

Denmark



GLASS LEWIS

2022 Policy Guidelines

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About Glass Lewis

Glass Lewis is the world's choice for governance solutions. We enable institutional investors and publicly listed companies to make sustainable decisions based on research and data. We cover 30,000+ meetings each year, across approximately 100 global markets. Our team has been providing in-depth analysis of companies since 2003, relying solely on publicly available information to inform its policies, research, and voting recommendations.

Our customers include the majority of the world's largest pension plans, mutual funds, and asset managers, collectively managing over \$40 trillion in assets. We have teams located across the United States, Europe, and Asia-Pacific giving us global reach with a local perspective on the important governance issues.

Investors around the world depend on Glass Lewis' [Viewpoint](#) platform to manage their proxy voting, policy implementation, recordkeeping, and reporting. Our industry leading [Proxy Paper](#) product provides comprehensive environmental, social, and governance research and voting recommendations weeks ahead of voting deadlines. Public companies can also use our innovative [Report Feedback Statement](#) to deliver their opinion on our proxy research directly to the voting decision makers at every investor client in time for voting decisions to be made or changed.

The research team engages extensively with public companies, investors, regulators, and other industry stakeholders to gain relevant context into the realities surrounding companies, sectors, and the market in general. This enables us to provide the most comprehensive and pragmatic insights to our customers.

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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 Denmark and the relevant regulatory background to which Danish 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 Danish companies deviates from the *Continental Europe Policy Guidelines*.

Corporate Governance Background

The Danish Public Companies Act (the Companies Act) provides the legislative framework for Danish listed companies. The rules of Nasdaq Copenhagen stipulate that listed companies must comply with local corporate governance recommendations, and annually publish a statement on the company's principles for corporate governance in accordance with the Danish Recommendations on Corporate Governance (the "Recommendations"). The original Recommendations, based on a "comply-or-explain" principle, were published in 2001, and were most recently revised in 2020 to reflect the implementation of the EU Shareholder Rights Directive II in Denmark. The Recommendations aim to comply with OECD's current Principles of Corporate Governance and to reflect the international development in the field of corporate governance.

Market and Regulatory Updates

On December 2, 2020, the Danish Corporate Governance Committee published a revised version of the Recommendations. The updates focus on the implementation of the EU Shareholder Rights Directive II, as well as recommendations regarding shareholder participation at virtual meetings, board competencies and board evaluations.

Summary of Changes for 2022

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 areas, which are summarized below but discussed in greater detail in the relevant sections of this document:

The Role of a Committee Chair

We have introduced a new section into these guidelines to outline our general approach when our guidelines outline a recommendation against a committee chair, but the chair position has not been designated or, in the

case of staggered boards, where the chair is not up for re-election. In such situations, and on a case-by-case basis, Glass Lewis may recommend that shareholders instead vote against the re-election of (a) long-serving committee member(s).

Expertise of Audit Committee Members

We have updated these guidelines to clarify we may recommend that shareholders vote against the re-election of the audit committee chair and/or other committee members standing for re-election when we have been unable to determine through the director biographies and disclosure provided by a company that at least one member of the audit committee has accounting or audit skills. We believe that companies should clearly outline the skills and experience of the members of the audit committee.

Board-Level Oversight of Environmental and Social Risk

As announced in our 2021 *Continental Europe Policy Guidelines*, Glass Lewis will, from 2022, generally recommend that shareholders vote against the re-election of the governance committee chair (or equivalent) of companies listed on a major European blue-chip index that fail to provide explicit disclosure concerning the board's role in overseeing material environmental and social issues. In Denmark, this policy will apply to companies listed on the OMX Nordic 40 index.

Board Responsiveness

We have introduced a new section into these guidelines to outline our expectations with regard to a company's response to high against votes at its general meetings. Glass Lewis believes that when 20% or more of minority shareholders vote contrary to the recommendation of management, the board should, depending on the issue, demonstrate some level of responsiveness to address shareholder concerns, particularly in cases where we have identified particular issues of concern.

