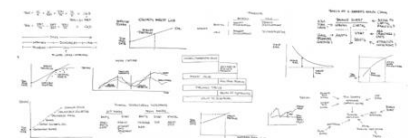


Corporate Governance

Part 2

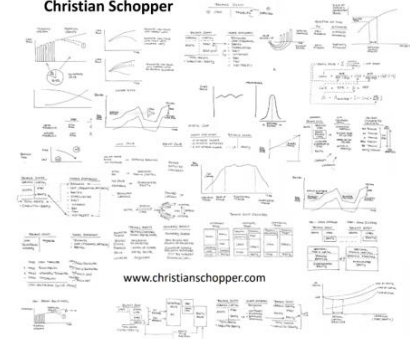
For more concepts click on:

2014



Corporate Finance Concepts

Christian Schopper

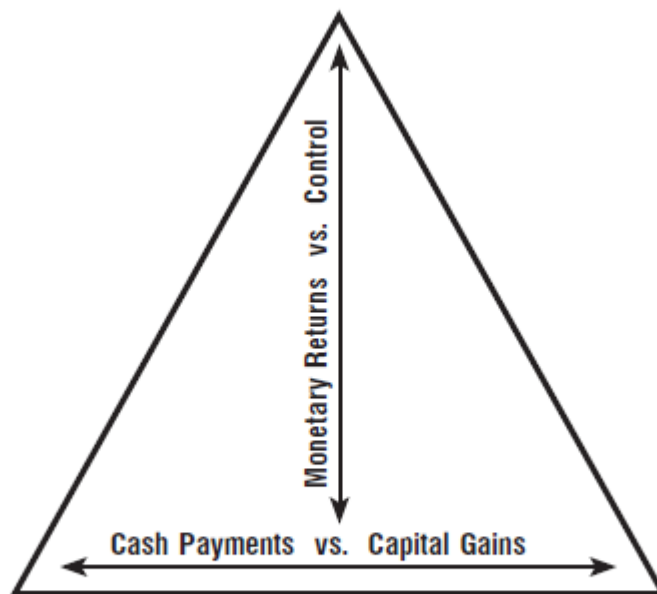


INTRODUCTION TO SHAREHOLDER RIGHTS

General Provisions on Shareholder Rights

Common Reasons for Becoming a Shareholder

Control: Shares provide investors with the opportunity to legally control the company and influence decision-making by nominating directors and, possibly, management. The greater the number of voting shares a shareholder holds, the greater the influence he wields.



Dividends: Dividends play an important role in the decision to invest. Regular dividend payments, especially if an investor holds a portfolio of shares, can generate predictable cash flows.

Capital Gains: Investors purchase shares to benefit from capital growth. Unlike dividends, shares need to be sold to realize the gains represented by rising share prices.

Types of Shares

Common Shares

- Owners of common shares have the right to participate in the decision-making of the company, most commonly exercised by **voting** during the GMS
- They also have the right to **share in the profits** of the company either through **dividends** or through **capital gains**

