

AMF Recommendation 2012-05 General meetings of shareholders of listed companies

Background regulations : articles L.225-38, L.225-39, L.225-40, L.225-96, L.225-98, L.225-100, L.225-102-1, L.225-105, L.225-106-2, L.225-107, L.225-108, L.225-114, L.225-117, L.225-129-5, L.228-1, L.233-5-1, L.233-7, L.233-14 and L.242-10 of the Commercial Code ; articles R.225-31, R.225-58, R. 225-66, R.225-69, R.225-71, R.225-73, R.225-73-1, R.225-83, R.225-85, R.225-92, R.225-95, R.225-98, R.225-100, R.225-101, R.225-106, R.225-106-1, R.225-107, R.225-116 et R.225-117 of the Commercial Code ; articles L.211-17-1 and R.211- 2 and ongoing of the Monetary and Financial Code; articles 322-59 and 570-2 of the AMF General Regulation

In view of its remit to ensure investor protection, the AMF pays special attention to ensuring that shareholders are able to exercise their voting rights at general meetings. In light of this, the AMF Board decided in May 2011 to commission a working group made up of different market participants to formulate proposals on the following issues: the dialogue between shareholders and issuers at general meetings, the functioning of general meetings (shareholder voting, in particular non-resident shareholder voting and duties and powers of the committee) and voting on regulated agreements. The report of the working group ("the Report") presents the results of the work undertaken by the group and issues thirty-three proposals:

- Some proposals are aimed directly at the market participants concerned, notably listed companies. All the proposals articulated by the working group may be applied by the market participants concerned as early as possible, except where legislative or regulatory amendments arising from some of these proposals are necessary. Subject to this caveat, **the AMF recommends that these proposals be adopted at the general meetings to be held as of 1 January 2013**
- The other proposals are addressed either to public authorities when they require legislative or regulatory amendments or to certain professional associations or organisations. **The AMF will follow up the implementation of these proposals in the coming months¹.**

Recommendation :

L'AMF recommends the application of:

- **the propositions 1 to 6 (ongoing dialogue between shareholders and issuers)**
- **the propositions 8, 9, 10, and 12 (voting at general meeting) ;**
- **the propositions 15, 16 and 17 (The general meeting committee: constitution, duties and practices) ;**
- **the propositions 20, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32 and 33 (voting on regulated agreements).**

The propositions 1, 2, 3, 6, 8, 9, 15 and 20 are a priori not intended to apply to small- and mid-caps. These companies may however decide to refer to them on a voluntary basis or to draw inspiration from them in practice.

Moreover, the AMF will follow up the implementation of the proposals in the report addressed to public authorities and to certain professional associations or organisations (propositions 3, 4, 7, 11, 13, 14, 16, 17, 18, 19, 21 and 24).

¹ Some propositions are reiterated in the AMF recommendation insofar as they are addressed to specific market participants (issuers, shareholders, statutory auditors...) and also, partially, to public authorities and certain professional associations and organisations. .

ANNEX 1

PROPOSITIONS OF THE WORKING GROUP

I. Ongoing dialogue between shareholders and issuers

Proposition 1

- Establish an ongoing dialogue between shareholders and companies before draft resolutions are published and after the general meeting as well, to help resolve possible disagreements on points of voting policy for different categories of shareholders.
- Develop new ways of dialoguing after the notice of meeting has been published, and allow time for discussion.
- After the general meeting, to the extent possible, meet personally with shareholders who wish to discuss any disagreements on important points brought up at the meeting, with a view to drawing lessons for the next general meeting.

Proposition 2

- Extend the practice of the issuer announcing the date of the following year's general meeting (or even the dates of the next two AGMs) at the end of the current year's meeting. The date(s) are then published on the issuer's website in the same section as its calendar for future financial reports.
- Ensure that the issuer's updated articles of association are posted on its website so that each shareholder has access to full information from the company.

Proposition 3

- Facilitate the exercise of a shareholder's right to put items or proposed resolutions on the agenda of the general meeting.
- Amend the regulations in the Commercial Code to allow companies to include in their articles of association lower thresholds than those currently provided in the Commercial Code for shareholders submitting draft resolutions and/or agenda items.
- Adopt a broad conception of agenda items that extends beyond what lies strictly within the decision-making powers of the general meeting. It would be sufficient for agenda items to relate to the purpose of the company or to the content of the literature provided to the general meeting.
- Sequence the general meeting so that agenda items and proposed resolutions relating to the same subject are debated together, not separately.