Diversity of Skills and Experience

We have introduced a new section into these guidelines to outline when and how we may recommend shareholder action on the basis of a failure to provide meaningful disclosure on key skills and experience of directors or to address major and continued issues of board composition, including the composition and mix of skills and experience of the non-executive element of the board.

The Link Between Pay and Performance

We have updated this section of the guidelines to better reflect the current regulations and guidance outlined in the Danish Companies Act and the Recommendations on Corporate Governance.

Virtual Shareholder Meetings

We have introduced a new section into these guidelines to outline our expectations in respect to the organisation and disclosure of virtual shareholder meetings. Our policies regarding virtual shareholder meetings in Denmark do not differ materially from our *Continental Europe Policy Guidelines*.

Authority to Issue Shares and/or Convertible Securities

In line with our *Continental Europe Policy Guidelines*, we have clarified that we generally expect authorities intended to service potential obligations under equity incentive plans to fall under 5% of a company's issued share capital.

A Board of Directors that Serves the Interests of Shareholders

Election of the Board of Directors or Supervisory Board

Under Danish law, public companies may choose between a true dual board structure or a hybrid structure unique to the Nordic markets.¹ Regardless of the choice, companies must have either a board of directors or supervisory board. If the company opts for a board of directors, the executive board will be in charge of day-to-day management while the board of directors will be in charge of the overall strategic management and will supervise the executive board. If a company chooses to have a supervisory board, the board will only supervise the executive board, which is tasked with both day-to-day and strategic management. Unless otherwise stated, all references to the “board of directors” in these guidelines will also apply to the “supervisory board.”

The board of directors appoints the executive board, which should have between one and three members, unless otherwise prescribed in the company’s articles of association. The board of directors also sets the remuneration paid to members of the executive board.

Unless otherwise specified in a company’s articles of association, the board of directors elects its chair, who may not be an executive of the company.² Further, it is recommended that a retiring executive does not join the board immediately after retirement.³

Election of Shareholders Committee and Danish Savings Banks

In Denmark, a third governing body, the shareholders committee, may be elected by the general meeting. The shareholders committee elects members to the supervisory board and/or board of directors usually from among members of its own committee.

This setup is frequently seen in Danish savings banks where the shareholders committee is the bank’s highest governing body.⁴ The shareholders committee must have at least 21 members, elected for a maximum term of four years.⁵

Independence

In Denmark, we put directors into four categories based on an examination of the type of relationship they have with the company:

¹ Article 111 of the Danish Companies Act.

² Articles 111 and 122 of the Danish Companies Act.

³ Article 3.2.2 of the Recommendations.

⁴ Article 81(1) of the Danish Financial Business Act.

⁵ Article 81(2) of the Danish Financial Business Act.

Independent Director — An independent director has no material⁶ financial, familial⁷ or other current relationships with the company,⁸ its executives, or other board members, except for board service and standard fees paid for that service.⁹ An individual who has been employed by the company within the past five years¹⁰ is not considered to be independent. We use a three year look back for all other relationships.

Affiliated Director — An affiliated director has a material financial, familial or other relationship with the company or its executives but is not an employee of the company.¹¹ We will normally consider board members affiliated if they:

- Have served in an executive capacity at the company in the past five years;
- Have served on the board for more than 12 years;¹²
- Have — or have had within the past three years — a material business relationship with the company or its auditor;
- Own or control 10% or more of the company's share capital or voting rights;¹³

⁶ Per Glass Lewis' *Continental European Policy Guidelines*, "material" as used herein means a relationship in which the value exceeds: (i) DKK 350,000 (or 50% of the total compensation paid to a board member, or where no amount is disclosed) for board members who personally receive compensation 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) DKK 750,000 (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.

⁷ 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 director is an affiliate if the director has a family member who is employed by the company.

⁸ 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.

⁹ Article 3.2.1 of the Recommendations.

¹⁰ Ibid.

¹¹ If a company classifies a non-executive director as non-independent, Glass Lewis will classify that director as an affiliate, unless there is a more suitable classification (i.e. shareholder representative, employee representative).

¹² Article 3.2.1 of the Recommendations.