Preferred Shares

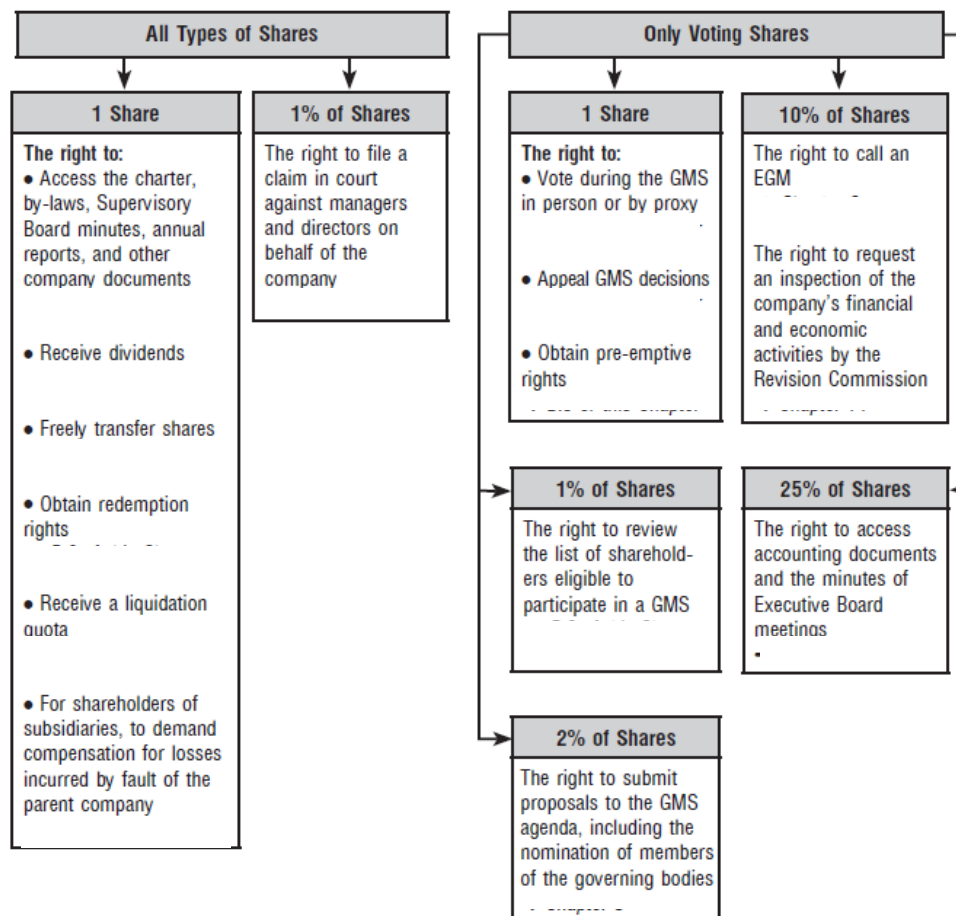
- A company has the right to issue **various classes of preferred shares**
- The total nominal value of preferred shares of all classes **cannot exceed 25% of the charter capital**
 - All preferred shares of the same class must have the same nominal value and must provide the same rights to their owners
 - In contrast to common shares, preferred shares can be divided into classes depending on the rights and preferences attached to them
- Preferred shares can give their owners **preferential rights** associated with the distribution of dividends, liquidation value of shares, and voting rights attached to shares under specific circumstances

Comparison of Common and Preferred Shares

	Common Shares	Preferred Shares
Mandatory	Yes , must always be issued	No , are optional
What is the percentage of shares that can be issued?	A minimum of 75% of the charter capital is mandatory	A maximum of 25% of the charter capital is allowed
Can different classes of shares be issued?	No , only one class of common shares may be issued	Yes , different classes of preferred shares can be issued
Can this type of share be converted into other securities?	No , common shares cannot be converted into preferred shares or other securities	Yes , preferred shares may be converted into common shares, if so provided for in the charter
Do shareholders have the right to vote during the GMS?	Yes , with certain exceptions	No , except under certain circumstances.
Can the charter grant additional rights to shareholders?	Yes	Yes

Specific Shareholder Rights

Shareholder Rights Under Russian Company Law



The Right to Vote

The Right to Vote Common Shares

- Common shares grant voting rights to their holders
- However, there are some circumstances when common shares become non-voting

The Right to Vote Preferred Shares

- The Company Law limits the right of preferred shareholders to participate in voting during the GMS
- Preferred shareholders **normally do not have voting rights** at the GMS except under specific circumstances when their rights are affected

Non-Voting Common Shares

Preconditions	Legal Consequences
Failure to fully pay for shares: When common shares placed to the company's founders are not fully paid for, unless the charter provides otherwise.	Precludes voting on any issue during the GMS ¹⁴
Limitations on the number of votes and/or shares that a single shareholder can possess: When a shareholder has more votes than the maximum established by the charter that can be used during the GMS	Precludes casting more than the maximum number permitted by the charter on any issue during the GMS ¹⁵
Treasury shares: ¹⁶ When the company possesses issued common shares of the company because: <ul style="list-style-type: none"> • The founders have not fully paid the shares within the period that they have to fully pay the common shares; or • The company redeemed common shares; or • The company bought back common shares. 	Precludes voting on all issues during the GMS
The approval of related party transactions: Common shares that are owned by a shareholder who is an interested party in a related party transaction.	Precludes voting on the approval of the related party transaction in which the shareholder is an interested party ¹⁷
Waiver to extend the buy-out offer in control transactions: <ul style="list-style-type: none"> • When common shares are owned by a controlling shareholder, including his affiliated parties; and • When the company has more than 1,000 common shareholders. 	Precludes voting on the waiver of the controlling shareholder's obligation to buy-out the minority shareholders ¹⁸

Non-Voting Common Shares (cont'd)

