

2020

PROXY PAPER™

GUIDELINES

AN OVERVIEW OF THE GLASS LEWIS APPROACH TO PROXY ADVICE

AUSTRIA



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Guidelines Introduction

These guidelines are intended to supplement Glass Lewis' Continental Europe Policy Guidelines by highlighting the key policies that we apply specifically to companies listed in Austria and the relevant regulatory background to which Austrian companies are subject, where they differ from Europe as a whole. Given the growing convergence of governance regulations and practices across companies subject to European Union rules and directives, Glass Lewis combined our general approach to Continental European companies in a single set of guidelines, the Continental Europe Policy Guidelines, which set forth the underlying principles, definitions and global policies that Glass Lewis uses when analysing Continental European companies.

While our approach to issues addressed in the Continental Europe Policy Guidelines are not repeated here, we will clearly indicate in these guidelines when our policy for Austrian companies deviates from the Continental Europe Policy Guidelines.

CORPORATE GOVERNANCE BACKGROUND

The Austrian Stock Corporations Act (*Aktiengesetz*, or "AktG") provides the primary legislative framework for Austrian corporate governance.

The legal requirements of the Stock Corporations Act, as well as best practices for corporate governance, are regulated by the Austrian Code of Corporate Governance ("Kodex"). The Kodex is reviewed annually by the Austrian Working Group for Corporate Governance in light of national and international developments. Adopted initially by a special commission of the Austrian government on October 1, 2002, the most recent amendments to the Kodex took effect in January 2018. The Kodex contains three types of provisions: legal requirements, comply or explain recommendations, and recommendations for which an explanation is not required in case of deviation. We will note which type of provision is cited throughout these guidelines.

REGULATORY UPDATES

With the transposition of the European Shareholder Rights Directive ("SRD II") into law on July 23, 2019, several amendments were made to the Austrian stock corporation act ("AktG") and the Austrian Stock Exchange Act.

More specifically, provisions regarding the increased powers of the annual general meeting to approve executive remuneration policies and additional requirements for related party transactions were transposed into the Austrian stock corporation act. In addition, provisions regarding the identification of shareholders and disclosure requirements for institutional investors, asset managers and proxy advisors were transposed into the Austrian Stock Exchange Act.

With regard to the increased powers of the annual general meeting to approve executive remuneration policies, the law foresees the following:

- Companies will be required to seek shareholder approval of the remuneration policy for management and supervisory board members on an advisory basis each time that a "material amendment" to the policy is made, but in any case at least once every four years. If the remuneration policy does not receive the support of a majority of votes cast, the policy must be reviewed and presented for another shareholder vote at the following annual meeting at the latest.
- Companies will be required to seek shareholder approval of the remuneration report for the past fiscal year on an advisory basis at each annual meeting.

SUMMARY OF CHANGES FOR THE 2020 AUSTRIA GUIDELINES

Glass Lewis evaluates these guidelines on an ongoing basis and formally updates them on an annual basis. This year we've made noteworthy revisions in the following area:

MANAGEMENT AND SUPERVISORY BOARD REMUNERATION

We have updated the "Link Between Pay and Performance" section of these guidelines to clarify our approach to analysing management board remuneration proposals in light of the aforementioned changes changes to Austrian law.

BOARD SKILLS

We have updated these guidelines to reflect the fact that from 2020 we will include board skills matrices in our analysis of director election proposals at companies listed in the ATX Index which are also members of the S&P Europe 350.

Our policies regarding analysis of a board's mix of skills do not differ from those outlined in our Continental European Guidelines.

A Supervisory Board that Serves the Interests of Shareholders

ELECTION OF SUPERVISORY BOARD

Under Austrian law, public companies are governed by a two-tier board system, with a supervisory board presiding over a management board. The supervisory board consists entirely of non-executive members,¹ while the management board is composed entirely of executive directors. The management board is responsible for the day-to-day operation of the business, whereas the supervisory board is responsible for monitoring the management board.² However, a company that chooses to incorporate under European Company (“SE”) law may be governed by either a one-tier or two-tiered board system.³

Unless otherwise provided by these guidelines, any and all rules will apply to a company that elects to be governed by a two-tiered system.

