons.

When the conditional capital is intended for the conversion of bonds for which shareholders had a priority subscription right, Ethos respects the legal limit of 50%. However, if the shareholders' pre-emptive rights can be waived, Ethos sets the limit at 10%, unless the company presents due justification for requesting a higher amount.

On the other hand, when the conditional capital is to be used to convert stock options granted to the company's executives and employees under incentive plans, pre-emptive rights are always waived. Ethos makes decisions on a case-by-case basis, in the light of the plans' characteristics, in particular eligibility and acceptable limits to the capital reserved for that and other company plans (for long-term incentive plans, see point 5.3.1).

As in the case of authorised capital, the shareholders should analyse conditional capital requests bearing in mind the total potential dilution resulting from all authorisations.

6.3 CAPITAL REDUCTION

6.3.1 SHARE REPURCHASE AND CANCELLATION

In some countries, companies must seek shareholder authorisation to repurchase their own shares if they intend to cancel them. Share repurchases followed by the cancellation of shares lead to a reduction in share capital. This is a way of returning capital to the shareholders when the free cash flow exceeds investment needs.

In Switzerland, company law provides that a company may hold at most 10% of its own shares. Beyond this limit, the company must either reissue shares or cancel them and reduce its capital accordingly. If the shares are cancelled, the shareholders must approve the reduction in capital. Therefore, if a company wants to repurchase more than 10% of its capital it should ask authority from its shareholders to repurchase and subsequently cancel the shares exceeding this threshold.

Any proposal by a company with a significant cash flow to buy back its shares in order to reduce its capital must be justified by the board of directors. The board must explain clearly to the shareholders why, for example, the surplus cash is not used for new investments or acquisitions.

In Switzerland, certain companies ask shareholder authority to repurchase shares in replacement of a dividend. However, a share buyback should not be confused with the payment of a dividend, as the buyback consists in a reimbursement of capital to shareholders, while the dividend is a distribution of profits. This practice is not beneficial for long-term investors such as pension funds that do not want to sell their shares. The shareholders that would sell their shares on a second trading line would also be disadvantaged, given that any gain realised by the sale is taxable. In addition, shareholders will bear transaction costs, which is not the case for a cash dividend payment.

6.3.2 REIMBURSEMENT OR PAR VALUE

Capital can be reduced by reimbursing part of the par value of shares, thereby returning capital to the shareholders, sometimes in lieu of or in addition to a dividend. The decrease in capital via par value reduction can nevertheless negatively affect shareholder rights. Indeed, when the right to place an item on the agenda of the annual general meeting is contingent on holding a certain amount of nominal value, a reduction in capital undermines the shareholders' rights unless the company amends its articles of association to reduce the minimum nominal amount required to place an item on the agenda accordingly.

In fact, given that the right to put an item on the agenda is a fundamental shareholder right, a decrease in share capital (by cancelling shares or by reducing their par value) without a concomitant decrease in the value of shares required to exercise that right constitutes a deterioration of shareholders' rights, which is not acceptable, unless it is negligible.

6.3.3 THE SWISS CASE: THE CAPITAL FLUCTUATION MARGIN

As mentioned in chapter 6.2.4, Swiss law introduced on 1st of January 2023 the system of a capital fluctuation margin, whereby the annual general meeting gives the board of directors the right to proceed, at its own initiative, to successive increases or decreases of the capital, up to the authorised amount, for a limited period of five years. The upper limit may not exceed one and a half times the share capital entered in the commercial register, and the lower limit is set at half the share capital entered in the commercial register (Art. 653s., para. 2 CO). The articles of association may provide that the fluctuation margin only allows an increase or decrease of the capital (Art. 653s, para. 3 OR).

The board of directors can therefore theoretically be authorised by the shareholders to reduce the share capital by half by means of a share buy-back accompanied by a cancellation of the shares or by a repayment of the nominal value of the shares during a period of five years without going to the general meeting.

In view of the significant consequences that a capital decrease may have for the shareholders, Ethos considers that the authorisation to decrease the capital within the framework of the capital fluctuation margin should be limited to 5%. For larger capital decreases, companies should make a request at the general meeting to inform shareholders of the precise reasons and conditions of the capital decrease so that they can vote in an informed manner on a proposal that may have a non-negligible impact on their rights.