Preconditions	Legal Consequences
<p>Violation of rules on the acquisition of shares in control transactions:</p> <ul style="list-style-type: none"> • When a person (or a group of affiliated persons) acquires common shares that are equal to or exceed a total of 30% of common shares; and • When this person (or this group of affiliated persons) has not followed the procedures specified by the Company Law when acquiring these shares; and • When the company has more than 1,000 common shareholders. 	<p>Common shares (the acquired shares that cause the holdings to equal or exceed 30%) cannot be voted at the GMS¹⁹</p>
<p>Violation of rules on the acquisition of shares in control transactions:</p> <ul style="list-style-type: none"> • Each time a person (or a group of affiliated persons) acquires 5% of common shares; and • This person (or this group of affiliated persons) already possesses at least 30% of common shares; and • When this person (or this group of affiliated persons) has not followed the procedures specified by the Company Law when acquiring the additional 5% of common shares; and • When the company has more than 1,000 common shareholders. 	<p>Precludes voting on all issues during the GMS²⁰</p>
<p>Election and dismissal of Revision Commission members: When common shares are held by Supervisory Board members, the General Director, and Executive Board members.</p>	<p>Precludes voting on the election of Revision Commission members²¹</p>

When Preferred Shares Become Voting Shares

Circumstances	When Owners of Preferred Shares Can Vote
Reorganization or liquidation	The owners of preferred shares can vote on agenda items that are directly related to the reorganization and liquidation of the company ²²
Charter amendments that restrict preferred shareholder rights of a specific class	The owners of preferred shares of a specific class can vote on charter amendments restricting the rights attached to preferred shares of that specific class ²³
Non-declaration of dividends on non-cumulative preferred shares	The owners of non-cumulative preferred shares have the right to vote on all agenda items during the GMS until the first payment of dividends is made in full ²⁴
Partial payment of dividends on non-cumulative preferred shares	The owners of non-cumulative preferred shares have the right to vote on all agenda items during the GMS until the first payment of dividends is made in full ²⁵
Non-declaration of dividends on cumulative preferred shares	The owners of cumulative preferred shares have the right to vote on all agenda items during the GMS until the full payment is made of all accumulated dividends ²⁶
Partial payment of dividends on cumulative preferred shares	The owners of cumulative preferred shares have the right to vote on all agenda items during the GMS until the full payment is made of all accumulated dividends ²⁷

The Right to Appeal Decisions of the GMS

- A shareholder has the right to **appeal decisions of the GMS in court** when:
 - The decision is adopted in **violation of legislation or charter** provisions; and
 - The decision **violates the rights and lawful interests of the shareholder**; and
 - The **shareholder did not participate in the GMS** or **voted against this decision of the GMS**
- A shareholder appealing a decision of the GMS must **file his appeal** with the court **within 6 months** after the shareholder learned or should have learned about the decision

The Right to Receive Information About the Company

Company Documentation

- The charter (including amendments to the charter or a new version of the charter);
- The certificate of state registration;
- Title documents that verify the ownership of the company's assets; and
- The by-laws and other internal company documents.

Other Information

- Prospectuses;
- Reports on the activities of the company submitted to state agencies;
- Lists of affiliated parties of the company;
- Reports of Independent Appraisers; and
- Other documents specified by legislation, the charter, and by-laws.

GMS

- The minutes of the GMS, the Revision Commission, the Supervisory Board, and the Counting Commission;
- Voting ballots and proxies for the GMS (or copies of these); and
- Lists of persons entitled to participate in the GMS, or who are entitled to receive dividends, and any other lists prepared by the company for exercising shareholder rights.



Financial Information

- Annual reports;
- Financial statements; and
- Reports of the Revision Commission, the External Auditor, and state and municipal financial control agencies.

The Right to Freely Transfer Shares

- The owners of common and preferred shares of a company have the **right to sell their shares** at any time and at any price, without the consent of, or any pre-emptive right on the part of, the company and other shareholders
- This means that the **company cannot restrict the free transferability** of shares, regardless of type and class
- Any charter provisions purporting to restrict the transferability of common and preferred shares are null and void

Pre-Emptive Rights

The Purpose of Pre-Emptive Rights

- In certain circumstances, shareholders have pre-emptive rights, which allow them to **purchase** shares or convertible securities **on a priority basis before they are offered to third parties**
 - Thus, a shareholder has the right to purchase newly issued shares in proportion to the number of shares he owns at the time the company decides to issue new shares or convertible securities of the same type and class
- In **Russia**, the pre-emptive rights of shareholders **cannot be detached** from shares
 - This means that a shareholder cannot transfer his pre-emptive rights to another shareholder
 - Pre-emptive rights are only transferable together with shares.

