

English version

swiss code of best practice for corporate governance

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Preface

Since it was introduced in 2002, the “Swiss Code of Best Practice for Corporate Governance” has strongly influenced the development of corporate governance in Switzerland and has proven to be an effective instrument of self-regulation.

Various developments in the past few years have made it necessary to modify the “Swiss Code”. The revised version takes into account the changes that have resulted from Article 95(3) of the Federal Constitution.

It emphasises in particular the concept of sustainable corporate success as the lodestar of sensible “corporate social responsibility”. It also prescribes specific modifications to the composition of the Board of Directors (including representation of women) and to risk management (incl. compliance).

The “Swiss Code” provides companies with recommendations on designing their corporate governance and information that go beyond what is stipulated by law. It also ensures that companies retain their organisational flexibility. This has proven to be an important locational advantage of Switzerland. Each company should retain the option of putting its own ideas on structuring and organisation into practice. However, if their corporate governance practices deviate from the recommendations of the “Swiss Code”, they now have to provide a suitable explanation (principle of “comply or explain”).



Heinz Karrer
Chairman of the Board



Monika Rühl
Chairwoman
of the Executive Board

Handwritten signatures of Heinz Karrer and Monika Rühl in black ink.

Supporting organisations

The following organisations, which give high priority to the subject of corporate governance in their activities, have expressly agreed to support the “Swiss Code” and Appendix 1:

Supporting the “Swiss Code” and Appendix 1

Date on which the declaration of support was issued

	“Swiss Code”	Appendix 1
ASIP Swiss Association of Pension Funds, Zurich	25.04.2002	12.12.2007
ethos – Swiss Foundation for Sustainable Development, Geneva	29.04.2002	10.10.2007
scienceindustries, Zurich	6.06.2002	15.10.2007
SVV Swiss Insurance Association, Zurich	8.05.2002	16.10.2007
SWIPRA – Swiss Proxy Advisor, Zurich	9.09.2014	9.09.2014
Swiss Bankers Association, Basel	22.04.2002	23.10.2007
Swiss Employers Association, Zurich	29.04.2002	1.10.2007
Swiss Federation of Small and Medium Enterprises (sgv), Berne	19.04.2002	10.12.2007
SwissHoldings – Federation of Swiss based multinational enterprises, Berne	25.04.2002	15.10.2007
Swiss Institute of Certified Accountants and Tax Consultants, Zurich	8.04.2002	6.12.2007
Swissmem, Zurich	16.04.2002	17.11.2007
The Swiss Association of Privately Held Companies, Basel	17.04.2002	18.12.2007

Other organisations are also free to submit a declaration of support. They will be immediately added to the electronic publications and the next edition of the printed version. All of the supporting organisations will be involved in the further development of the “Swiss Code”.

Members of the working group that drafted the texts

Prof. em. Peter Bockli, University of Basel
Michèle Burger, Nestlé AG
Prof. em. Peter Forstmoser, University of Zurich
David P. Frick, Chairman of the Legal Commission of economiesuisse, Nestlé AG
Prof. Karl Hofstetter, University of Zurich, Schindler Holding
Fürsprecher Christian Stiefel, SwissHoldings
Erich Herzog, economiesuisse / Dr. Meinrad Vetter (until December 2013)
PD Dr. Christoph Winzeler, SBA

The Legal Commission of economiesuisse and SwissHoldings and the supporting organisations have commented on the drafts.

The “Swiss Code of Best Practice for Corporate Governance” (hereinafter “Swiss Code”) was approved in its revised form by the Board of economiesuisse on 28 August 2014.

Swiss Code of Best Practice for Corporate Governance

Preamble

The “Swiss Code” was published by *economiesuisse* as the Swiss Business Federation from all sectors of the economy in July 2002 and supplemented with an appendix containing recommendations on the remuneration of Boards of Directors and Executive Boards in 2007. It has become an important reference text for interested parties. The latest version reflects both the international developments in the area of corporate governance as well as changes at Swiss level, which have resulted from the revision of Article 95 (3) of the Federal Constitution in particular.