6.4 SHARE REPURCHASE WITHOUT CANCELLATION

In several countries other than Switzerland, requests to repurchase shares (without cancellation) are a standard item on the agenda of annual general meetings because companies wish to have room for flexibility, for various reasons:

- to finance share-based incentive plans without issuing new capital.
- to intervene on the market to support the share price.
- to finance acquisitions through share exchanges.
- to increase control over the company by one or more shareholders.
- to increase the share price in the short term with a view to exercising stock options.
- to hinder a hostile takeover bid (see 6.5)

In view of the above, it is important to be particularly attentive to the reasons underlying a repurchase. Several countries regulate share repurchases to protect the shareholders.

Depending on the country, provision may be made for a maximum repurchase rate with respect to the issued capital, a repurchase price bracket, the obligation to inform shareholders of the motives underlying the repurchase, the prohibition of selective repurchases that could discriminate against certain shareholders, and limitation of the authority in time. These restrictions may to some extent protect the company from its own attempts to manipulate the stock price by creating an artificially high demand for its shares and prevent share repurchases from becoming an anti-takeover measure.

6.5 PROTECTION MEASURES

Multiple measures may be taken to protect the company from an «opportunist» shareholder or a hostile takeover bid by a third party.

In principle, institutional investors, shareholder associations and codes of best practice in corporate governance do not support such measures because they do not foster good management and enhanced performance within a company. These measures are often aimed at protecting management from shareholder control. By over-protecting a company's management, these measures tend to prevent management from questioning the company's management or taking over companies that could increase the company's growth potential.

However, if the company's long-term survival and the interests of the majority of stakeholders are at risk, protection measures can be justified. This may be the case, for example, when a competitor plans to purchase the company to wind it up, to delocalise production or to resell it «piece by piece», thus putting numerous jobs at risk. Under such circumstances, the measures must be duly justified, limited in time, and submitted to the shareholders' approval.

The main anti-takeover strategies are described below:

Different classes of shares

To strengthen control of the company by a group of shareholders, a company may have several classes of shares that confer different voting or pecuniary rights, contrary to the one share = one vote principle. Depending on the country, the share capital may consist of shares carrying enhanced voting or pecuniary rights (regarding the dividend, pre-emptive rights, and rights of redemption or additional parts on the proceeds of liquidation).

In Switzerland for example, some companies have two classes of shares with different nominal values but equal voting rights. This enables some shareholders to control a company with a lower investment since shares of a lower nominal value have the same voting rights as shares of a higher nominal value. In some cases, the shares with a lower nominal value are not listed and held by the founding family or a major shareholder.

In principle, Ethos is opposed to capital structures with privileged voting rights. In such a case, the ratio between the nominal value of the different classes of shares should not exceed one to two.

Limitation of the right to transfer or to register shares and of the right to vote

The «one share = one vote» principle may sometimes run counter to the long-term interests of the company and its stakeholders. In fact, given the low participation of shareholders at general meetings, it is often sufficient for a shareholder (or a group of shareholders) to acquire around 20% of the share capital to take control of the vote and impose his (their) decisions. In such cases, voting rights restrictions can protect companies from attacks by opportunistic shareholders who want to outsource production, eliminate a competitor, or dismantle the company.

In some countries, including in Switzerland, companies are entitled to set a limit in the articles of association with respect to the shares that a shareholder can register. The company can therefore set a cap (in percentage of shares) above which it is not obliged to consider an acquirer as a shareholder with voting rights. These restrictions concern registered shares, but also bearer shares when their holders are known. In most cases, the restriction does not apply to all the shareholders, which enhances inequality.

If the company has set limits or intends to limit the shareholders' right to register shares in the articles of association, the articles of association should expressly provide that the annual general meeting may, at any time, waive that limit at the request of a shareholder and that such waiver may only be granted by decision of the general meeting. This gives all shareholders the power to decide, on a case-by-case basis, whether the request is justified, thereby shielding companies from de facto control by opportunistic shareholders with a limited investment but also from management entrenchment.

Indeed, unequal capital structures and voting rights limits generally serve to shield management from changes of control and external influences. They may thus result in management inertia by reducing the risk of potential takeovers by external shareholders or a hostile buyout offer and thereby have a negative impact on the company's capacity to innovate and remain competitive in the long run. Where there is reason to consider the relevance of an unequal capital structure in the light of the company's history and its specific situation, such structures must be regularly reviewed and the relevance of measures contravening the «one share = one vote» principle regularly reconfirmed.