The Purpose of Pre-Emptive Rights

- Pre-emptive rights **ensure** that all **shareholders of the same class are treated equally**
 - They provide the opportunity to purchase new shares **when the company wants to increase its charter capital**
 - Pre-emptive rights help **protect** shareholders **from dilution**, which can result in losing some of their rights due to the decrease of the percentage of shares they hold.
- The existence of pre-emptive rights depends on the type of subscription (open or closed) and whether it is limited to the existing shareholders or whether third parties can purchase new shares

Pre-Emptive Rights (cont'd)

Open Subscription

Each shareholder can purchase a number of shares and other convertible securities pro rated to the number of shares that he already owns.

Closed Subscription (Shareholders and Third Parties)

Only the shareholder who has voted against the decision to carry out a closed subscription, (or who did not participate in the voting on that issue) can purchase a number of shares and other convertible securities pro rated to the number of shares that he already owns.

Closed Subscription (Only Shareholders)

No pre-emptive rights exist if new shares and convertible securities are issued through closed subscription only to shareholders and if such shareholders have the option to purchase newly issued shares and other convertible securities pro rated to the number of shares they already own.

Pre-Emptive Rights (cont'd)

Pre-Emptive Rights and Fractional Shares

- When shareholders exercise pre-emptive rights, fractions of shares (fractional shares) can result

The Procedure for Exercising Pre-Emptive Rights

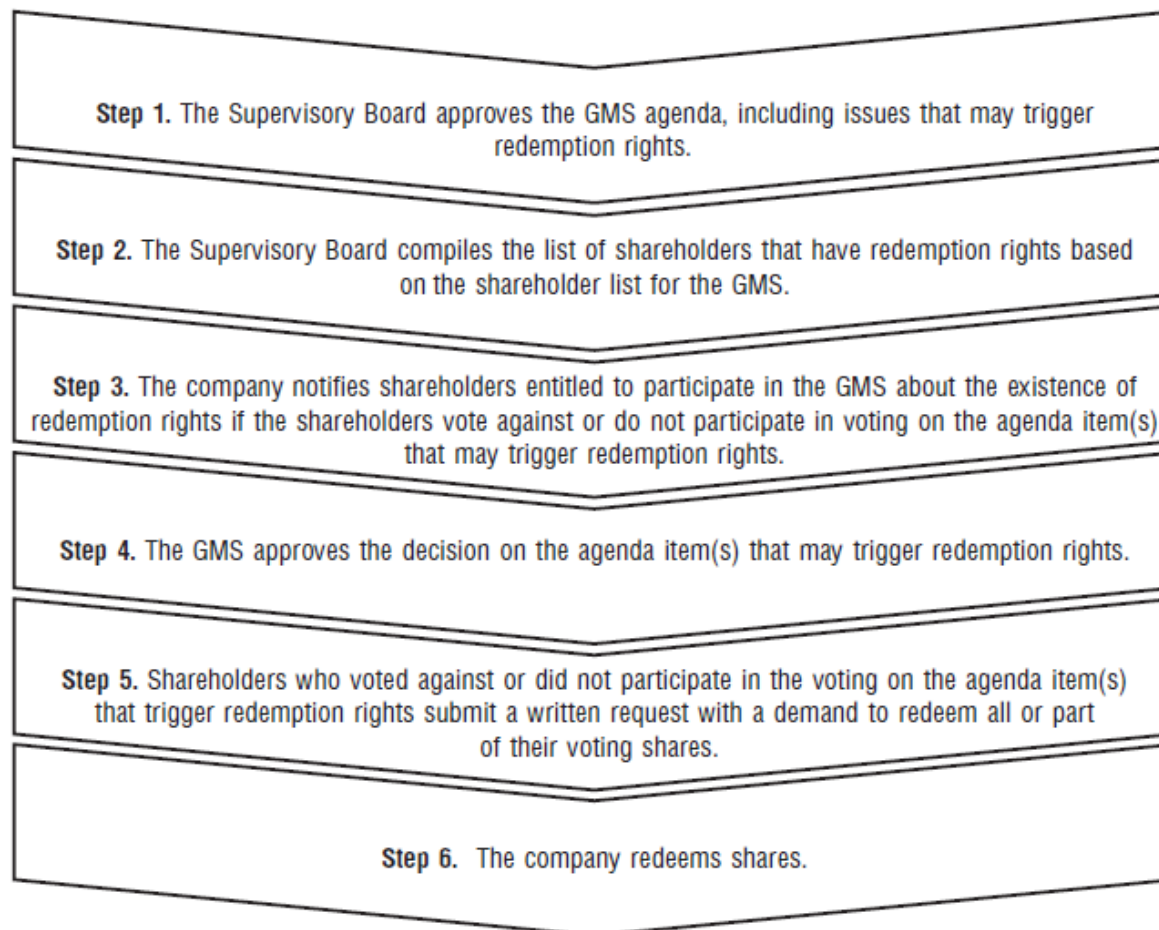
- The shareholders included in the shareholder list that have pre-emptive rights must be **notified** in the same manner **as** the notification of the **GMS**
 - The **number of shares** or convertible securities to be **issued**;
 - The **placement price** or the procedure for determining the placement price (including the placement price or the procedure for determining the placement price of additionally issued shares for shareholders with pre-emptive rights);
 - The **procedure for determining the number of shares** and convertible securities that each shareholder has the right to purchase; and
 - The **period** within which **pre-emptive rights** must be **exercised**
- A shareholder that has pre-emptive rights can exercise these rights fully or in part by submitting to the company:
 - A **written statement** requesting the purchase of additionally issued shares or other convertible securities, which must include:
 - The name of the shareholder,
 - The place of residence (location) of the shareholder, and
 - The number of shares or convertible securities to be purchased by the shareholder; and
 - A document verifying the payment for shares or other convertible securities