The “Swiss Code” addresses the situation in Switzerland with its characteristic mixture of large, medium and small public limited companies. The “Swiss Code” should comprehensibly embody the high standards of practice which are now being widely observed by many companies in Switzerland. At a time when capital markets are being linked worldwide, the “Swiss Code” will give foreign investors an idea of Swiss “best practices”. The “Swiss Code” is ultimately a reflection of the fact that Swiss lawmakers have taken a different route with regard to questions of remuneration than is common in other countries.

The “Swiss Code” is intended as a list of recommendations, using the “comply or explain” principle for Swiss public limited companies. Non-listed, economically significant companies or organisations (incl. those in legal forms other than a public limited company) can also take appropriate guidelines from the “Swiss Code”.

To complement the “Swiss Code”, each of the organisations involved in drafting this text should be free to emphasise certain aspects differently and pursue its own ideas, even when deviating where necessary from the main rules set forth therein.

“Corporate Governance” as a guiding principle

Corporate governance encompasses all of the principles aimed at safeguarding sustainable company interests. While maintaining decision-making capability and efficiency at the highest level of a company, these principles are intended to guarantee transparency and a healthy balance of management and control.

The “Swiss Code of Best Practice for Corporate Governance” as a guideline and recommendation

The “Swiss Code of Best Practice for Corporate Governance” is intended for Swiss public limited companies. Certain provisions address institutional investors and intermediaries. The purpose of the “Swiss Code” is to set out guidelines and recommendations. However, it should not force Swiss companies into a straitjacket. Every company should retain the option of putting its own ideas on organising corporate governance into practice. If a company’s corporate governance practices deviate from the recommendations of the “Swiss Code”, it has to provide a suitable explanation (“comply or explain”).

Shareholders

1

As investors, shareholders have the final say within the company.

- The powers of the shareholders¹ are defined by statute. The shareholders alone are entitled to make decisions regarding personnel matters at the top company level (electing and granting release to members of the Board of Directors, electing the Chairman of the Board of Directors and the members of the Compensation Committee, appointing the company's auditors and the independent voting proxies), the final approval of accounts (annual and consolidated financial statement) and the policy on distributions and shareholders' equity (dividends, increase in capital or reduction of capital) as well as compensation paid to the Board of Directors and the Group Executive. The shareholders determine the purpose of the company and other key parameters and rules in the Articles of Association. Their approval is required for decisions on mergers, demergers, changes and liquidation.
- Shareholders exercise their rights at the General Shareholders' Meetings and have the right to make motions regarding items on the agenda. They may also request information on company matters not included on the agenda and, if appropriate, a special audit.
- Institutional investors, nominees and other intermediaries exercising shareholders' rights in their own name should ensure, as far as possible, that beneficial owners may exercise their influence as to how such shareholders' rights are brought to bear.
- Institutional investors, nominees and other intermediaries, including proxy advisors, should take the Guidelines for institutional investors into consideration when exercising their right to vote in public limited companies.²
- If registered shares are acquired through custodian banks, the latter should invite the party acquiring the shares to apply for registration in the company's Register of Shareholders.

2

The company should endeavour to facilitate the exercise of shareholders' statutory rights.

- To this end, the Articles of Association may lower the statutory threshold to an appropriate degree for shareholders to request that items be placed on the agenda or to convene an Extraordinary General Shareholders' Meeting.
- If the General Shareholders' Meeting reduces the par value of shares through repayment, the Board of Directors should review whether it would be appropriate to adjust the required threshold (relating to requests to place items on the agenda, convene meetings or, where appropriate, for a special audit to be carried out) to ensure that the shareholders' rights are not curtailed.
- The Articles of Association and at least the main features of the organisational regulations should be available in written or in electronic form at all times. The company should also publish the Articles of Association on their website.

¹ All function designations which indicate a particular gender or which are gender-neutral (e.g. shareholder, member, Chairman of the Board) are intended to denote both men and women.

² Eds. ASIP, Swiss Pension Fund Association, Swiss Federal Social Security Funds AHV/IV/EO, economie-suisse, Ethos – Swiss Foundation For Sustainable Development, Swiss Bankers Association and Swiss-Holdings, January 2013.

3

The company should ensure that the General Shareholders' Meeting is used as a forum for communication so that it is well-informed in discharging its function as the highest corporate authority.