Obligation to make an offer

In Switzerland, the law on financial market infrastructure provides that an investor must make an offer to acquire all listed securities if he acquires shares that (with the ones that he already owns) represent more than 33⅓ of the voting rights. To ensure the equality of treatment of all shareholders, the payment of a control premium is prohibited. In fact, the offer price must be the higher of (1) the average market share price in the 60 days before the offer and (2) the highest price that the buyer paid for a share of the company in the last 12 months.

However, companies may introduce in their articles of association a provision that completely frees the buyer from the obligation to make an offer (opting out clause). Companies also have the possibility to raise in their articles of association the threshold triggering the obligation to make an offer, setting it at a maximum of 49% of the voting rights (opting up clause).

These possibilities to waive the obligation to make an offer were introduced in the legislation to grant flexibility to major shareholders. In fact, the opting out and opting up clauses allow major shareholders not to make an offer for all listed securities in case they cross the threshold when buying a few additional shares.

However, these provisions also enable a major shareholder (who owns more than a third of the voting rights) to sell his stake with a significant premium and without obligation for the buyer to make an offer for all listed securities, which strongly penalises the minority shareholders. For Ethos, these clauses bypass the original purpose and become instruments allowing major shareholders to realise a premium, and therefore an incentive to sell the company rather than a protective measure. The control premium that a buyer would pay (and thus the incentive to sell for the major shareholder) is especially high in a company with a dual class of shares, where the buyer can take control of the company with a minority of the capital.

In the light of the above considerations, Ethos considers that the companies should not include opting out or opting up clauses in their articles of association.

Supermajority vote requirements

In some cases, the law or a company's articles of association require that certain general meeting decisions be taken by a qualified majority. In Switzerland, for example, certain decisions require the affirmative vote of a two-thirds majority of the votes and an absolute majority of the nominal shares represented. The supermajority vote requirements can therefore enable management to protect itself from proposals it does not approve, to the detriment of the shareholders and the other stakeholders.

Share repurchases and «White Knights»

In some cases, share repurchases may provide protection against a takeover bid. According to this strategy, a company that is facing a hostile takeover bid transfers large blocks of shares to a «White Knight» who is an entity favourable to the company's board and management.

Capital increase or «Poison Pill»

In the United States and in Canada, when a shareholder reaches the 15-20% threshold, or when a hostile takeover bid is announced, some companies automatically increase the share capital and place shares with existing shareholders, at a sharply reduced price (generally half the market share price). This procedure, known as a «Poison Pill», makes the takeover more onerous for the purchaser.

Canadian legislation requires that companies seek shareholder approval before introducing a «poison pill». This is not the case in the United States. According to codes of best practice, such measures should not be adopted by the board without shareholder approval.

«Poison Pills» were massively introduced in Japan as of 2005, to prevent foreign investors from gaining control of Japanese companies.

In Europe too, a company's articles of association can authorise an automatic capital issuance for existing shareholders (at a purchase price that is less enticing than a «Poison Pills»), in order to make the takeover costlier for the purchaser.

7. Mergers, Acquisitions, Spin-offs, Restructuring and Delistings

7.1 GENERAL REMARKS

Mergers, acquisitions, spin-offs, and restructuring are generally large-scale transactions with far-reaching long-term consequences for all the company's stakeholders. The interests of the various parties do not necessarily coincide, however, particularly in the short term. It is therefore very important to analyse a merger, acquisition or restructuring from a long-term perspective that considers all future consequences, not only for the shareholders, but also for the other stakeholders, including company personnel, clients, suppliers, and any members of civil society that might be directly impacted by the transaction.

The stated purpose of most mergers is to maximise a company's value, but it must never be forgotten that mergers also present major risks. These risks include:

- Problems relating to the integration of two separate and often competing entities with different company cultures, which may, among others, undermine staff motivation.
- The amount of the premium, which is supposed to represent the value of the synergies expected from the merger. More often than not, the premium paid (goodwill) far exceeds the value of the effective synergies and must be written off rapidly following an impairment test (according to IFRS).
- The financial cost of the transaction, in particular one-time restructuring costs.