INDEPENDENCE

In Austria, we put supervisory board members into three categories based on an examination of the type of relationship they have with the company:

Independent Supervisory Board Member — An independent supervisory board member has no material⁴ financial, familial⁵ or other current relationships with the company,⁶ its executives, or other board members, except for board service and standard fees paid for that service. An individual who has been employed by the company within the past five years⁷ is not considered to be independent. We use a three year look back for all other relationships.

Affiliated Supervisory Board Member — An affiliated supervisory board member has a material financial, familial or other relationship with the company or its executives, but is not an employee of the company.⁸ We will normally consider board members affiliated if they:

1 Article 90(1) of the Austrian Stock Corporations Act.

2 Article 95(1) of the Austrian Stock Corporations Act.

3 Council Regulation (EC) 2157/2001 of 8 October 2001, on the Statute for a European Company and Article 38 of the Austrian Law on the SE (“SE-Gesetz”). The one-tier board option is not widely utilised by Austrian companies incorporated under European Company law.

4 Per Glass Lewis’ Continental European Policy Guidelines, “material” as used herein means a relationship in which the value exceeds: (i) €50,000 (or 50% of the total remuneration paid to a board member, or where no amount is disclosed) for board members who personally receive remuneration for a professional or other service they have agreed to perform for the company, outside of their service as a board member. This limit would also apply to cases in which a consulting firm that is owned by or appears to be owned by a board member receives fees directly; (ii) €100,000 (or where no amount is disclosed) for those board members employed by a professional services firm such as a law firm, investment bank or large consulting firm where the firm is paid for services but the individual is not directly compensated. This limit would also apply to charitable contributions to schools where a board member is a professor, or charities where a board member serves on the board or is an executive, or any other commercial dealings between the company and the board member or the board member’s firm; (iii) 1% of the company’s consolidated gross revenue for other business relationships (e.g., where the board member is an executive officer of a company that provides services or products to or receives services or products from the company); (iv) 10% of shareholders’ equity and 5% of total assets for financing transactions; or (v) the total annual fees paid to a director for a personal loan not granted on normal market terms, or where no information regarding the terms of a loan have been provided.

5 Per Glass Lewis’ Continental European Policy Guidelines, familial relationships include a person’s spouse, parents, children, siblings, grandparents, uncles, aunts, cousins, nieces, nephews, in-laws, and anyone (other than domestic employees) who shares such person’s home. A supervisory board member is an affiliate if the individual has a family member who is employed by the company.

6 A company includes any parent or subsidiary in a group with the company or any entity that merged with, was acquired by, or acquired the company.

7 Annex 1 of the Kodex. Article 55 (legal requirement) of the Kodex prohibits a member of the management board from serving on the supervisory board within two years of the end of the employment mandate, unless requested by a shareholder owning more than 25% of voting rights in a company.

8 If a company classifies a supervisory board member as non-independent, Glass Lewis will classify that supervisory board member as an affiliate, unless there is a more suitable classification (i.e., employee representative).

- Have been employed by the company within the past five years;
- Have — or have had within the past three years — a material business relationship with the company;
- Own or control 10% or more of the company’s share capital or voting rights;⁹
- Have served on the supervisory board for more than 15 years or more than three terms, whichever is longer;¹⁰
- Serve as a member of the management board of another company at which a member of the management board of the company is a supervisory board member;¹¹ or
- Have close family ties with any of the company’s advisers, board members or employees.

Employee Representatives — Pursuant to Austrian co-determination laws, employees are entitled to appoint one employee representative to the supervisory board for every two shareholder representatives appointed.¹² Glass Lewis does not take employee representatives into account when analysing the independence of Austrian supervisory boards given that these individuals are neither elected by, nor intended to directly represent, a company’s shareholders.

Voting Recommendations on the Basis of Board Independence

Glass Lewis believes a supervisory board will be most effective in protecting shareholders’ interests when at least a majority¹³ of the shareholder-elected supervisory board members are independent.¹⁴ Where 50% or more of the members are affiliated, we typically recommend voting against some of the affiliated supervisory board members in order to satisfy the majority threshold.¹⁵ However, we accept the presence of representatives of significant shareholders in proportion to their equity or voting stake in the company.

We refrain from recommending to vote against any supervisory board members on the basis of lengthy tenure alone. However, we may recommend voting against certain long-tenured directors when lack of board refreshment may have contributed to poor financial performance, lax risk oversight, misaligned remuneration practices, lack of shareholder responsiveness, diminution of shareholder rights or other concerns. In conducting such analysis, we will consider lengthy average board tenure, evidence of planned or recent board refreshment, and other concerns with the board’s independence or structure.