- The Board of Directors should inform the shareholders in such a way that they can exercise their rights in the knowledge of the essential basis of their decision-making.
- When convening meetings, the company should provide intelligible explanations about agenda items and motions put forward by the Board of Directors. Requests by shareholders to place items on the agenda and motions made by them should be communicated, if received in good time.

4

The company should facilitate the participation of shareholders in the General Shareholders' Meeting by clearly setting dates and time limits well in advance.

- The Board of Directors should give notice of the date of the next ordinary General Shareholders' Meeting as early as possible.
- The company should give notice of the deadline for shareholders to propose items for the agenda as well as corresponding motions. This date should not be set any further in advance of the General Shareholders' Meeting than necessary.
- If the Board of Directors sets a deadline prior to the General Shareholders' Meeting in order to identify the persons entitled to exercise shareholders' rights, this deadline, both for holders of registered and of bearer shares, should be no more than a few days before the date of the meeting.

5

The organisation of the General Shareholders' Meeting should enable shareholders to make relevant and concise comments on the agenda items.

- The Board of Directors should ensure that the shareholders are able to form their opinions in an informed manner and express them clearly.
- The Chairman should use his powers to ensure that the shareholders may exercise their rights. He should conduct the meeting in a balanced and purposeful way.
- In the interests of running the meeting efficiently, the Chairman should ensure that those present do not ramble, repeat themselves or make any unnecessarily derogatory statements. He may limit the time allotted to each speaker where appropriate, in particular if there are numerous requests to speak on the same agenda item.

6

Arrangements should be made to ensure that shareholders' rights to information and inspection are met.

- The Chairman should answer questions which are relevant and relate to the company, or arrange for a competent specialist or the Chairmen of the committees of the Board of Directors to reply.
- Complex questions or those with a number of different aspects should be submitted to the Board of Directors in writing in sufficient time to allow for responses to be prepared.
- The results of the voting should be made available to the shareholders as soon as possible, but no later than one week after the voting takes place.

7

The will of the majority should be clearly and fairly expressed in the General Shareholders' Meeting.

- The Chairman should implement the voting procedures in such a way that the will of the majority can be determined as unambiguously and as efficiently as possible. Where possible, the Board of Directors should use tried and tested electronic means.
- If voting takes place by a show of hands, the shareholders may request that votes against the motion and any abstentions be recorded; the number of votes cast should be communicated to the meeting.
- The Chairman may arrange for a combined poll to be taken when electing members of corporate bodies or granting release to them, provided there is no opposition from the shareholders and there is not a request for a separate vote on one or more persons.
- The Board of Directors should take appropriate measures to ensure that the independent voting representative is able to carry out his function effectively.

8

The Board of Directors should take steps to contact the shareholders also in between the General Shareholders' Meetings.

- The Board of Directors should also inform the shareholders on the progress of the company during the course of the financial year.
- The Board of Directors should appoint a competent authority for shareholder relations. When disseminating information, it should respect the statutory principle of equal treatment.
- If a significant proportion of the votes do not support the Board of Directors' motion, the Board of Directors should improve communication with the shareholders.

Board of Directors and Executive Board

Duties of the Board of Directors

9

The Board of Directors elected by the shareholders is responsible for the strategic direction and supervision of the company or the Group.

- The Board of Directors should determine the strategic goals, the general ways and means to achieve them and the persons responsible for conducting the company's business.
- The Board of Directors should shape the company's corporate governance and put it into practice.
- In its planning, it should ensure the fundamental harmonisation of strategy, risks and finances.
- The Board of Directors should be guided by the goal of sustainable corporate development.

Swiss company law lays down the inalienable and non-transferable primary functions of the Board of Directors.

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- Its primary functions are:
 1. the overall supervision of the company and issuing of the necessary directives;
 2. establishing the organisational framework;
 3. organising the accounting system, the financial control and the financial planning to the extent necessary for the management of the company;
 4. appointing and removing the persons entrusted with the management and representation of the company;
 5. the overall supervision of persons entrusted with the management of the company, specifically with regard to compliance with the law, the Articles of Association, regulations and directives in particular;
 6. compiling the Annual Report as well as preparing the General Shareholders' Meeting and implementing its resolutions;
 7. notifying the judge in the event of overindebtedness;
 8. deciding on motions to be submitted to the General Shareholders' Meeting on the remuneration of the Board of Directors and the Group Executive Board as well as compiling the compensation report.