The social implications of mergers, acquisitions and restructuring require the shareholders to show great prudence when they are called on to give their approval. They must have the means of ascertaining that the transaction is to the advantage of all stakeholders. They should strive to avoid endorsing an operation that serves solely to further the interests of management. Particular attention must be paid to any conflicts of interest that may arise for executives, who may be tempted to privilege their own interests through the new structure and advance their career, improve their remuneration or receive transaction bonuses. Such objectives may not necessarily coincide with the long-term interests of the minority shareholders and other stakeholders, notably the employees. It would therefore be of great value to stakeholders to create a special committee including only independent members with no personal or professional interests in the operation, to review and appraise the proposed transaction.

It is admittedly difficult, in particular for the shareholders, to foresee exactly what long-term effects a merger, acquisition or restructuring will produce. However, it should be possible for them to carry out a reasonably in-depth analysis of available information.

In this respect, the quality of the information disclosed, and the justification provided by the company, including the «fairness opinion» drawn up by a competent institution such as an investment bank or specialised consultant, play a decisive role in the acceptance or rejection of the proposal. The institution entrusted with the appraisal of the transaction should be independent and objective (free of any business connection with the relevant companies) and unencumbered by the board's interference in its analysis of the transaction. To guarantee independence and objectivity, codes of best practice recommend that the fairness opinion be entrusted to an organisation that has no important business relations with the companies concerned.

Moreover, as remuneration for such work generally consists not only of a fixed fee but also of a variable one that largely depends on the value of the transaction and its execution, it is legitimate to be concerned about the independence and objectivity of the judgment. To guarantee the latter as much as possible, the codes of good practice recommend entrusting the study to a specialist who is not linked to the companies concerned by significant business relationships. Lastly, a study of the new entity's governance should be carried out to assess the impact of the merger on the shareholders' rights and on their long-term interests and those of other stakeholders.

7.2 ACQUISITION OR MERGER BY ABSORPTION

When an acquisition or merger by absorption takes place, one company takes over the assets and liabilities of another company during the course of a universal succession. The transaction may take place between companies within the same economic sector (horizontal integration) or between a company and a major client or supplier (vertical integration). The objective of such transactions may be to create synergies, to diversify, to increase prospects for the company's products, to increase cash flow or improve creditworthiness, or to lower fixed costs by achieving economies of scale (particularly in the case of horizontal integration).

The merger contract is always submitted to the general meeting of the company that will be absorbed or acquired. When the latter is dissolved without liquidation, its shareholders are allocated shares in the acquiring company. This transaction is implemented through a contract that provides for the exchange ratio between the shares of the acquired and the acquiring company. Generally, the shareholders of the absorbed company have an immediate financial interest in the transaction since the announcement of the operation usually leads to a considerable increase in the value of the company's shares. Unfortunately, for this reason, the debate concerning the advisability of the transaction is frequently limited to establishing whether management has succeeded in negotiating an optimum deal as represented by the share premium that the acquiring company has offered.

The acquiring company is generally not required to submit the merger to its shareholders for approval unless the operation involves a substantial increase in capital to cover the anticipated exchange of shares. In Switzerland, the board of directors approves the merger, except in situations that call for modifications to the articles of association (change of the

company's registered purpose, increase in capital, creation of a new class of shares, change in the number of members of the board). However, the shareholders need not be consulted if the company has sufficient shares of its own or if the articles of association entitle the board to increase the authorised capital to carry out the transaction.

If the capital is increased, the future advantages of the operation must adequately compensate for the dilution of profits and voting rights (see 6.2 on capital increase). The transaction may also have other consequences for the structure of the company (for example in terms of corporate governance), which should be also examined in the light of best practice standards and the long-term interests of the company's shareholders.

7.3 MERGER BY COMBINATION

In a merger by combination, two or more companies, which may or may not belong to the same economic sector, contribute their respective assets and liabilities to form a new company. The merger must be approved by the annual general meetings of both companies. Following approval, the new company can be formally constituted, and the shareholders of the dissolved companies receive shares in the new entity.

As in the case of mergers by absorption, the operation must be examined in the light of the long-term interests of all stakeholders. Moreover, a careful study should demonstrate that the structure of the newly formed company complies with standards of best practice in corporate governance. In this respect, particular attention should be paid to the composition of the board of directors and the capital structure.