Voting Recommendations on the Basis of Committee Independence

We believe that the majority¹⁶ of the individuals serving on a company’s audit and remuneration committees should be shareholder-elected members that are independent of both the company and its significant share-

⁹ Article 54 (comply or explain) of the Kodex recommends that companies disclose which of the supervisory board members are not a representative of a shareholder with a stake of more than 10%.

¹⁰ Annex 1 of the Kodex.

¹¹ *Ibid.*

¹² Article 110(1,4) of the Austrian Labour Constitutional Law (*Arbeitsverfassungsgesetz*, or “ArbVG”). The one-third parity representation rule also applies to all committees of the supervisory board, except for those committees overseeing the relationship between the company and management board members.

¹³ Article 53 (comply or explain) of the Kodex requires that the majority of shareholder-elected members of the supervisory board be independent from the company and management. Article 54 (comply or explain) of the Kodex requires that at least two shareholder-elect supervisory board members also be considered independent from major shareholders in all non-controlled company boards. The Kodex also recommends that at least one shareholder-elected supervisory board member be independent from major shareholders at any company with a free float of more than 20%.

¹⁴ Glass Lewis does not take employee representatives into account when analysing the independence of Austrian supervisory boards. Employee representatives are neither elected nor accountable to shareholders.

¹⁵ With a staggered board, if the affiliates that we believe should not be on the board are not up for election, we will express our concern regarding those members, but we will not recommend voting against the affiliates who are up for election just to achieve majority independence.

¹⁶ Article 39 (comply or explain) of the Kodex requires that each committee be comprised of a majority of independent, as per Article 53 (comply or explain) of the Kodex, supervisory board members that have been elected by shareholders, with the exception of representatives of major shareholders.

holders.¹⁷ We note that pursuant to Austrian law, the audit committee chair or the member designated as financial expert cannot be a supervisory board member who served as a company executive within the past three years.¹⁸

We believe a majority of the shareholder-elected members of the nominating committee should be independent of company management and other related parties. We accept the presence of representatives of significant shareholders on this committee in proportion to their equity or voting stake in the company.

OTHER CONSIDERATIONS FOR INDIVIDUAL BOARD MEMBERS

Our policies with regard to performance, experience and conflict-of-interest issues are not materially different from our Continental Europe Policy Guidelines. The following are clarifications regarding best practice recommendations in Austria.

EXTERNAL COMMITMENTS

We believe that supervisory board members should have the necessary time to fulfill their duties to shareholders. In our view, an overcommitted board member can pose a material risk to a company's shareholders, particularly during periods of crisis. In addition, recent research indicates that the time commitment associated with being a director has been on a significant upward trend in the past decade.

As a result, a supervisory board member who serves as an executive officer or member of the management board of any public company while serving on more than two¹⁹ public company boards and any other supervisory board member who serves on more than five²⁰ public company boards typically receives an against recommendation from Glass Lewis.²¹ As stated in our Continental Europe Policy Guidelines, we count supervisory board chair positions as double given the increased time commitment and we may consider relevant factors such as the size and location of the other companies where the individual serves on the board, as well as attendance records, when making recommendations based on this issue.

BOARD STRUCTURE AND COMPOSITION

Our policies with regard to board-level risk management oversight and board diversity are not materially different from our Continental Europe Policy Guidelines. In deviation from our Continental Europe Policy Guidelines, we apply different standards for the election of former management board chairs to the supervisory board and board size.

SEPARATION OF THE ROLES OF THE MANAGEMENT AND SUPERVISORY BOARDS

By law, members of the supervisory board cannot simultaneously serve as management board members, authorised representatives of the management board or company, or officers of the company. Exceptions may, however, apply for limited periods of time.²²

¹⁷ EU Commission Recommendation of 15 February 2005 on the role of non-executive or supervisory directors of listed companies and on the committees of the (supervisory) board. Annex I. Articles 3.1 and 4.1. We believe a majority of remuneration committee members should be independent of the company and shareholders owning at least 50% of the share capital or voting rights. Given the importance of the audit committee's work, we believe that a higher level of independence from major shareholders is necessary. As such, we believe a majority of audit committee members should always be independent of the company and shareholders holding more than 20% or more of the company's share capital or voting rights. While we generally believe that a majority of the members of the audit and remuneration committees should also be independent of shareholders owning 10% or more of the company's share capital or voting rights, we will take into account the company's ownership structure when evaluating the composition of these committees.