Subject to the provisions of the Articles of Association, the Board of Directors should array the powers and responsibilities of the persons entrusted with the management of the company.

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- The Board of Directors should ensure that management and control functions are allocated appropriately.
- If the Board of Directors assigns management responsibilities to a delegate or to a separate Executive Board, it should issue organisational regulations with a clear definition of the scope of the power conferred. As a rule, it should reserve the power to approve certain significant business transactions.

Composition

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The goal should be well-balanced representation in the Board of Directors.

- The Board of Directors should be small enough in numbers for efficient decision-making and large enough for its members to contribute experience and know-how from different fields and to allocate management and control functions (Section 20 et seq.) among themselves. The size of the Board should match the needs of the individual company.
- The Board of Directors should be comprised of male and female members. They should have the necessary abilities to ensure an independent decision-making process in a critical exchange of ideas with the Executive Board.
- The Board of Directors should guarantee that there is an appropriate diversity among its members.
- The majority of the Board of Directors should be composed of members who are independent within the meaning of Section 14.
- If a significant part of a company's operations are abroad, persons with long-standing international experience or foreign members should also be members of the Board of Directors.

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The Board of Directors should plan for the succession of its members and ensure that they receive further training.

- The term of office for members of the Board of Directors should be one year.
- The Board of Directors should plan the succession of its members and determine the criteria for selecting candidates.
- The Board of Directors should ensure that newly elected members receive an introduction appropriate to their functions as well as further training with respect to their responsibilities.

Independence

14

The independence of the members of the Board of Directors is governed by particular principles.

- Independent members shall mean non-executive members of the Board of Directors who have never been a member of the Executive Board, or were members thereof more than three years ago, and who have no or comparatively minor business relations with the company.
- Where there is cross-involvement in other Boards of Directors, the independence of the member in question should be carefully examined on a case-by-case basis.
- The Board of Directors may define further criteria of institutional, financial or personal independence.

Procedures and Chairmanship of the Board of Directors

15

The Board of Directors should determine the procedures appropriate to perform its function.

- The Board of Directors should, as a rule, meet at least four times a year according to the requirements of the company. The Chairman should ensure that deliberations are held at short notice whenever necessary. The members of the Board of Directors should ensure that they are able to fulfil the responsibilities of their position even in periods when there are increased demands on their time.
- The Board of Directors should review the regulations that it has issued at regular intervals and amend them as required.
- The Board of Directors may obtain independent advice from external experts on important business matters at the company's expense.
- The Board of Directors should self-evaluate its own performance and that of its committees annually.

16

The Chairman shall be responsible for preparing and conducting meetings; one of his core responsibilities is the provision of appropriate information.

- The Chairman of the Board of Directors is entrusted with running the Board of Directors in the company's interests. He should ensure that procedures relating to preparatory work, deliberation, passing resolutions and implementation of decisions are carried out properly.
- The Chairman should liaise with the Executive Board to ensure that information is made available in good time on all aspects of the company that are significant for decision-making and supervision. The Board of Directors should receive, where possible prior to the meeting, well-presented and clearly organised documentation; if this is not possible, the Chairman should make the documentation available prior to the meeting, allowing sufficient time for perusal.
- As a rule, persons responsible for a particular business matter should be present at the meeting. Anyone who is indispensable for answering questions in greater depth should be available.

Dealing with conflicts of interest and advance information

17

Each member of the Board of Directors and the Executive Board should arrange his personal and business affairs so as to avoid, as far as possible, conflicts of interest with the company.

- If a conflict of interest arises, the member of the Board of Directors or the Executive Board concerned should inform the Chairman of the Board of Directors. The Chairman, or Vice Chairman, should request a decision by the Board of Directors commensurate with the seriousness of the conflict of interest. The Board of Directors should decide without the participation of the party concerned.
- Anyone who has interests in conflict with the company or is obligated to represent such interests on behalf of third parties should not participate in the decision-making. Anyone who has a permanent conflict of interest cannot be a member of the Board of Directors or the Executive Board.
- Transactions between the company and members of corporate bodies or related persons should be carried out "at arm's length" and should be approved without the participation of the party concerned. If necessary, an impartial opinion should be obtained.