7.4 SITUATIONS AKIN TO MERGERS

In everyday language, the term «merger» is often used to designate procedures that, from the economic point of view, are akin to mergers but should not be qualified as such from a legal point of view. The two main situations that are similar to mergers, «so-called mergers» and «quasi-mergers», are briefly described below.

«So-called mergers» occur when one company (or a part thereof) transfers its assets and liabilities to another in return for either cash or shares in the other company. If the shareholders' general meeting agrees, the company that has been taken over can subsequently be liquidated, which is not really what happens in a true merger, when the company is never liquidated (see 7.2 above). The shares or cash thus obtained are paid out as liquidation proceeds to the shareholders of the company that has been taken over.

A «quasi-merger» occurs when one company takes over all (or at least most) of the shares of another company and maintains the latter as a subsidiary. This type of procedure results in the creation of a group. In some cases, the subsidiary is subsequently absorbed by the parent company.

7.5 COMPANY SPIN-OFFS

When a company decides to withdraw from a given sphere of activity in order to concentrate on another area, it may proceed to a spin-off operation.

Such a course of action is often undertaken when the synergy between a particular sphere of activity and the company's other activities is weak, and when the proposed operation offers greater potential for growth on both sides. A spin-off may also prove effective when a specific sector of a company's activities is undervalued. When separated from the rest, the market would be more likely to recognise it at a better value.

A spin-off takes place when one company transfers to another a specific part of its own activities and can take different forms. The shareholders of the parent company can receive participation rights in the new company to compensate for the loss of substance of the original company. The spun-off company will become independent, and its shares will be listed on the stock market.

The parent company can also sell a division and return to the shareholders all or part of the proceeds of the sale in the form of a dividend corresponding to the value of the sold activities.

When a spin-off operation leads to a reduction in capital, it must be brought before the shareholders of the parent company for their approval. It is essential to ensure that the transaction is to the advantage of the stakeholders of both companies. Furthermore, the structure of the new company must comply with the principles of best practice in corporate governance. In this respect, particular attention should be paid to the composition of the board of directors and the capital structure.

7.6 DELISTING OF COMPANIES

As of 2024, Swiss companies are required to submit all delisting decisions to a shareholder vote.

In general, delistings occur when a company is sold following a public offer. However, companies sometimes propose to delist their shares for other reasons, for example to avoid the additional work and costs involved in maintaining a listing. In the latter case, it is very important to ensure that all shareholders are treated fairly and equitably, in particular by allowing shareholders who wish to sell their shares to do so through a public offer before the company is taken private.

8. Amendments to the Articles of Association

8.1 GENERAL

The articles of association are the legal foundation on which a company's existence is based. They contain the provisions that are essential to its activities, namely its registered name, headquarters, corporate purpose, capital structure, the competencies of its bodies, and its shareholders' rights and obligations.

Proposals to amend the articles of association are generally prompted by the need for a company to adapt to new situations. They may stem, for example, from changes in the national legislative or regulatory framework, including the adoption of a new law or stock market regulations or the establishment of jurisprudence.

Amendments to the articles of association may involve the mere rewording in an article, the amendment of several articles, or even a complete reformulation of the document.

Some amendments concern fundamental issues such as capital structure, the shareholders' voting rights, the composition of the board of directors, the external auditor's election and term of office, or else the allocation of company income. These subjects are dealt with separately in other sections of this booklet and voting positions on them are to be defined in accordance with the voting recommendations pertaining to the relevant section.

Amendments to the articles of association may also concern other important issues, for example voting procedures, conditions for admission to annual general meetings, shareholder representation at meetings, and administrative matters relating to securities.

However, an apparently minor or purely technical amendment may have a significant impact on shareholder rights. It is therefore essential to carefully review the content of all proposed amendments to the articles of association. For this reason, the company should provide the shareholders with the complete text of all the proposals and not just a summary.

Corporate governance best practice rules and even the law in certain countries require that the annual general meeting should be entitled to a separate vote on each separate theme and not to a bundled vote of all the amendments proposed, based on the «unity of matter» principle. A series of amendments may contain some proposals that have a positive impact on shareholders, while others have a negative impact or are simply neutral. Bundling the proposals in a single vote would leave the shareholders with no choice but to accept or reject them as a whole.

If the shareholders are nevertheless called upon to vote on a bundled series of proposals, they must weigh the negative proposals against the positive to assess the overall effect on their long-term interests.

