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CORPORATE GOVERNANCE

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CORPORATE GOVERNANCE

STEERING THE WAY WITH THE CORPORATE GOVERNANCE PROGRAM

In times of change and upheaval, overall corporate governance takes on particular significance. This refers not only to the top management body, such as the board of directors or executive management, but also – and above all – to the supervisory board or advisory board. It's no coincidence that there has been talk for years of the need for professional corporate governance for the future of companies. It is the most important factor for developing organizations across all sectors, in both the for-profit and non-profit areas, and also in public and semi-public institutions. This applies in particular to family businesses.

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I. CORPORATE SUPERVISION AND CORPORATE GOVERNANCE

Corporate governance is the modern term for corporate supervision or overall corporate management. It defines in whose interests and according to what standards an organization is to be managed. Central to this are the long-term orientation of the company and the interaction between the top management bodies (supervisory and executive bodies). The term 'governance' derives from the Latin 'gubernare' and the ancient Greek 'kybernan', both of which mean 'the art of steering' in the sense of leadership. There are numerous sets of regulations governing issues of ownership, supervision and management. International examples include the OECD's voluntary Principles of Corporate Governance, the European Union's mandatory Audit Directive and the European Corporate Governance Framework. National regulations include, for example, the US Sarbanes-Oxley Act (SOX), the German Corporate Governance Code (DCGK), the Austrian Corporate Governance Code (ÖCGK) and the Swiss Rules on Corporate Governance. Irrespective of this, SMEs (small and medium-sized enterprises) may establish an advisory board at any time on an informal basis.

Supervision ensures the company is run properly.

One of the most important instruments of oversight is the so-called corporate constitution. This defines the principles and rules for the management and supervision of companies. It addresses the requirements for corporate governance functions, such as competence or independence. Furthermore, it sets out the rights and obligations, including issues relating to remuneration, professionalism, and confidentiality. In particular, the rights and obligations of the owners must be clarified: voting rights, participation in shareholders' meetings, etc. The mission statement and strategy also form an important part of the corporate constitution, particularly guidelines for business areas, business models, market position, profitability, and liquidity. Further components

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of the constitution include information policy, transparency, disclosure, and the assurance of audit processes and compliance.

2. COMPETENCE AND INCOMPETENCE OF THE SUPERVISORY BODY

Professional supervision requires competent supervisory bodies. This principle, which is simple in itself, means that such bodies must have knowledge of the company and the market, experience, the capacity for reflection and sufficient time. This applies to significant and forward-looking decisions. It refers to the expansion into new markets, the development of new market offerings, and the transformation of the business or organizational model. Particularly in today's climate of globalization being re-negotiated, trade conflicts, climate change, AI and political turbulence, the demands placed on professional supervision are increasing. One example is Walmart's board decision to bring the production of toys, household appliances and textiles back from China to the US. Such sourcing issues have always been critical to success and are therefore a matter for the board's oversight. Regardless of the relevant legal framework, the size of the company or its ownership structure, ten questions can help (Fig. 1) to ensure the right discussions take place[1].

Fig. 1: Ten questions for corporate governance

1. If you could set the **agenda**, what topics would be on it?
2. What are you not being told that you should actually **know**?
3. What **changes in the external environment** are not reflected in your board meetings?
4. Which **gaps in your knowledge** about your company cause you the greatest concern?
5. What is discussed time and again but never **resolved**?
6. What **isn't discussed**, even though it really should to be?
7. Do we take all **stakeholders** into account – and not just the shareholders?
8. Are we giving due consideration to **long-term issues**, both internal and external?
9. How well do we know and **trust** one another?
10. How would we describe our **corporate culture**?

Competent governance doesn't mean passive reporting, but rather taking an active role. Unprofessionalism manifests itself in a lack of understanding of business or leadership and a reluctance to embrace new ideas. A major problem remains that board members devote too little time and attention to their duties due to having too many other commitments. Furthermore, an excessive desire for harmony on the one hand, and greed for money, status and power, as well as arrogance on the other, can hinder effective overall management. Cases of a lack of independence and poor supervisory board skills are also not uncommon. Most supervisory board members are still unable

[1] White, A., et al., 'Ten Questions Every Board Member Should Ask', in: Harvard Business Manager 09/2021, p. 50 ff.

to read and interpret balance sheets or profit and loss accounts properly. The banking disaster during and following the financial crisis starkly illustrates the consequences of a failure to exercise competent supervision (Lehman Brothers, Hypo Real Estate, Hypo Alpe Adria, West LB…).

Supervisory bodies, too, must conduct themselves professionally.

Competence in corporate governance also requires competence in organization and leadership[2]. With regard to structure, the size and composition of the board must first be clarified. Issues such as terms of office, age limits, conflicts of interest, and remuneration must also be defined as early as possible. Similarly, the chairmanship, deputy positions and, where applicable, committees must be staffed professionally. When it comes to the management of the supervisory body, many practical details are essential. These include the number and duration of meetings, professional meeting management, preparation and follow-up, the drafting of the agenda, and consistency in following up on measures. All of this naturally assumes that genuine corporate supervision is desired, rather than merely a puppet body that serves only as a representative figurehead. Unfortunately, this is not the exception.