18

The Board of Directors should regulate the principles governing ad hoc publicity in greater detail and take measures to prevent insider-trading offences.

- The Board of Directors should ensure, in particular, that appropriate action (e.g. "close periods") is taken with regard to purchasing and selling securities of the company or other sensitive assets during critical periods, e.g. in connection with acquisition projects, before media conferences or prior to announcing corporate figures.

Chairman of the Board of Directors and President of the Executive Board

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The principle of maintaining a balance between management and control should also apply to top management.

- The Board of Directors should aim to entrust its chairmanship and the top position on the Executive Board to two people (dual leadership).
- If, for reasons specific to the company or because the circumstances relating to availability of top management makes it appropriate, the Board of Directors decides that a single person should perform both positions, it should ensure that there are adequate control mechanisms in place. The Board of Directors may appoint an experienced non-executive member ("lead director") to perform this task. Such a person shall be entitled to convene and chair meetings of the Board of Directors on his own if necessary.

Internal control system, dealing with risk and compliance

20

The Board of Directors should provide internal control and risk management systems that are suitable for the company. Risk management refers to financial, operational and reputation-based risks.

- The internal control system should be geared to the size, the complexity and the risk profile of the company.
- The internal control system should, depending on the specific nature of the company, also cover risk management.
- The company should set up an internal audit function, which should report to the Audit Committee, or as the case may be, to the Chairman of the Board of Directors.

21

The Board of Directors should take measures to ensure compliance with the applicable standards.

- The Board of Directors should arrange the compliance function according to the specific nature of the company and issue an appropriate code of conduct.
- It should follow recognised best practice rules.³
- The Board of Directors should provide itself with an account at least once a year of whether the principles of compliance applicable to themselves and the company are sufficiently well known and are constantly respected.

Committees of the Board of Directors

22

The Board of Directors should form committees to perform defined tasks.

- The Board of Directors should appoint committees from amongst its members responsible for carrying out an in-depth analysis of specific business-related or personnel matters for the full Board of Directors in preparation for passing resolutions or exercising its supervisory functions.
- The Board of Directors should appoint the members of the committees if the General Shareholders' Meeting does not have the right to do so. It should appoint the Chairman of each committee and determine its procedures. Apart from that, the rules applying to the Board of Directors also apply to the committees.
- The Board may combine the functions of several committees provided that all their members fulfil the respective qualifications.
- The committees should report to the Board of Directors on their activities and findings. The overall responsibility for the duties delegated to the committees remains with the Board of Directors.

³ See in particular "Fundamentals of Effective Compliance Management" dated september 2014 drafted by economiesuisse and SwissHoldings.

Audit Committee

23

The Board of Directors should set up an Audit Committee.

- The Committee should consist of non-executive and independent members of the Board of Directors.
- The majority of the members, including the Chairman, should be experienced in financial and accounting matters. In complex situations, at least one member should be a financial expert (e.g. current or former CEO, CFO or financial auditor).

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The Audit Committee should form its own opinion of the quality of the internal and external audit, the internal control system and the annual financial statements.

- The Audit Committee should form an impression of the effectiveness of the external audit (the audit body), the internal audit, and their collaboration.
- The Audit Committee should also assess the effectiveness of the internal control system, including risk management, and should form an impression of the state of compliance within the company.
- The Audit Committee should critically review the single-entity and consolidated financial accounts as well as the interim financial statements intended for publication. It should discuss the latter with the Chief Financial Officer and the head of the internal audit, and separately, should the occasion warrant, with the head of the external audit.
- The Audit Committee should decide whether the single-entity and consolidated financial accounts can be recommended to the Board of Directors for presentation to the General Shareholders' Meeting.
- The Audit Committee should assess the performance and the fees charged by the external auditors and ascertain their independence. It should examine the compatibility of the auditing responsibilities with any consulting mandates.

Compensation Committee

25

The Board of Directors should put forward non-executive and independent members at the General Shareholders' Meeting for election to the Compensation Committee.