8.2 SITUATION IN SWITZERLAND

The articles of association of Swiss companies must contain specific provisions governing the functioning of the governing bodies.

8.2.1 MAXIMUM NUMBER OF MANDATES

To ensure that the members of the governing bodies are sufficiently available to exercise their function with the required diligence, the maximum number of mandates exercised by the members of the board of directors, the advisory board and the executive management within management or administrative bodies of other legal entities must be laid down in the articles of association.

Ethos believes that it is important to provide for a different maximum number of mandates for the members of the executive management and for the non-executive members of the board of directors. Furthermore, in each of the two cases, a distinction should be made between mandates in listed companies, for-profit companies, and other institutions.

These distinctions aim to be able to better assess the workload that the maximum number of admitted mandates requires. This should make it possible to determine whether the members of the board of directors and of the executive management are able to exercise their activity and assume their responsibilities with due diligence.

The question of the maximum number of mandates admitted by Ethos is dealt with in Appendix 2 of the voting guidelines.

8.2.2 REMUNERATION SYSTEM AND EMPLOYMENT CONTRACTS

The Code of Obligations further provides that the articles of association of Swiss companies include specific provisions on the maximum length of employment contracts of management bodies.

To prevent the provisions of the employment contracts of members of the executive management from circumventing the prohibition on paying severance pay by providing for long notice periods or particularly long contracts, the maximum length and maximum notice periods must be fixed in the articles of association. According to the Code of Obligations, the length and period of notice cannot exceed one year. However, it is not specified to what remuneration the staff member is entitled during the notice period (fixed salary and target bonus, total remuneration including allotments of shares or options, etc.). Ethos believes that in principle only fixed remuneration should be paid if the latter has been made redundant and has not worked during the notice period.

It should be noted that the Code of Obligations prohibits the payment of severance pay. As a replacement, many companies have included in their articles of association the possibility of providing paid non-competition clauses to the members of the executive management. In principle, the articles of associations specify the duration of such clauses and the remuneration to which the beneficiaries will be entitled.

8.2.3 VIRTUAL GENERAL MEETINGS

Swiss companies may hold their general meetings in electronic form and without a physical meeting place if their articles of association so provide (Art. 701d CO).

However, the board of directors must ensure that the speeches at the general meeting are broadcast live and that any participant can make proposals and take part in the debates (Art. 701e CO).

Ethos considers that it is essential to maintain a physical meeting place while allowing shareholders to vote and intervene remotely (hybrid format) in order to give shareholders a free choice as to the meeting place and to guarantee a direct contact between the board of directors and the shareholders of the company at least once a year. The exclusively virtual format should be reserved for cases of force majeure (pandemic, natural disaster, etc.).

Therefore, the introduction in the articles of association of the possibility of holding virtual-only general meetings can be supported by Ethos if the hybrid format is guaranteed and if exceptions for cases of force majeure are expressly mentioned. Organising hybrid-format general meetings does not require a modification of the articles of association.

9. Shareholder Resolutions

9.1 HISTORY

Shareholder resolutions, which date back to the late 1920s in the US, were initially a means of obtaining information from management. Subsequently, in the 1970s, religious organisations (but not only), grouped together in their capacity as shareholders in the Interfaith Center for Corporate Responsibility (ICCR), began to submit resolutions, in their capacity as shareholders, which sought to promote ethical values such as peace and the principles of social justice in the business community and society at large. The resolutions originally aimed to ensure respect for human rights in repressive political regimes, but they have since evolved to include the need to promote and respect quality standards in the workplace, notably in the spheres of security, equality, and non-discrimination.

Since the establishment in the mid-1980s in the United States of the Council for Institutional Investors (CII), the inception of rules aimed at promoting good corporate governance has become a major concern for institutional investors.

The Coalition for Environmentally Responsible Economies (Ceres) was created in 1989, after the Exxon Valdez disaster. It is an umbrella organisation for investors working to convince companies to adopt a series of environmental principles to be presented annually to the shareholders in the form of standardised reports.

Ceres currently has 210 members that «mobilise a powerful network of investors, companies and public interest groups to accelerate and expand the adoption of sustainable business practices and solutions to build a healthy global economy».

Nowadays, shareholder resolutions are becoming increasingly diverse and are used as a means of influencing corporate strategies, social and environmental policies, and corporate governance. They are common practice in the United States and Canada and exist in other parts of the world, such as Europe and Japan.