¹⁸ Article 92(4a) of the Austrian Stock Corporations Act.

¹⁹ Article 57 (comply or explain) of the Kodex sets the limit at four supervisory board memberships, with the role of chair weighted as being equivalent to two directorships.

²⁰ Article 56 (legal requirement) of the Kodex sets the limit at eight supervisory board memberships, with the role of chair weighted as being equivalent to two directorships.

²¹ *Ibid.*

²² Article 86(3) of the Austrian Stock Corporations Act.

Moreover, Austrian law stipulates that former members of the management board may only serve as members of the supervisory board within two years after the end of their appointment if they are appointed by a motion presented by shareholders holding more than 25% of the voting rights in the company.²³

Lastly, not more than one former management member, within the two-year period after their appointment, may serve as member of the supervisory board.²⁴

Despite statements in Austrian law and the Kodex cautioning against cross-over between the management and supervisory boards, it is common practice for Austrian companies to appoint former management board members or executives to the role of supervisory board chair. Former members of the management board are, however, forbidden from serving as supervisory board chair for two years after initially stepping down as executives.²⁵

We do not recommend that shareholders vote against former CEOs, executives or management board members who serve on the supervisory board, unless the board is not sufficiently independent. However, we typically apply extra scrutiny to former executives who are proposed as candidates for election to the supervisory board. We may recommend to vote against the election of a current or recent member of the management board to the supervisory board if the company did not provide a compelling justification of why his skills and experience would benefit the supervisory board; or if the supervisory board wasn't structured in a way that ensured adequate independent oversight of management, such as through the appointment of an independent board chair or lead independent director, or if the company did not provide a thorough explanation of how his election would contribute to the planned structure and development of the supervisory board in the coming years.

SIZE OF THE SUPERVISORY BOARD

Under Austrian law, supervisory boards must consist of between three and 20 members.²⁶ While we do not believe there is a universally applicable optimum board size, we do believe boards should have at least six supervisory board members (or three supervisory board members in the event of small-cap companies) to ensure sufficient diversity in decision-making and to enable the formation of key board committees with independent supervisory board members.

In line with best practice in Austria, we may recommend voting against the nominating committee chair when a board has more than ten shareholder-elected members.²⁷

CANDIDATE DISCLOSURE

In Austria, companies may occasionally make information regarding the identity and background of supervisory board nominees available only on the fifth business day prior to the date of the general meeting.²⁸ Unfortunately, this may make it difficult for international shareholders who are not physically present at the meeting to make informed voting decisions in a timely manner. When companies do not disclose at least the identity and profession of nominees 21 days prior to the meeting, Glass Lewis may recommend that shareholders vote against new supervisory board candidates.

In addition, the Kodex lays out a recommended format for the disclosure of information pertaining to

23 Article 86(4) of the Austrian Stock Corporation Act.

24 Article 86(2) of the Austrian Stock Corporation Act.

25 Article 55 (legal requirement) of the Kodex.

26 Article 86(1) of the Austrian Stock Companies Act requires that public company supervisory boards consist of at least three members (including employee representatives) and sets a maximum limit of 20 members. According to Annex 4 of the Kodex, Austrian public companies must have at least three shareholder-elected supervisory board members.

27 Article 52a (comply or explain) of the Kodex.

28 Article 87(6) of the Austrian Stock Corporations Act requires that companies disclose information on the identity and qualifications of a supervisory board nominee by the fifth business day prior to a general meeting. However, most Austrian companies release this information concurrently with the notice of meeting, which must be distributed to shareholders at least 21 days ahead of a general meeting.

supervisory board members' biographical information, professional experience, independence and role within the company.²⁹ In certain cases, where the company fails to provide this basic information to shareholders, we may consider recommending that shareholders vote against the supervisory board chair.