- The Compensation Committee has a key role to play in implementing the stipulations of the law and the Articles of Association, and the General Shareholders' Meeting, which demands expertise and commitment in the interests of the company.
- The Chairman of the Board and the President of the Executive Board may attend the meetings, except when their own remuneration is concerned.
- In all other respects, Appendix 1 shall apply.

Nomination Committee

26

The Board of Directors should set up a Nomination Committee.

- The Nomination Committee should consist predominantly of non-executive and independent members of the Board of Directors.
- The Nomination Committee should lay down the principles for the selection of candidates for election or re-election to the Board of Directors and prepare the selection of candidates in accordance with these criteria.
- The Nomination Committee may also be assigned responsibilities in connection with the selection and assessment of candidates for top management.

Special circumstances

27

The rules of the “Swiss Code” may be adapted to actual circumstances, depending on the shareholder structure and the size of the company.

- Companies with active major shareholders (including Group subsidiaries listed on the stock exchange) as well as small and medium-sized enterprises may modify or simplify the guidelines. Such companies should implement an appropriate arrangement for the assessment of the external audit, a functionally efficient internal control system, the remuneration policy for members of the Board of Directors and the Executive Board, and the succession policy for the Board of Directors in their own way.
- Instead of committees, small and medium-sized companies may appoint individual representatives or have the full Board of Directors perform the tasks in question.
- For public listed companies, the principle of “comply or explain” remains applicable.

Auditing

28

The external audit role should be performed by the audit body elected by the shareholders.

- The external auditors should exercise the role assigned to them by law in accordance with the guidelines that are relevant to them. They should cooperate in an appropriate manner with those in charge of the internal audit.
- The audit body shall comply with the guidelines on maintaining independence that are applicable to them.

Disclosure

29

The company shall provide information on corporate governance in its Annual Report.

- The SIX Swiss Exchange Directive on information relating to Corporate Governance and the provisions of company law are applicable with regard to individual pieces of information.

Appendix 1

Introduction

The Appendix 1 adopted by the supporting organisations of the “Swiss Code of Best Practice for Corporate Governance” in 2007 provided detailed recommendations and opinions on the corporate governance aspects of the remuneration of members of the Board of Directors and the Executive Board in public limited companies. The “Ordinance against Excessive Remuneration in Listed Companies Limited by Shares” (ERCO) by the Federal Council and in force since 1 January 2014 has fundamentally altered the legal framework. However, the challenges for corporate governance remain the same. It should ensure that the remuneration of the most senior company representatives provides optimal incentives for successful corporate leadership and is in tune with the interests of shareholders. Even though the new regulatory requirements are restrictive, they still leave companies room to manoeuvre both in terms of the procedural form and the content of the remuneration practice for the most senior company representatives. The question of “best practices” in the area surrounding compensation of Boards of Directors and Executive Boards is still a significant one. The recommendations of the “Swiss Code” put guidelines in place which should be conducive towards implementing and developing such “best practices” further within the new regulatory environment.

Recommendations on compensation for Boards of Directors and Executive Boards

This Appendix 1 clarifies and expands on the provision in Section 25 of the “Swiss Code of Best Practice for Corporate Governance” with updated recommendations on the issue of compensation for members of Boards of Directors and Executive Boards. It is deemed to be an integral part of the “Swiss Code”.

Appendix 1 to the “Swiss Code” can offer neither binding regulations nor a generally applicable formula for resolving issues arising in connection with compensation given to members of Boards of Directors and Executive Boards in public limited companies. It should, however, set out recommendations for dealing with these issues responsibly.

In doing so, it is important to stress the need for the business community and companies to assume responsibility for this issue themselves. Within the framework of a liberal economic system, this should not be a matter of issuing regulations governing the nature and amount of compensation for Boards of Directors and members of Executive Boards. The role of corporate governance provisions should be to set guidelines and to ensure transparent procedures which are free of conflicts of interest, and oriented towards regulatory requirements, market realities and company interests. The compensation for members of Executive Boards and Boards of Directors to be proposed to the General Shareholders’ Meeting must also be comprehensible to the shareholders. The endeavours undertaken by Boards of Directors will ultimately prove crucial in ensuring that the compensation levels that apply to the most senior company representatives find acceptance among shareholders, the wider public and of course among the employees of the companies in question.