The rights of shareholders and their ability to put resolutions before annual general meetings vary from country to country. In the United States, for example, a shareholder need only own shares worth USD 25'000 for one year (or USD 2'000 for three years) to put a resolution on the agenda of an annual general meeting. However, when companies wish to prevent a proposal from being presented at the shareholders' general meeting, they can seize the SEC, which has the authority to decide whether to exclude the proposal or not.

In fact, as shareholder resolutions have progressively become a means for active shareholders to influence company strategy, the SEC regularly revises its rules regarding acceptability of resolutions. It sometimes puts forward technical or juridical reasons for limiting the number and scope of resolutions that can be voted on by the shareholders.

In Switzerland, unless otherwise stipulated in the company's articles of association, shareholders must represent shares totalling at least 0.5% of the share capital in order to put an item on the agenda for listed companies. Depending on the company's market capitalisation, it can prove very difficult to submit resolutions because the shareholder often has to hold shares amounting to a market value of tens of millions of francs.

In Germany, where one must represent shares totalling at least EUR 500'000 or 5% of the share capital to submit a shareholder resolution, shareholders unable to reach this threshold attempt to circumvent the problem by submitting «counterproposals» to the different proposals of the board instead of resolutions. Counterproposals may be numerous and wholly unrelated to each other in substance. Since they can be introduced at various points on the agenda, they are generally presented in connection with approval of the dividend and requests to grant discharge to the management board and supervisory board. The board reads the counterproposals to the shareholders, who are subsequently called upon to approve or reject the specific item on the agenda and not the counterproposal itself.

As a result, it sometimes happens that shareholders put forward a counterproposal criticising the company's involvement in a controversial field. Shareholders who agree with the substance of such a counterproposal would then have to oppose, for example, the dividend distribution or withhold discharge. Although such counterproposals are unlikely to win sufficient support among the shareholders, they nevertheless provide the proponents with an opportunity to draw the general meeting's attention to certain important matters.

9.2 ANALYSIS OF SHAREHOLDER RESOLUTIONS

Each shareholder resolution must be subject to an in-depth analysis. However, certain rules of best practice apply to all shareholder resolutions.

A resolution should be clearly expressed and accompanied by detailed explanations concerning its objectives and the means of implementation proposed to the company. The feasibility of the proposals must be demonstrated to justify its endorsement by the shareholders. Hence, if the targeted objectives go beyond a company's authority and fall within the remit of Government, the resolution should not be approved. A resolution is not acceptable either when it aims at micro-managing a company by delegating decisions to investors that belong to the board or the executive management.

Some investors are only interested in proposals that aim at enhancing shareholder value. However, for other shareholders, including the Ethos Foundation, resolutions are acceptable if they aim at enhancing long-term corporate value, not only for shareholders, but also for the majority of the other stakeholders.

Most shareholder resolutions are on the agenda of North American companies' annual general meetings.

Generally speaking, shareholder resolutions can be divided into three broad categories:

Corporate Governance resolutions

The first category consists of resolutions that concern corporate governance matters. Such resolutions aim at encouraging the company to improve its corporate governance, primarily to ensure that boards discharge their duties in the best interests of companies and their shareholders, thereby creating long-term value.

In this respect, Ethos lends its support to resolutions that aim at aligning company practices to best practice in corporate governance. Ethos generally approves resolutions asking companies to promote greater transparency and disclosure of information, ensure equal treatment of shareholders, separate the functions of chair and CEO, introduce annual election and majority vote for members of the board of directors, reduce the shareholdings required for convening an extraordinary general meeting, align the interests of managers and shareholders in terms of remuneration, or ask for information regarding political spending by companies.

Environmental resolutions

The second category involves resolutions concerning the environment. These resolutions aim at increasing a company's awareness of the environmental issues raised by its activities and at encouraging the company to limit or minimise the impact of its activities on the natural environment. Generally, Ethos considers that the companies should put ambitious climate change strategies in place and enhance the protection of the natural environment.

This is precisely the objective of environmental resolutions that require, for example, companies to prepare sustainability reports, adopt and publish quantitative and challenging targets of greenhouse gas emissions reduction to mitigate climate change, develop policies regarding waste management, water usage, or limit productions that release pollutants in the atmosphere. Certain resolutions also ask companies to assess the challenges related to climate change or prepare a report on «carbon risks», i.e., the risks related to stranded assets that cannot be utilised because they are too carbon intensive.