BOARD DIVERSITY

SUPERVISORY BOARD COMPOSITION

In line with best practice in Europe, we will provide an explicit assessment of skills and experience of shareholder representatives and nominees to the supervisory board for all companies in the S&P Europe 350 index. The purpose of this assessment is to provide further insight into the board refreshment process and allow for a more in-depth assessment of the composition of the supervisory board. While no specific voting recommendation policies are linked to the outcome of this assessment, we may utilise potential skills gaps to underline specific concerns with board or company performance and to assist case-by-case decisions when applying supervisory board election policies.

SUPERVISORY BOARD GENDER QUOTA

Since January 1, 2018, Austrian publicly-listed companies with a workforce consisting of more than 1,000 employees and at least 20% of each gender and with a supervisory board comprising at least six shareholder representatives have been required to ensure that at least 30% of supervisory board seats are held by directors of each gender.³⁰ Companies affected by this legislation are not required to immediately adapt the composition of their supervisory boards; rather they are required to work toward the quota when the terms of incumbent board members expire. Pursuant to the so-called "empty seat" provision, elections or appointments to the supervisory board that are not in compliance with this legislation are legally invalid.³¹

In principle, this quota is intended to apply to the composition of the supervisory board as a whole. However, the shareholder representatives and the employee representatives on a company's supervisory board are permitted to lodge an objection to this overall compliance provision up to six weeks in advance of an election, subsequent to a resolution being adopted by the majority of either group. Should this occur, the shareholder representatives and employee representatives will be required to each meet the quota separately.³² When companies subject to this legislation are proposing elections to the supervisory board, they will also be required to disclose the minimum number of supervisory board seats that must be filled by directors of each gender in order to comply with the legislation, as well as whether an objection has been lodged to meet separate quotas for shareholder and employee representatives.³³ Given the consequences of board seats initially remaining empty if companies subject to the 30% quota fail to comply with the legislation, Glass Lewis may recommend voting against the chair of the nominating committee if forthcoming elections appear to contravene the gender quota provisions and no compelling justification is provided.

DISCLOSURE ON DIVERSITY MEASURES

All Austrian publicly-listed companies are required to take into account gender, internationality and age when nominating new candidates to the supervisory board.³⁴ Further, companies must disclose a diversity concept and provide a description with respect to the promotion of women to the management board, the supervisory board and top management positions within the company.³⁵ Where a company fails to provide meaningful disclosure on diversity measures, and where boards have failed to appoint any female members to the supervisory board or taken appropriate steps to diversify the board in relation to the company's business, size and international scope, Glass Lewis may consider recommending that shareholders vote against the reelection of the nominating committee chair.

²⁹ Annex 2a of the Kodex.

³⁰ Article 86(7) of the Austrian Stock Corporations Act.

³¹ Article 86(8) of the Austrian Stock Corporations Act.

³² Article 86(9) of the Austrian Stock Corporations Act.

³³ Article 108(2) of the Austrian Stock Corporations Act.

³⁴ Article 52 (legal requirement) of the Kodex.

³⁵ Article 60 (legal requirement) of the Kodex.

SUPERVISORY BOARD COMMITTEES

Austrian public companies are legally required to have at least an audit committee, regardless of the size of the company.³⁶ In addition, it is recommended that Austrian public companies with supervisory boards consisting of more than six members form nominating and remuneration committees.³⁷ In the absence of committees, we may recommend that shareholders vote against the supervisory board chair on this basis; however, this will generally not apply to small-cap companies with six or fewer board members.

In Austria, planned amendments to the composition of key board committees are often not disclosed until after the supervisory board's initial meeting following the general meeting. Where the board has clearly disclosed its intentions with regard to post-AGM committee composition, we will take this into consideration in our analysis of the supervisory board.

Our policies with regard to committee performance are not materially different from our Continental Europe Policy Guidelines.

ELECTION PROCEDURES

Our policies with regard to election procedures are not materially different from our Continental Europe Policy Guidelines. The following are clarifications regarding best practice recommendations in Austria.

CLASSIFIED BOARDS AND TERM LENGTHS

Austrian law requires that supervisory board members either resign or stand for re-election at least every five years.³⁸ As a result, most Austrian companies appoint supervisory board members for the full term allowable by law. In some cases, boards may be staggered. Given that it is common practice, we do not normally recommend voting against candidates who are nominated for five-year terms.

³⁶ Article 40 (legal requirement) of the Kodex.

³⁷ Articles 41 and 43 (comply or explain) of the Kodex.