Role of the General Shareholders' Meeting

30

The Board of Directors should ensure that the General Shareholders' Meeting can exercise its powers.

- The Board of Directors decides within the framework of the law and the Articles of Association how it will structure and organise the various votes and elections on compensation in the General Shareholders' Meeting. It should strive for objective debates and efficient decision-making by the General Shareholders' Meeting.
- The Chairman of the Board of Directors or the Chairman of the Compensation Committee should provide additional information on the compensation report as well as on the remuneration system, and take questions on these topics.
- The Board of Directors should use the resources that it possesses to also facilitate the information retrieval and decision-making of the shareholders in the run-up to the General Shareholders' Meeting.

The Role of the Board of Directors and the Compensation Committee

31

The Board of Directors should pass a resolution on the design of the compensation system for members of top management, and compensation motions placed before the General Shareholders' Meeting.

- Within the framework of the principles set out in the Articles of Association, the Board of Directors should pass a resolution on the company's compensation policy which takes the strategic goals of the company into consideration, on the fundamental structure of the compensation system for members of the Board of Directors, the Executive Board and if need be for the Advisory Council, as well as on the guidelines for the structure of the occupational pension schemes for the executive members of these bodies.
- The Board of Directors should decide the annual compensation sums to be submitted for approval for the Board of Directors, the Executive Board, and if necessary, the Advisory Council, and justify these in its motion to the shareholders in a comprehensible manner. In doing so, it may also refer to the compensation report.
- The Board of Directors should comply with the resolutions of the General Shareholders' Meeting and with the stipulations in the Articles of Association on the division of competence between itself and the Compensation Committee regarding the determination of individual compensation packages. It generally reserves the right to approve the overall compensation for the Executive Board and its Chairman.

32

The Board of Directors should propose non-executive and independent members for election to the Compensation Committee.

- The Board of Directors should propose independent members to the General Shareholders' Meeting for election to the Compensation Committee. If non-independent members are proposed by the shareholders for election, the Board of Directors should inform the General Shareholders' Meeting of this situation.
- The Board of Directors should not propose any members for election to the Compensation Committee who have reciprocal board memberships. Such a situation is deemed to exist if a committee member responsible for co-determining the compensation of a member of the Board of Directors or a member of the Executive Board is himself subject to the supervisory or directive powers of a member in another company.
- Independent members of the Board of Directors who are themselves, or represent, significant shareholders may be members of the Compensation Committee.

The Compensation Committee has a key role to play in implementing the stipulations of the law, the Articles of Association, and the General Shareholders' Meeting, which demands expertise and dedication in the interests of the company.

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- The Compensation Committee should carry out the duties assigned to it in a dedicated manner. It should also only represent the interests of the company in discussions and negotiations on individual compensation packages. It should gather the necessary specialist knowledge to do so where required by bringing in independent external consultants.
 - The Compensation Committee should keep the Board of Directors informed about its deliberations during the latter's meetings and report to it periodically on the development of the remuneration process within the framework of the law, the Articles of Association and relevant resolutions of the General Shareholders' Meeting. Where necessary, it should propose the requisite changes to the remuneration system.

34

The Compensation Committee should be entrusted with the task of developing a proposal for the structuring of a compensation system for the senior executives and board members of the company acting on the Board of Directors' stipulations regarding the compensation policy.

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- The Board of Directors should indicate to the Compensation Committee the basic elements of the compensation system for members of the Board of Directors and the Executive Board within the framework of the Articles of Association; this system should be as simple, as clear and as transparent as possible.
 - The company should offer overall compensation commensurate with market conditions and aligned to performance in order to acquire and retain persons with the necessary skills and character.
 - The compensation system should be designed in such a way that the interests of the top executives and board members are aligned with the interests of the company.
 - The Committee should also strive to ensure traceability with respect to the practical application of the compensation system.

Particular features of the compensation system

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As a rule, the compensation system should contain both fixed and variable components; it should reward performance aimed at medium and long-term success with compensation elements only available at a later date.