¹³ The commentary to Article 3.2.1 of the Recommendations specifies that the board should consider the independence of directors representing more than 20% of share capital. Per Glass Lewis' *Continental European Policy Guidelines*, we view 10% shareholders as affiliates because they typically have access to and involvement with the management of a company that is fundamentally different from that of ordinary shareholders. More importantly, 10% holders may have interests that diverge from those of ordinary holders, for reasons such as the liquidity (or lack thereof) of their holdings, personal tax issues, etc.

- Have close family ties with any of the company's advisers, directors or employees; and/or
- Hold cross-directorships or have significant links with other directors through their involvement with other companies.

Inside Director — An inside director simultaneously serves as a director and as an employee of the company. This category may include a board chair who acts as an employee of the company or is paid as an employee of the company.

Employee Representatives — In companies that have had an average of 35 employees or more during the last three years, employees have the right to elect representatives to the company's, or the parent company's, board of directors. Employees can elect up to half the number of directors that are elected by the shareholders, but no less than two individuals.

Voting Recommendations on the Basis of Board Independence

We believe that at least half of the members of the board should be independent¹⁴ and that the board should be entirely free of executive directors, in line with the Danish Recommendations.¹⁵ Where more than 50% of the members are affiliated or inside directors, we typically recommend voting against some of the inside and/or affiliated directors in order to satisfy the 50% threshold. However, we accept the presence of representatives of significant shareholders in proportion to their equity or voting stake in the company. We may recommend voting against a member of the shareholders committee that also serves as a member of the board of directors in cases where we would have recommended voting against him/her as a director.

As outlined in our *Continental Europe Policy Guidelines*, we refrain from recommending to vote against directors who are not considered independent due to lengthy board tenure on that basis alone in order to meet recommended independence thresholds.

Voting Recommendations on Shareholders Committee

We may recommend voting against the shareholders committee as a slate if the committee has failed to create a sufficiently independent and functioning board. In case there are more nominees than available committee positions, we will base our recommendation on the competencies and experience of the nominees.

Voting Recommendations on the Basis of Committee Independence

We believe that only non-executive board members should serve on a company's audit and remuneration committees.¹⁶ Further, we believe a majority¹⁷ of the members of these committees should be independent of the company and its significant shareholders. In addition, we believe that the audit committee should not be chaired by the board chair, unless there is a reasonable and explicit justification.¹⁸

¹⁴ Article 3.2.1 of the Recommendations.

¹⁵ Article of 3.2.2 of the Recommendations.

¹⁶ 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.

¹⁷ Article 3.4.2 of the Recommendations.

¹⁸ Article 3.4.3 of the Recommendations.

We believe a majority of the 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.

Dual Classes of Shares

The use of two different classes of shares usually results in a stable ownership structures where founding families retain control of a company even with a small equity interest. If a company decides to have a dual class capitalisation, the articles of association must state the differences between the classes.¹⁹ While public companies can set the voting rights associated with each share, including issuing non-voting shares, the most common ratio is 1:10, whereby one class of shares has 1 voting right per share, and the other class of shares carries 10 voting rights per share. While we generally believe that major shareholders should be represented on a board in proportion to their equity ownership, rather than in proportion to their voting rights, we do not recommend voting against directors based solely on this issue. When a company has a dual share class structure, we will consider both a director's equity and voting stake in a company when determining whether to consider the director independent.

Other Considerations for Individual Directors

Our policies with regard to performance, experience and conflict-of-interest issues are not materially different from our *Continental Europe Policy Guidelines*.

Board Responsiveness

Glass Lewis believes that when 20% or more of minority shareholders vote contrary to the recommendation of management, the board should, depending on the issue, demonstrate some level of responsiveness to address shareholder concerns, particularly in cases where we have identified particular issues of concern. These include instances when 20% or more of shareholders: (i) abstain from or vote against a director nominee; (ii) abstain from or vote against a management-sponsored proposal; or (iii) vote for a shareholder proposal. In our view, a 20% threshold is significant enough to warrant a close examination of the underlying issues and an evaluation of whether or not a board response was warranted and, if so, whether the board responded appropriately following the vote.