³⁸ Article 87(7) of the Austrian Stock Corporations Act.

Transparency and Integrity in Financial Reporting

In Austria, shareholders are asked to vote on a number of proposals regarding the audited financial statements, the appointment of auditor and the allocation of profits or dividends on an annual basis. While we have outlined the principle characteristics of these types of proposals that we encounter in Austria below, our policies regarding these issues are not materially different from our Continental Europe Policy Guidelines.

ACCOUNTS AND REPORTS/CONSOLIDATED ACCOUNTS AND REPORTS

Austrian public companies are required to publish annual consolidated financial statements, audited in accordance with International Financial Reporting Standards, within four months of the end of each fiscal year.³⁹ The annual report, consisting of the consolidated financial statements, the report of the independent auditor, the management and supervisory board reports, and the corporate governance report, must be presented at the annual meeting of shareholders, which must be held within eight months of the end of the fiscal year.⁴⁰ Furthermore, a company's audited financial statements must be approved by either the supervisory board or the company's shareholders. In most cases, however, the supervisory board approves the financial statements and subsequently presents them at the annual meeting.⁴¹ Shareholders are typically asked only to vote on the acknowledgement of the receipt of the annual accounts and reports; therefore, we typically recommend voting for this proposal as long as the requisite documents have been made available for shareholder review in a timely manner.

³⁹ Article 65 (legal requirement) of the Kodex and Articles 244 and 246 of the Business Enterprise Code ("*Unternehmensgesetzbuch*, or "UGB").

⁴⁰ Article 104(1-2) of the Austrian Stock Corporations Act.

⁴¹ Article 104(3) of the Austrian Stock Corporations Act specifies that shareholders must only approve the financial statements in cases where the supervisory board did not approve them or requests that they be approved by shareholders.

The Link Between Pay and Performance

Following the transposition of the European shareholder rights directive (“SRD II”) into Austrian Law with effect from June 10, 2019, companies are now required to prepare and submit an annual remuneration report for shareholder approval on an advisory basis.⁴² Small companies, however, are exempted from the requirement to hold a vote on their remuneration reports.⁴³ Due to the transitional arrangements provided for by the updated Stock Corporations Act, it will be 2021 before investors see widespread votes on such remuneration reports.

In addition, companies will be required to submit a remuneration policy to an advisory vote at least once every four years and any time a material change is made to the remuneration policy. Should a company fail to gain shareholder approval for its remuneration policy, a revised remuneration policy must be submitted for shareholder approval at the following annual general meeting.⁴⁴

While our policies regarding these matters do not differ materially from our Continental Europe Policy Guidelines, we do account for a company’s compliance with best practice in Austria, as described below, when evaluating such proposals.

VOTES ON REMUNERATION

REMUNERATION POLICY

In accordance with the Stock Corporation Act, companies must include the following in their remuneration policy:

- A discussion of the alignment between a company’s strategy and its remuneration policy;
- A description of all remuneration components and their relative weight within a management board member’s pay package;⁴⁵
- A discussion regarding a board’s consideration of employees in pay-setting;⁴⁶
- Disclosure of all financial and non-financial metrics used under the variable components of the remuneration package remuneration package, with a special focus on metrics related to social

⁴² Article 78d(1) of the Austrian Stock Corporations Act.

⁴³ Small companies may include the remuneration report as a discussion item in the meeting agenda, rather than as a voting item, according to Article 78d(2) of the Austrian Stock Corporations Act. For this purpose, small companies are defined according to §221 UGB.

⁴⁴ Article 78b (1-2) of the Austrian Stock Corporations Act.

⁴⁵ Article 78a(2) of the Austrian Stock Corporations Act.

⁴⁶ Article 78a(3) of the Austrian Stock Corporations Act.

responsibility;⁴⁷

- Disclosure of the evaluation criteria used to assess the achievement of performance targets;⁴⁸
- Disclosure of vesting and holding periods, where applicable;⁴⁹
- Disclosure of contract terms, including their length, notice periods, the terms of pension arrangements, and termination provisions;⁵⁰
- A description of the administration of the remuneration policy and the avoidance of conflicts of interests;⁵¹
- A description and explanation of any material changes.⁵²