- The compensation system for individuals in non-executive positions should generally only contain fixed elements. In principle, these should consist of payments and share allocations.
- Where the compensation system for persons in executive positions consists of both fixed and variable elements, it should be structured in such a way that the variable component is in reasonable proportion to individual performance on the one hand, and dependent on the sustainable success of the company or a corporate unit on the other.
- The variable compensation component should be calculated based on comprehensible criteria; management qualities which are less easy to measure should also be taken into account. Variable compensation elements should be cancelled or reduced if the relevant targets are not met.
- The Board of Directors should determine whether or not share-based compensation is awarded, with the goal of converging the highest company representatives as closely as possible to the interests of long-term committed shareholders. In this case, the Board of Directors should consider the different effects of allocating shares on the one hand and options or similar instruments on the other. During this time, it should take into account experiences and developments within the relevant markets.
- Compensation packages should generally consist of immediately available components for shorter-term, identifiable targets and deferred or blocked components for medium- or longer-term targets. In the event of deferred remunerations which are share-based, the Compensation Committee should respect appropriate performance criteria and a meaningful matching of maturities.

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The compensation system should be structured in such a way as to avoid the allocation of advantages which are not objectively justifiable, or false incentives.

- The Compensation Committee should take care to ensure that the system does not set any unintended incentives or contain any components that could intentionally be influenced counter to their objectives.
- In employment contracts with members of the Executive Board, the maximum applicable statutory notice periods and contract terms of twelve months must be observed and no illicit termination benefits may be agreed upon.
- No compensation should be paid out in advance. Starting benefits should only be granted when they serve as compensation for recoverable claims lost by the new member of the Board of Directors or Executive Board in question as a result of the change in company.
- To counter non-justified benefits or to sanction a serious lack of compliance, repayment obligations or forfeiture provisions for deferred or blocked compensation can be agreed upon ("claw backs").

The Compensation Committee should scrutinise both salary comparisons with other companies as well as the work of external and internal consultants.

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- Where the remuneration packages of other companies serve as a benchmark, the Compensation Committee should undertake a critical review of the composition of this peer group and of the conclusiveness of the comparisons drawn for its own compensation. It should exclude any companies from the group that would skew the comparative results, either because of a lack of corporate governance or for any other reason(s).
- If the Compensation Committee brings in external consultants to make comparisons and recommendations in the area of compensation for senior executives, the Committee itself should decide on the consultant to be used, issue the mandate, and determine the fee. It should evaluate the results critically.
- If the Compensation Committee orders comparisons to be undertaken by the staff of its own company, these staff members should be subject to the instructions of the Committee Chairman.

Compensation report and transparency

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The Board of Directors should produce an annual compensation report and ensure transparency with respect to the compensation given to the members of the Board of Directors and the Executive Board.

- The compensation report should contain the content required by law and also describe the compensation system and its application in the business year under review. The compensation report should indicate what remuneration the members of the Board of Directors, the Executive Board as a whole and the latter's most highly compensated member were awarded for the year and why such remuneration has dropped or increased in the business year under review (pay-for-performance connection).
- The compensation report should detail the key criteria that have been used in measuring the variable elements of compensation and the mechanism that has been applied for valuing share options according to the relevant rule system.
- The compensation report should specify the external consultants that have been used in connection with compensation issues and describe the comparisons that have been made.
- The compensation report should also show transparently how the Board of Directors and the Compensation Committee have implemented the compensation decisions of the General Shareholders' Meeting made in advance in the business year under review.
- If the General Shareholders' Meeting prospectively approves or authorises the total compensation, the Board of Directors is permitted to present the compensation report to the General Shareholders' Meeting for consultative voting.

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economiesuisse
Swiss Business Federation
Hegibachstrasse 47
P.O. Box
CH-8032 Zurich

economiesuisse
Fédération des entreprises suisses
Carrefour de Rive 1
Case postale 3684
CH-1211 Genève 3

economiesuisse
Swiss Business Federation
Spitalgasse 4
P.O. Box
CH-3001 Berne

economiesuisse
Federazione delle imprese svizzere
Corso Elvezia 16
Casella postale 5563
CH-6901 Lugano

economiesuisse
Swiss Business Federation
Avenue de Cortenbergh 168
B-1000 Bruxelles

www.economiesuisse.ch