Proposition 4

- Make the titles of resolutions proposed at general meetings more understandable and improve the wording of the statement of reasons for each proposed resolution in order to clarify what is to be voted on and what is at stake in the decision. Accordingly, these explanations ought not to consist merely in recasting the legal terms of the resolution in plainer language. They should present the issues and the reasons for the proposed resolution in a way that enlightens and informs the shareholder vote.
- To achieve this goal of instructive presentation, call on the professional associations concerned (issuers and shareholders) to draft a guide that explains the issues and rules for each type of financial authorisation.
- Post the statements of reasons included in the board's report on the proposed resolutions on the issuer's website at the same time that the "meeting notice" is published in the legal gazette (BALO), not later than 35 days before the meeting. Include a link to the issuer's website in the AGM notice published in the BALO.
- At the general meeting, present and explain the proposed resolutions before they are voted on.

Proposition 5

- Justify new requests for authority to issue securities within the framework of the company's business strategy, with due regard for the confidentiality of financial offerings.
- As soon as the meeting notice is published, post on the issuer's website, along with the board's statement of reasons for the proposed resolutions, the summary table on how previous financing authorisations have been used, if need be with explanations to aid understanding.

Proposition 6

- Post a summary report on the general meeting on the company's website within two months of that meeting.
- Draw up the minutes as soon as possible after release of the summary report on the meeting, and no later than four months after the meeting.
- In information meetings that take place after the AGM, devote an agenda item to summarising the discussions that took place at the meeting.

II. Voting at general meetings

Proposition 7

- Institute a true vote of abstention in French law through new legislation.
- Redesign the mail-in voting form to clarify the intent of each vote, in particular to distinguish it from powers granted without specifying the name of the proxy.

Proposition 8

Take measures that give importance to non-resident shareholders:

- When communicating with investors, issuers should pay particular attention to non-resident shareholders (if any), notably by providing English translations of the main general meeting documents (agenda, draft resolutions, statements of reasons, management report);
- Large issuers with an international shareholder base should systematically put a suitable person in charge of relations with non-resident investors in order to answer questions relating to the general meeting. The name and contact details of this person should be provided in the issuer's financial disclosures.

Proposition 9

- Ensure that non-resident shareholders are better informed about the key stages of the voting procedure by providing them with clear, comprehensive documentation put together by issuers and other participants in the French securities holding system;
- Where possible, make non-resident investors more aware of the advantages of registering their shares directly with the issuer, to be sure of receiving relevant information before and after a general meeting and of having their votes counted.

Proposition 10

Without prejudice to other countries' laws, align the information on non-resident investors with that required for resident shareholders. To this end, ensure that the global mail-in voting forms sent via registered intermediaries include a file giving details of the identity and votes cast of the shareholders concerned.

Proposition 11

- Put in place one or more electronic voting platforms that can provide prompt, reliable handling of data flows between issuers and all their shareholders. Enable non-resident shareholders to benefit from this system by encouraging all participants in the voting chain to take the steps needed to connect to these platforms as quickly as possible;
- Once the electronic voting system makes it possible for non-resident shareholders to vote, encourage them to use it directly or via voting service providers.

Proposition 12

Provide any person or nominee registered directly on the issuer's books, upon prior request from the persons concerned, with a document confirming that their votes have been properly taken into account.

Proposition 13

Study the feasibility of a system that would enable resident and non-resident shareholders to be informed that their voting rights have been duly exercised where the voting is done electronically.

III. General meeting committee: constitution, duties and practices

Proposition 14

- Insert the principle, in either the legislative or regulatory part of the Commercial Code, that a general meeting committee must be formed and in place at the general meeting.
- In the regulatory part of the Commercial Code, specify that this committee is chaired by the same person who presides as chair of the general meeting, except in the case of an impediment as provided in Proposal 16 below, and that the committee's decisions are taken by a majority of its members.

Proposition 15

- Put in place a general meeting committee composed of a chairperson and two scrutineers, unless circumstances duly explained in the meeting minutes make this impossible.
- To the extent possible, identify in advance the persons likely to be named as scrutineers, so that they can familiarise themselves with the role they will play and the difficulties the committee may encounter during the general meeting.

Proposition 16

- Prohibit a member of the general meeting committee from taking part in any decision within the committee's powers that would affect that member, such as a decision on suspending voting rights, amending a resolution or proposing a new resolution. Designate an alternate who would take the place of the committee member prevented from participating in such circumstances.
- Write this prohibition and this provision for designating alternates into the legislative or regulatory part of the Commercial Code.

Proposition 17

- Remind the general meeting of the role of the "centraliser". On the attendance sheet, mention that the scrutineers have signed this document on the basis of information provided by the centraliser under the terms of its contract with the issuer.
- Ask the professional associations concerned, issuers and shareholders to draft conduct of business rules for the meeting centraliser that identify best practices, particularly on managing potential conflicts of interest.

**Proposition 18**

Enshrine the policing power of the general meeting committee in the regulatory section of the Commercial Code. Specify that this committee:

- ensures orderly debate. Accordingly, it may have to ensure orderly management of answers to shareholders' questions (in particular by distributing floor time).
- if necessary, decides whether to suspend the session, that is, to halt deliberations of the general meeting momentarily.
- enforces the applicable rules on denial of voting rights based on evidence presented to it, but without making a precise legal characterisation.