More specifically, the Kodex suggests that management board remuneration should include both fixed and variable components. Variable components should be more heavily weighted to long-term and multi-year measurable performance criteria,⁵³ and long-term incentives for management board members should be geared toward a company's sustainable development.⁵⁴ Where stock option programmes are offered to members of the management board, awards should be subject to a holding period of at least three years.⁵⁵ Further, recovery provisions should be imposed on variable remuneration components; and severance payments for members of the management board should be capped at two years of annual pay or the remaining term of the employment contract.⁵⁶

In consideration of relevant Kodex recommendations and our Continental European Guidelines, the following deficiencies may cause Glass Lewis to recommend a vote against a remuneration policy:

- Management board members do not receive any performance-based remuneration;
- Remuneration is not linked to appropriate, forward-looking, multi-year individual and company performance targets;
- The supervisory board approves severance pay for a member of the management board that is more than twice his or her total annual remuneration.

When assessing a remuneration structure, its disclosure and any related amendments, we will focus our recommendations on the overall effect of structural changes, as well as on any improvement or deterioration in disclosure, taking into consideration the general "direction of travel" undertaken by a company.

REMUNERATION REPORT

In accordance with the Stock Corporation Act, a company's remuneration report should give a comprehensive overview of remuneration both paid and granted during the year under review. A remuneration report should include a description of a company's remuneration practices during the year, as well as a breakdown of individual remuneration elements, and an explanation of how remuneration practices align with long-term strategy. When supervisory board deviates from the remuneration policy in extraordinary circumstances, full disclosure on the nature of such deviation and the originating circumstances must be provided.⁵⁷ Finally, the

47 Article 78a(4) of the Austrian Stock Corporations Act.

48 Article 78a(4) of the Austrian Stock Corporations Act.

49 Article 78a(5) of the Austrian Stock Corporations Act.

50 Article 78a(6) of the Austrian Stock Corporations Act.

51 Article 78a(7) of the Austrian Stock Corporations Act.

52 Article 78a(9) of the Austrian Stock Corporations Act.

53 Article 27 (comply or explain) of the Kodex.

54 Article 26a (legal requirement) of the Kodex.

55 Article 28 (comply or explain) of the Kodex.

56 Article 27 (comply or explain) of the Kodex.

57 Article 78a(8) of the Austrian Stock Corporation Act.

remuneration report must include a discussion of the outcome of the previous year's remuneration report vote.

SUPERVISORY BOARD REMUNERATION

Pursuant to the updated Stock Corporation Act, the contractual terms and yearly payments of supervisory board members' remuneration have to be detailed in the remuneration policy and the remuneration report, respectively.⁵⁸ Additionally, the Kodex suggests that supervisory board members' remuneration should be disclosed individually in the annual report.⁵⁹

The Kodex recommends that supervisory board members do not participate in stock option plans.⁶⁰ As such, Glass Lewis will not support stock option plans for supervisory board members in Austria. In practice, however, proposals on supervisory board remuneration are rarely contentious.

58 Article 98a of the Austrian Stock Corporations Act.

59 Article 51 (comply or explain) of the Kodex.

60 Article 51 (comply or explain) of the Kodex.

Governance Structure and the Shareholder Franchise

In Austria, shareholders are asked to approve proposals regarding a company's governance structure, such as the ratification of management and supervisory board acts and amendments to the articles of association. While we have outlined the principle characteristics of these types of proposals that we encounter in Austria below, our policies regarding these issues are not materially different from our Continental Europe Policy Guidelines.

RATIFICATION OF SUPERVISORY BOARD AND/OR MANAGEMENT BOARD ACTS

Austrian companies are required to request that shareholders discharge the members of the supervisory board and management board from any and all of their actions committed during the fiscal year on an annual basis.⁶¹

In Austria, ratifying the acts of the management and supervisory boards is primarily a vote of confidence and does not release its members from liability for their actions. They will still be held liable for any tortious or negligent act committed in the performance of their duties.

In accordance with best practice in Austria, we believe the ratification of management and supervisory board acts should be presented as a separate voting item for each individual board member in cases where there are known shareholder concerns regarding a board or individual's performance during the past fiscal year. In cases where we would have recommended that shareholders vote against the ratification of an individual board member, but shareholders are only provided with the opportunity to ratify the board as a whole, we will generally recommend that shareholders oppose ratification for the entire board.