While the 20% threshold alone will not automatically generate a negative vote recommendation from Glass Lewis on a future proposal, it will be a contributing factor to recommend a vote against management's recommendation in the event we determine that the board did not acknowledge and/or address such dissent appropriately. Further, we may, where appropriate, hold chairs and members of the relevant committees accountable where the response to shareholder concerns has fallen below a qualitative threshold. In the absence of an option to escalate concerns to specific directors, we may instead recommend a vote against the receipt of the annual report and accounts.

¹⁹ Article 45 of the Companies Act.

Our evaluation of board responsiveness is not materially different from our *Continental Europe Policy Guidelines*.

Board Structure and Composition

Our policies regarding board structure and composition are not materially different from our *Continental Europe Policy Guidelines*. The following is a clarification on best practice recommendations and law in Denmark.

Separation of the Roles of Chair and CEO

Under the Danish Companies Act, neither the chair nor the vice-chair of the board may be employed by the company as an executive officer.²⁰ If the chair has duties assigned by the company, in addition to those inherent to their position, these may not involve tasks that are part of the CEO's responsibilities in the day-to-day management of the company, and the division of responsibilities between the chair and the CEO must be clearly stated in the job description of each position.²¹

Board Gender Diversity

In Denmark, large companies are required to establish diversity targets with the goal to increase the representation of the underrepresented gender on the board of directors and in company management.²² Danish companies are further required to report on their progress towards fulfilling these targets. Companies that have equal gender balance on their board of directors, and are therefore not required to set specific target figures, must disclose this in their management report.²³ The Danish Recommendations state that the board of directors must take into consideration the need for integration of new talent and diversity in relation to age, international experience and gender.²⁴

In line with our *Continental Europe Policy Guidelines*, we generally expect the boards of all main market companies to not be composed solely of directors of the same gender. This policy will apply to companies included in the OMX Nordic All-Share index.

Where a proposed board election foresees an all-male board, we will generally recommend that shareholders vote against the nominating committee chair (or equivalent) or a new nominee to the board, as appropriate. Exceptions to this policy may be granted to boards consisting of four or fewer directors and to companies that present a credible, near-term plan to address the lack of gender diversity on the board. We may also recommend voting against the nominating committee chair in cases where a company deviates from its diversity targets without sufficient explanation, or where a company fails to present a coherent board diversity policy altogether.

Further, in line with substantial progress that has been made in improving the gender balance on Danish boards, we will also consider recommending against the election of nominating committee chair where a company

²⁰ Article 111 of the Companies Act.

²¹ Article 2.3.2 of the Recommendations.

²² Article 79a(1) of the Danish Financial Business Act.

²³ Article 99b of the Financial Statements Act.

²⁴ Article 3.1.2 of the Recommendations.

included on the OMX Nordic 120 index has failed to ensure that at least 30% of boards seats are held by the underrepresented gender and the company has not disclosed a credible explanation or plan to address the issue.

Diversity of Skills and Experience

We believe companies should disclose sufficient information to allow a meaningful assessment of a board's skills and competencies. Our analysis of election proposals at large European companies includes an explicit assessment of skills disclosure. We expect these companies to provide a robust, meaningful assessment of the board's profile in terms of skills and experience in order to align with developing best practice standards.

If a board has failed to address material concerns regarding the mix of skills and experience of the non-executive element of the board, we will consider recommending voting against the chair of the nominating committee. In the case of a by-election where it is unclear how the election of the candidate will address a substantial skills gap, we may consider recommending voting against the new nominee to the board. In egregious cases where the disclosure of a large company does not allow for a meaningful assessment of the key skills and experience of incumbent directors and nominees to a board, we will also consider recommending voting against the chair of the nominating committee.

Board-Level Oversight of Environmental and Social Risk

Glass Lewis believes that companies should ensure that boards maintain clear oversight of material risks to their operations, including those that are environmental and social in nature. Accordingly, for large-cap companies and in instances where we identify material oversight concerns, Glass Lewis will review a company's overall governance practices and identify which directors or board-level committees have been charged with oversight of environmental and/or social issues.