3. FAMILY GOVERNANCE AS AN UNDERESTIMATED ISSUE

Over eighty per cent of total economic output and of all businesses are not large corporations, let alone listed on the stock exchange. SMEs (small and medium-sized enterprises) remain the backbone of our economy, and the vast majority of these are family-owned. Although there are usually no legal requirements for formal corporate governance in SMEs, a supervisory function certainly makes sense. Reflection, sparring, coaching, taking a step back from day-to-day operations, contributing experience from other organizations, and other such activities, are just a small selection of the valuable contributions a supervisory or advisory board can make. In family businesses in particular, so-called 'family governance' is a key issue. In addition to the traditional supervisory considerations, emotional factors such as cohesion, trust and a sense of community also come into play. The overarching aim is to foster responsible entrepreneurial thinking and action across generations.

Family businesses, in particular, require competent oversight.

Key components of family governance[3] include, first and foremost, the cornerstones of management and asset policy. A major distinction lies in whether the company is family-run, family-controlled, or entirely managed by external parties. This involves legally (and emotionally) clear arrangements regarding shareholder structures, succession, tax

[2] Malik, F., Effective Corporate Governance, Munich 2008, pp. 174 ff.

[3] Kormann, H. / Suberg, B. (eds.), Issues in the Governance of Family Businesses, Heidelberg 2023, pp. 61 ff.

and inheritance policy, dividend distributions, and other related topics. These issues also highlight the importance of a family culture such as actively practiced family values and joint events. Furthermore, a minimum level of business competence should be established through joint professional development. Family governance only works if there are trust-based discussions and professional decision-making processes. Examples include a family council, conflict resolution mechanisms, reporting and transparent communication on all business matters concerning the family.

4. THE CORPORATE GOVERNANCE PROGRAM

The Corporate Governance Program is the most important management tool for the supervisory board and similar bodies such as an advisory board or an owner-family council (Fig. 2). The first element involves defining the corporate purpose, the associated principles and the business-related objectives. Secondly, it includes looking back and looking ahead. That is, assessing the current situation, today's potential for success, and identifying areas for transformation and, consequently, risks and opportunities. The third component of the governance strategy can be described as 'management of management'. This refers to the steering and organization of the highest management bodies: recruitment, performance appraisal, remuneration, dismissal, definition of management structures, rules of procedure, etc. Fourthly, management and reporting processes must be defined, including the relevant compliance issues. And fifthly, the supervisory body must make a professional contribution to communication and corporate culture.

Fig. 2: The Corporate Governance Program	
1. Definition of corporate policy	• Definition of the corporate purpose and the associated principles and values • Clarity regarding business-related objectives
2. Expertise in analysis and future scenario planning	• Assessment of the current situation, i.e. review, past potential for success… • Identification of transformation issues, risks and opportunities (future potential for success)
3. Governance and organization of top management	• Recruitment, assessment, remuneration and dismissal of the senior executive bodies • Clarification of the leadership structure, rules of procedure and allocation of responsibilities
4. Defining management and reporting processes	• Establishing a framework for key management processes (strategy, innovation, etc.) • Defining the content and procedures relating to reporting and compliance
5. Initiatives to promote communication and corporate culture	• Professional representation and communication of the company's interests to stakeholders • Ideas for an effective leadership and corporate culture

Depending on the size of the company, the corporate governance program should be developed or updated at least once a year (Fig. 3). In times of major upheaval and

rapid change, the program must be reviewed without delay. Examples include the COVID-19 pandemic, which affected all sectors, and Russia's war of aggression against Ukraine, which impacted the energy and defense sectors. The governance program must be coordinated with senior management and employee representatives to have a consistent approach. This ensures that the supervisory board acts as a competent sparring partner for management and provides a positive impetus for healthy corporate development.

Summary: Application and benefits

1. Competent supervision as the key to the company's long-term direction
2. Targeted skills development for supervisory bodies and the avoidance of typical mistakes
3. The corporate governance program as the most important tool for professional supervision

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Fig. 3: Corporate Governance Program: Tool and example (hotel chain)

A family-owned hotel chain is restructuring its governance. A key component of this are the core responsibilities of the supervisory board.

A. Governance strategy: assessment and issue register

1. Definition of corporate policy	• Still an 'old-world' mission statement and too little impetus for transformation in overall management • Proposal: Development of genuine strategic cornerstones for the globalized company • …
2. Expertise in diagnosis and future scenario planning	• A tendency to extrapolate current success factors ('rear-view mirror') • Proposal: joint development of a transformation scenario for all business areas • …
3. Governance and organization of top management	• No genuine top management development plan to date • Proposal: Adjustment of the Executive Board structure and rules of procedure • …
4. Defining management and reporting processes	• A pronounced focus on day-to-day operations and an SME-style approach to management • …
5. Initiatives to promote communication and corporate culture	• …

B. Governance strategy: measures for implementation

No.	Measure	Deadline	Responsible
1	Strategy workshop and development of a new mission statement or a concise strategy for the globalized business model	30.06	G. Schneider
2	Development of transformation scenarios for all business areas	30.06	A. Lorenz
3	Joint workshop with senior management and HR to define key principles for future leadership development	30.09	…
4	…		