Social resolutions

The third category includes resolutions designed to increase a company's sense of social responsibility towards its stakeholders, including employees, customers, suppliers, local authorities, and civil society at large. Such resolutions may also address the social impact of the company's products and practices.

Generally, Ethos considers that companies should adopt high standards in terms of human and workplace rights and enforce them, not only in their country of domicile, but also all along the supply chain. Ethos urges companies to put codes of conduct and anti-corruption mechanisms in place, to take measures aiming at reducing workplace accidents and to promote diversity and non-discrimination.

When company practices are not adequate and a resolution aims to remediate such a situation, Ethos will approve the resolution. This is notably the case for resolutions when asking companies to increase employee diversity, establish and enforce anti-discrimination policies, introduce independent monitoring of the implementation of its code of conduct, prepare a report on measures to reduce accidents, implement a policy to make medicines affordable to poor citizens, or to guarantee liberty of expression on the Internet.

9.3 IMPACT OF SHAREHOLDER RESOLUTIONS

Shareholder resolutions are the last step in a communication process between the shareholders and management. Bringing about a change in a company's «attitude» or practices is a process that is usually successful only after sustained and good quality dialogue. However, when constructive dialogue is not possible, or if it does not bear fruit within reasonable deadlines, a resolution enables the proponents to raise awareness of other shareholders and civil society on their concerns and to send a signal to the company.

Usually, when a shareholder resolution is initiated, companies contact the authors to start a dialogue aimed at withdrawing the resolution before it is placed on the agenda of the general meeting. In principle, shareholders agree to withdraw their resolution when certain conditions are met (e.g. following a written statement from the company demonstrating its genuine willingness to engage in dialogue or the formation of a dialogue group empowered to make proposals to the Board of Directors or to take decisions).

The approval rate of a resolution is very important, in particular to send a strong signal to the company's management regarding shareholders' concerns. Many resolutions, however, obtain no more than 10% of votes, at least the first year. Moreover, in some countries, such as the United States, they are generally non-binding, which means that the outcome of the vote is purely advisory.

The board of directors is not obliged to implement the decision, even if it has been supported by most shareholders. However, when a majority of shareholders approve a resolution, the board of directors is placed under heavy pressure to take account of it, at the risk of not being re-elected by the shareholders.

10. Other Business

10.1 INDEPENDENT PROXY

In Switzerland, to facilitate the exercise of voting rights by shareholders who are unable to attend general meetings in person, the Swiss Code of Obligations requires companies to appoint an independent proxy. The existence of an independent proxy is essential if shareholders are to be able to exercise their voting rights remotely by communicating their voting positions in advance. According to the Swiss Code of Obligations, the independent proxy is elected annually by the shareholders.

For Ethos, independence is a fundamental quality that a shareholder representative must possess in order to be credible with investors.

The Swiss Code of Obligations states that the independence criteria for the audit firm apply by analogy to the independent shareholder representative. In particular, close links between the company's management or a major shareholder on the one hand, and the independent representative or persons close to him or her on the other, are incompatible with the concept of independence of the shareholder representative.

10.2 OTHER BUSINESS

The «Other business» item on the agenda of the annual general meeting usually covers matters that require consideration but are not put to the vote.

Nevertheless, companies sometimes submit to vote proposals that did not appear as items on the agenda. This procedure is not authorised in some countries In Switzerland, the general meeting cannot decide on an item that was not on the agenda (except to call an extraordinary general meeting, to conduct a special audit or to elect an audit firm). The shareholder may make additional proposals or counterproposals to the subjects covered in the agenda.

The practice of introducing matters that do not appear on the agenda under the heading «Other business» is a contentious issue. It is much criticised by investors and consultants in corporate governance, particularly when the acceptance of the matter requires the approval of the majority of shareholders actually present at the annual general meeting. This serves to exclude the vast majority of investors, and notably institutional investors who traditionally vote by proxy.

To avoid ratifying proposals of unknown content, shareholders voting by proxy, and who are therefore not present at the annual general meeting, should not approve in advance an unknown proposal. It is therefore imperative that voting cards include explicitly the possibility for shareholders voting in advance to refuse any proposal announced during the general meeting, be it by the board or a shareholder.

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