We will generally recommend voting against the governance committee chair (or equivalent) of companies listed on the OMX Nordic 40 index that fail to provide explicit disclosure concerning the board's role in overseeing material environmental and social issues.

Board Evaluations

Glass Lewis strongly supports routine director evaluation, including externally facilitated triennial reviews in accordance with the Danish Recommendations.

As such, we will consider recommending against the election of the chair of the nomination committee if the board fails to conduct an external evaluation of its effectiveness every three years in the absence of a compelling rationale. If the board has not established a nomination committee, we will consider recommending against the election of the board chair.

Board Committees

The Recommendations state that companies should establish separate audit,²⁵ nominating²⁶ and remuneration committees.²⁷

Many Danish companies, particularly those with smaller boards, fail to establish separate committees. When a large board fails to create separate committees, we may recommend voting against the board chair on this basis, particularly if the board is not sufficiently independent.

Committee Composition and Performance

The Role of a Committee Chair

Glass Lewis believes that a designated committee chair maintains primary responsibility for the actions of his or her respective committee. As such, many of our committee-specific voting recommendations – as outlined in these guidelines and in further detail in our *Continental Europe Policy Guidelines* -- are against the applicable committee chair rather than the entire committee (depending on the seriousness of the issue). In cases where the committee chair is not up for election due to a staggered board, and where we have identified substantial or multiple concerns, we will generally recommend voting against a long-serving committee member that is up for election, on a case-by-case basis. In cases where we would ordinarily recommend voting against a committee chair but the chair is not specified, we apply the following general rules, which apply throughout our guidelines:

- If there is no committee chair, we recommend voting against the longest-serving committee member or, if the longest-serving committee member cannot be determined, the longest-serving board member serving on the committee (i.e. in either case, the “senior director”); and
- If there is no committee chair, but multiple senior directors serving on the committee, we recommend voting against both (or all) such senior directors.

Expertise of Audit Committee Members

For an audit committee to function effectively on investors’ behalf, it must include members with sufficient knowledge to diligently carry out their responsibilities. We believe that companies should clearly outline the skills and experience of the members of the audit committee, and that shareholders should be wary of audit committees that include members that lack the requisite expertise.

In Denmark, it is required that at least one member of the audit committee must have qualification in accounting or auditing.²⁸ When we have been unable to determine the representation of such expertise on the audit committee through the director biographies and disclosure provided by a company, we may recommend that shareholders vote against the re-election of the audit committee chair and/or other committee members standing for re-election.

²⁵ Article 3.4.3 of the Recommendations.

²⁶ Article 3.4.6 of the Recommendations.

²⁷ Article 3.4.7 of the Recommendations.

²⁸ Danish Act on Approved Auditors and Audit Firms, Chapter 8.

Election Procedures

Our policies regarding election procedures are not materially different from our *Continental Europe Policy Guidelines*. The following are clarifications on best practice recommendations in Denmark.

Voting Options

In Denmark, it is generally not possible to vote against proposals that involve elections due to plurality voting requirements. In cases where a proxy card does not allow for against votes, we will instead recommend shareholders abstain from voting on the proposal.

Classified Boards and Term Lengths

Under Danish law, a director can be re-elected an unlimited number of times, with each term not exceeding four years.²⁹ It is recommended, however, that directors be up for re-election each year.³⁰ We may recommend voting against the nominating committee chair, or in the absence of the nominating committee, the board chair, when term lengths exceed this limit without explanation.

²⁹ Article 120(4) of the Companies Act.

³⁰ Article 3.1.5 of the Recommendations.

Transparency and Integrity in Financial Reporting

In Denmark, shareholders are routinely asked to vote on a number of proposals regarding the audited financial statements, the appointment of auditor and dividends. While we have outlined the principal characteristics of these types of proposals that we encounter in Denmark below, our policies regarding these issues are not materially different from our *Continental Europe Policy Guidelines*.

