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NEW DANISH CORPORATE GOVERNANCE RECOMMENDATIONS

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Introduction

2 December 2020, the Danish Committee on Corporate Governance released its revised recommendations on corporate governance in Danish listed companies. The recommendations increase the focus on long-time value creation along with dialogue with shareholders and society. Further, the focus on sustainability, purpose and corporate social responsibility has been increased. This article provides an overview of the most important changes compared to the existing recommendations from 2017 and their implications for listed companies.

Entry into Force

The updated recommendations apply with respect to accounting years starting 1 January 2021 or later. Accordingly, the first recommendation on compliance with the recommendations must be made in 2022. However, it should be noted that the new recommendation 4.1.3 which states that the variable part of the remuneration should have a cap at the time of being granted, and the recommendation stating that the company should have the option to reclaim variable remuneration in case of incorrect information, may need to be considered by the companies at the annual general meetings in 2021.

Inclusion of general Principles

Each section of the recommendations has been updated to include a description of the overall guiding principles for the section in question for the purpose of explaining the importance and relevance. These principles may be taken into account by the companies but are not required to be reported on separately.

Reduction of Number of individual Recommendations

The number of individual recommendations has been reduced from 47 to 40. This has been done with a view to make the recommendations fewer and more relevant, and thus to omit recommendations already covered by company law or common practice.

Further Possibilities of Reporting

In connection with the new recommendations, the committee has also provided an updated template for reporting, allowing companies that do not comply with one or more recommendations to state why they do not comply, and the approach chosen instead.

Section 1: Interaction with Shareholders and Stakeholders

- Recommendation no. 1.1 has been updated to include dialogue with both shar holders, investors, and other stakeholders. The company may also consider engaging with proxy advisors.

- Recommendation 1.2.1 on supporting active ownership at the general meeting has been updated to include prior questions and access to observe the general meeting electronically.

- Recommendation 1.4.1 states that the board should adopt a CSR policy, including social responsibility and sustainability (ESG), which should be available to the public and complied with.

- Recommendation 1.4.2 states that the board should adopt a tax policy, which should be available to the public.

Section 2: The Board of Directors

- Recommendation 2.1.1 has been updated to highlight that the board should consider the long-term value creation and purpose, among other things, a report thereon to be available to the public.

- Recommendation 2.2.2 contains provisions on the keeping each director knowledge up-to-date and use the director’s competence competences in the best possible way.

Section 3: The Composition, Organization, and Evaluation of the Board

- Recommendations 3.1.1- 3.1.5 focus on stating the collective and individual competences on board members, the public availability of a diversity policy (diversity to include education and business background), and the need to also consider continuity.

- Recommendation 3.3.1 has been updated to state that the entire board in addition to each individual director should consider the time needed for performing the director’s duties.

- Recommendation 3.5.1 introduces a set of minimum requirements that should always be included in the evaluation of the board. In addition, such new topics as the internal cooperation within the board and the individual board member’s active participation and preparation, should be included.

Section 4: Remuneration

- Recommendation 4.1.1 states that the board and executive management remuneration and other terms should be consistent with the company's long-term shareholder interests.

- Recommendation 4.1.3 states that the variable part of the remuneration should have a cap at the time of being granted, along with transparency with respect to value in different scenarios.

- Recommendation 4.1.6 states that a claw-back mechanism should be in place, entitling the company to reclaim variable remuneration granted in case information subsequently proves incorrect or is received in bad faith.

Section 5: Risk Management

- Recommendation 5.1.1 states that also accounting and liquidity risks should be considered by the board, and that the risks to be considered could also include digital risks.

- Recommendation 5.1.2 states that a procedure for handling whistleblower-cases should be in place.

Our Assessment

The new recommendations expand on the existing recommendations from 2017 as amended in 2019. It is very likely that most Danish listed companies will choose to fully comply with the recommendations, also considering the increased focus on long-time goals and sustainability, which, in our experience, are already being considered very important by Danish listed companies and their shareholders.

If you have any questions or require further information regarding any of the above, please do not hesitate to contact us:

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