IV. Voting on regulated agreements**Proposition 19**

Update the 1990 study by Compagnie Nationale des Commissaires aux Comptes (CNCC) on intra-group agreements. Senior managers use this document, among other things, to determine what is covered by the notion of "agreements on current operations entered into under normal terms and conditions". The CNCC could initiate an update in collaboration with the Haut Conseil du Commissariat aux Comptes (H3C) and the AMF, working in liaison with organisations representing issuers and shareholders. The new guide could cover agreements concluded both within and outside a corporate group.

Proposition 20

- Have companies establish an internal charter to define an agreement and submit it to the regulated agreement procedure. The charter would set forth the criteria adopted by the company, which would adapt the CNCC guide to its own situation, in agreement with its statutory auditors.
- Submit this charter to the company's board of directors for approval and make it public.

Proposition 21

Amend the law so that agreements between a listed company and its 100% directly- or indirectly-owned (or equivalent) subsidiaries at the time the agreement is signed are excluded from the regulated agreement regime. This derogation applies to the parent company as well as the subsidiary.

Proposition 22

Retain the definition of "indirectly involved person" suggested by the Paris Chamber of Commerce and Industry²: *"A person not party to an agreement is considered to be indirectly involved in that agreement if, by virtue of his or her links to the parties and of his or her powers to influence their conduct, he or she derives a benefit from it"*.

Proposition 23

When they are not agreements on current operations entered into under normal terms and conditions, describe agreements concluded by a directly- or indirectly-owned subsidiary, and that concern directly or indirectly, a senior manager and/or director of the listed company, or a shareholder owning more than 10% of the capital of the listed company, in the report to the general meeting and also in the registration document, if any.

² Contribution by the Paris Chamber of Commerce and Industry to the industry initiative on "enhancing the effectiveness of the regulated agreement procedure", September 2011.

Proposition 24

- Have the board of directors give its reasons for authorising a regulated agreement by explaining how the company stands to benefit from the agreement and the related financial terms and conditions. These reasons would be recorded in the meeting minutes and brought to the attention of the statutory auditors when they are notified of the agreement.
- Ask the statutory auditors to make comments in their special report in the event that the merits of the agreement is not, or not sufficiently, explained, on the understanding that the auditors assess neither the advisability nor the usefulness of entering into the agreement.
- Amend the regulatory section of the Commercial Code to make it mandatory for the board of directors to give reasons for their decision, to transmit those reasons to the statutory auditors and to have them set them out in the auditors' special report.

Proposition 25

- Encourage the board of directors to appoint an independent appraiser whenever entering into a regulated agreement may have a very significant impact on the balance sheet or results of the company and/or the group.
- Refer to the board of directors' request for an independent appraisal in the special report and make it public, with the exception of any factors that might compromise business secrecy.

Proposition 26

In exceptional cases in which prior authorisation from the board of directors could not be obtained, have the board ratify any agreements not previously authorised before they are submitted to the general meeting for approval, barring specific circumstances in which all the directors have a conflict of interest.

Proposition 27

Have the board of directors conduct an annual review of regulated agreements having a long-lasting effect on the company.

Proposition 28

- Enhance the content of the information provided in the statutory auditors' special report so that shareholders can better appreciate the issues involved in agreements that have been concluded. In particular, any information that might enable shareholders to assess the merits of entering into agreements and commitments should be provided, especially in the case of service agreements with directors. Achieving this objective will be facilitated if the board of directors transmits a clear, precise document explaining why the agreement is in the company's interest (see Proposal 24).
- Specify the persons concerned by the agreements and state their function, including for ongoing agreements;
- Clarify the presentation of the terms and conditions of regulated agreements in the report in order to identify more easily the issues involved for the issuer and the senior executives concerned. In this respect, the report on regulated agreements should be organised into three sections:
 - o agreements with shareholders
 - o agreements with companies that share senior managers, specifying the equity links between those companies (i.e. ownership percentages)
 - o other agreements with senior managers.
- Present the financial details of these agreements, making a distinction between income, expenses and commitments and specifying the amounts involved.

**Proposition 29**

Subject any significant regulated agreement, authorised and concluded after the financial year-end, to the approval of the next meeting, on condition that the statutory auditors have been able to analyse the agreement in time for the publication of its report.

Proposition 30

Establish a link, if any, between the consolidated financial statement note concerning related parties with the information presented on regulated agreements.

Proposition 31

Where the company prepares a registration document, the special report should be included so that shareholders can promptly access relevant information.

Proposition 32

Encourage submission of a separate resolution to shareholder vote whenever the agreement is of a significant nature for one of its parties and that directly or indirectly involves a senior manager or shareholder, as required by law for certain deferred commitments for the benefit of senior management.

Proposition 33

Present, in the board of directors' report to the general meeting, the new agreements submitted for approval and reiterate that only these agreements are to be voted on at the meeting.