Accounts and Reports

As a routine matter, Danish company law requires that shareholders approve a company's annual and consolidated financial statements in time for them to be submitted to the Danish Commerce and Companies Agency within five months following the close of the fiscal year, in order for them to be valid.³¹

Allocation of Profits/Dividends

In Denmark companies must submit the allocation of income for shareholder approval, whether or not a dividend is proposed.³² In accordance with Danish company law, the dividend must not exceed an amount which is reasonable in consideration of the financial position of the company.³³

Further, following the presentation of a company's first financial statement, the board of directors may be granted authority to distribute future dividends from the Company's distributable reserves³⁴ and profit for the current financial year,³⁵ without seeking further shareholder approval.

In most cases, we believe the board is in the best position to determine whether a company has sufficient resources to distribute a dividend to shareholders and that shareholders can voice any concerns regarding dividend payments through their votes on the allocation of profits or the election of directors, as appropriate, at the annual general meeting.

Absent evidence of egregious conduct that may threaten shareholder value, we will generally support the board's proposed dividend distribution. Further, we will generally recommend that shareholders support proposals authorising the board to distribute future dividends without seeking shareholder approval each time, provided that the company has a reasonable dividend history and has provided adequate disclosure.³⁶

³¹ Article 88(2) of the Companies Act and Article 138(1) of the Danish Financial Statements Act.

³² Articles 180-184 of the Companies Act.

³³ Article 179(2) of the Companies Act.

³⁴ Article 180(2) of the Companies Act.

³⁵ Article 182(3) of the Companies Act.

³⁶ Articles 182(2) and 183(1) of the Companies Act.

The Link Between Pay and Performance

Danish companies are required to submit a remuneration policy to a binding shareholder vote at least every four years; in addition, a remuneration report must be submitted to an advisory shareholder vote annually. Our guidelines with regard to the remuneration policy and report are not materially different from our *Continental Europe Policy Guidelines*.

Vote on Executive Remuneration (Say-on-Pay)

According to the Companies Act, the remuneration policy must include the following elements: i) an explanation of how the remuneration policy contributes to the company's business strategy, long-term interests and sustainability; ii) a description of the various components of fixed and variable remuneration, including all bonuses and other benefits; iii) a description of how the company's employees' remuneration have been taken into account in the preparation of the remuneration policy; iv) a description of the key terms of management contracts and the main elements of pension schemes, termination payments and notice periods.³⁷ Severance payouts should be limited to two years' remuneration.³⁸

In case the remuneration includes variable incentives, the policy must provide information on the financial and non-financial performance criteria, how they contribute to the company's business strategy, long-term interests and sustainability, and the methods used to determine whether the performance criteria have been met. Information on possible deferral periods and the company's ability to recover variable remuneration must also be disclosed.³⁹

The remuneration report must provide information on, among others, i) the total remuneration divided into components, and an explanation of how it complies with the remuneration policy, including how it contributes to the company's long-term results, and information on how the performance criteria are applied; ii) how the average workforce pay and financial performance have developed over the past five years; iii) remuneration received from group companies; iv) the number of shares or options allotted and the main conditions for the exercise of the rights, including the price at the time of allotment and the date of exercise; v) any clawback of pay; vi) any deviations from the remuneration policy; and vii) how the vote on the previous remuneration report was taken into account.⁴⁰

In addition, the Code recommends that share-based incentive plans have performance periods of at least three years,⁴¹ that the variable part of the remuneration includes a cap at the time of grant, and that there is

³⁷ Article 139a of the Companies Act.

³⁸ Article 4.1.4 of the Recommendations.

³⁹ Article 139a of the Companies Act.

⁴⁰ Article 139b of the Companies Act.

⁴¹ Principle 4 and Article 4.1.2 of the Recommendations.

transparency in respect of the potential value at the time of exercise under pessimistic, expected and optimistic scenarios.⁴²

Director Remuneration Plans

In our view, directors' fees should be reasonable in order to retain and attract qualified individuals. At the same time, excessive fees represent a financial cost to the company and threaten to compromise the objectivity and independence of non-employee directors. Pursuant to best practice in Denmark, while board members should be encouraged to invest part of their remuneration in shares, the company should not grant stock options or warrants to board members.⁴³ As such, we will recommend voting against any incentive plan for non-executive directors that includes options or performance-based fees.