In cases where we believe that ongoing investigations or proceedings may cast significant doubt on the performance of the management or supervisory board in the past fiscal year, but that the potential outcome of such investigations or proceedings is unclear at the time of convocation of the general meeting, we believe that companies should propose that a decision on ratification should be postponed until a future general meeting. If shareholders are not provided with this opportunity, we will generally recommend that shareholders abstain from voting on such ratification proposals; in cases where abstain votes are neither counted as valid votes cast nor displayed in the minutes of general meetings, we will generally recommend that shareholders vote against ratification proposals under the aforementioned circumstances.

Absent compelling evidence that the management and supervisory board has failed to satisfactorily perform its duty to shareholders in the past fiscal year, we generally recommend that shareholders approve ratification proposals.⁶²

⁶¹ Article 104(2) of the Austrian Stock Corporations Act.

⁶² Recommendations on the ratification of management and supervisory board acts are taken on a case-by-case basis. The general conditions for recommendation against such proposals are detailed in our Continental Europe Guidelines.

Capital Management

In Austria, shareholders are regularly asked to approve capital proposals, namely increases in authorised and conditional capital, the issuance of convertible debt instruments and the authority to repurchase shares. Such authorities generally extend for five years. Our policies with regard to these matters do not differ materially from our Continental Europe Policy Guidelines.

AUTHORISED CAPITAL

Austrian companies generally ask shareholders to approve an unallocated pool of authorised but unissued shares, which may be issued with or without preemptive rights.⁶³ Shares issued pursuant to these authorities may be used for a broad range of corporate purposes, including raising funds for expansion plans, refinancing existing loans, or carrying out mergers and acquisitions. By law, a company's authorised capital may not exceed 50% of a company's issued share capital and is valid for a maximum period of five years.⁶⁴ However, given the substantial risk of dilution to shareholders when granting management such broad authority, we apply scrutiny to the disapplication of preemptive rights in line with our Continental European Policy Guidelines. As such, we generally recommend voting against any proposed authorised capital that does not preserve preemptive rights for share issuances exceeding 20% of a company's issued share capital; further, we believe all general authorities to issue shares should have a common cap. Glass Lewis will recommend voting against any proposal that does not explicitly extend a 20% cap on share issues without preemptive rights to authorised and conditional capital authorities previously existing and/or proposed at the meeting, other than those reserved for unique purposes such as equity incentive plans.

CONDITIONAL CAPITAL

Austrian companies may ask shareholders to approve "conditional" or "contingent" capital. By law, conditional capital authorities are limited to 50% of share capital and are valid for a maximum of five years.⁶⁵ These capital increases may only be used under certain specifications, such as the issuance of shares to fulfill a company's obligations to holders of convertible debt instruments or stock options.⁶⁶ Conditional capital authorities allowing for the issuance of stock options to employees may not exceed 10% of existing share capital.⁶⁷ We will evaluate these proposals in conjunction with the proposed authority that allows the company to utilise it. Furthermore, we will apply the same scrutiny to the disapplication of preemptive rights as outlined in our Continental European Policy Guidelines and above.

AUTHORITY TO REPURCHASE SHARES

In Austria, companies may repurchase a maximum of 10% of the company's total shares in any given year, shares must be repurchased at market price, and the authority to repurchase shares is valid for a maximum of 30 months.⁶⁸ In light of these standards, we generally recommend voting for these proposals in Austria.

63 Article 153(3) of the Austrian Stock Corporations Act requires that companies seek specific shareholder approval to exclude preemptive rights.

64 Article 169 of the Austrian Stock Corporations Act.

65 Article 159(3,4) of the Austrian Stock Corporations Act.

66 Article 159(2) of the Austrian Stock Corporations Act.

67 Article 159(4) of the Austrian Stock Corporations Act.

68 Article 65 of the Austrian Stock Corporations Act.

AUTHORITY TO TRADE IN COMPANY STOCK

In addition to general authorities to repurchase shares, financial institutions are also permitted to acquire their own stock for the purpose of trading. In Austria, only financial institutions may request that shareholders grant this authority. All authorities to trade in company stock are valid for a maximum of 30 months, and the total number of shares acquired may not exceed 5% of the existing share capital.⁶⁹ In light of these standards, we generally recommend voting for these proposals in Austria.

⁶⁹ Article 65(1) of the Austrian Stock Corporations Act.

DISCLAIMER

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