⁴² Article 4.1.3 of the Recommendations.

⁴³ Article 4.1.5 of the Recommendations.

Governance Structure and the Shareholder Franchise

In Denmark, shareholders are asked to approve proposals regarding a company's governance structure, such as amendments to the articles of association. Our policies on these issues do not differ materially from our *Continental Europe Policy Guidelines*.

Ratification of Board and/or Management Acts

Danish companies usually request that shareholders discharge the members of the board of directors and the management from any and all of their actions committed during the fiscal year. The discharge from liabilities is binding and can hinder legal claims against board members and management. In fact, it protects members of the corporate bodies against claims for damages from the company.

However, if minority shareholders representing at least 10% of the share capital vote against the proposal to release directors of liability, any shareholder may start proceedings against the board or management for damages suffered by the company. In addition, should a company enter into insolvent liquidation within two years of the annual general meeting at which the board and management acts were ratified, the decision to pass the proposal is not binding.

Similarly, if the information provided to shareholders prior to the meeting was incorrect or incomplete, shareholders can still bring proceedings against the board or the management. Lastly, despite the approval of the ratification proposal, directors and management will still be liable for willful misconduct, fraud or any criminal offenses.

Bundled Proposals

In Denmark, distinct proposals are sometimes bundled together as a single voting item. When a company clearly indicates the intention to bundle voting items that are not otherwise related and may have a material effect on shareholders' rights, we may recommend that shareholders vote against the proposal on this basis alone. If we have concerns regarding any item to be approved under a single proposal that would cause us to recommend voting against it separately, we will recommend voting against the bundled proposal.

Virtual Shareholder Meetings

Glass Lewis unequivocally supports companies facilitating the virtual participation of shareholders in general meetings. We believe that virtual meeting technology can be a useful complement to a traditional, in-person shareholder meeting by expanding participation of shareholders who are unable to attend a shareholder meeting in person (i.e. a hybrid meeting).

We believe that clear procedures should be set and disclosed to ensure that shareholders can effectively participate in virtual-only shareholder meetings and meaningfully communicate with company management and directors.

Our policies regarding virtual shareholder meetings do not differ materially from our *Continental Europe Policy Guidelines*.

Capital Management

Shareholders in Danish companies are asked to approve proposals regarding the authority to issue shares or convertible bonds and the authority to repurchase and reissue shares on a regular basis. Apart from these proposals, shareholders are generally asked to approve only very specific transactions, which we evaluate on a case-by-case basis.

While we have outlined the principal characteristics of these types of proposals that we encounter in Denmark below, our policies regarding these issues are not materially different from our *Continental Europe Policy Guidelines*.

Authority to Issue Shares and/or Convertible Securities

In Denmark, shareholders are required to approve all proposals related to the issuance of shares and/or convertible securities. Shareholders must determine the length of the authority, which in no event may be greater than 5 years,⁴⁴ and the ceiling for the increase. In addition, the company may determine whether it wishes to issue the shares and/or convertible securities with or without preemptive rights.⁴⁵ However, in the event that it wishes to waive such rights, the board must request shareholder approval given that issuing additional shares may dilute existing holders. In accordance with our *Continental Europe Policy Guidelines*, we believe a company's general authorisations to issue shares should not cumulatively exceed 100% of its issued share capital, and issuances without preemptive rights should not cumulatively exceed 20% of its issued share capital. Further, we generally expect authorities intended to service potential obligations under equity incentive plans to fall under 5% of a company's issued share capital.

Authority to Repurchase Shares

Although Danish law does not limit the number of shares that may be repurchased,⁴⁶ we believe such authority should be limited to no more than 20% of the company's share capital. Furthermore, the authority to buyback shares cannot be granted for a period of time in excess of five years.⁴⁷ In line with our *Continental Europe Policy Guidelines*, we will recommend voting against any proposal that seeks the authority to repurchase more than 20% of a company's total share capital.

⁴⁴ Article 155 of the Companies Act.

⁴⁵ Articles 158 and 162 of the Companies Act.

⁴⁶ Article 198(1) of the Companies Act.

⁴⁷ Ibid.

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