The Right to Demand the Redemption of Shares

A shareholder has the **right to have the company redeem all or a part of his shares** when the company:

- **Reorganizes, and the shareholder voted against** the decision or did not participate in the voting on this decision during the GMS;
 - Concludes an **extraordinary transaction** approved by a decision of the GMS **and the shareholder voted against** this decision or did not participate in the voting on this decision; or
 - **Adopts a new version of the charter** or amends the charter by a decision of the GMS, which limits the rights of the shareholder, **and the shareholder voted against** this decision or did not participate in the voting on this decision
-
- To exercise his redemption rights, a shareholder must be informed about the right to demand the redemption of his shares.
 - The notice of the GMS that must approve the decisions that can trigger the redemption rights must include the following information about the redemption rights
 - The right of shareholders to demand the redemption of all or part of their shares if they vote against or do not participate in the voting on specified agenda items;
 - The redemption price the shareholders will receive if they demand redemption; and
 - The procedure for exercising redemption rights

Procedures for Redemption



Shareholder Rights During the Liquidation of the Company

- Shareholders are **residual claimants when a company is being liquidated**, i.e. they will receive a portion of the assets remaining after creditor claims are satisfied
- During liquidation, a **company must first satisfy** its obligations to **creditors**; then **priority claimants** (usually administrative expenses and salaries, wages, employee benefits, customer deposits, and taxes); and finally, the Creditors Committee divides the remaining assets among the shareholders following a specific order of priority:
 1. Common and preferred shareholders that can exercise **redemption rights** have the first priority to exercise their rights;
 2. Second priority is given to **preferred shareholders** for the payment of declared but unpaid **dividends** on preferred shares and to the payment of the liquidation value of preferred shares as specified by the charter; and
 3. The claims of the other shareholders with common shares and preferred shares without a liquidation value are satisfied after the first and second priorities

The Right to Review the Shareholder List

- The company must give registered shareholders holding at least 1% of voting shares the opportunity to inspect the shareholder list within three days of a request
- This right gives shareholders the **opportunity to contact other shareholders** and coordinate voting for collective action purposes
- The company is obliged to provide the following information:
 - The shareholder list; or
 - A document confirming that the inquiring shareholder is not included in the shareholder list

The Rights of the State as a Shareholder

The Rights of the State as a Shareholder

- The state can participate in a company either as an ordinary shareholder or as the holder of a “**golden share**”
- A golden share can be established to ensure the security of the state, or protect the morale, health, rights, and interests of its citizens
- Golden shares give agencies and subdivisions of the Russian Federation the right to:
 - **Propose items for the agenda** of the GMS;
 - **Request an Extraordinary General Meeting** of Shareholders (EGM);
 - **Veto** the following **decisions** of the GMS:
 - Amendments to the charter or approval of a new charter,
 - Reorganization of the company,
 - Liquidation of the company, appointment of the Creditors Committee, or approval of the intermediary and final liquidation balance sheets,
 - Amendments to the charter capital, and
 - Approval of extraordinary and related party transactions; and
 - **Access all corporate documents**

The Protection of Shareholder Rights

The Protection of Shareholder Rights

- Guarantees in the **Company Law**
- **Judicial** Protection
- Protection by the **Federal Commission for the Securities Market**
- **Non-Governmental Organizations** for the Protection of Shareholder Rights
- **Shareholder Activism** and Collective Action
- **Shareholder Agreements**

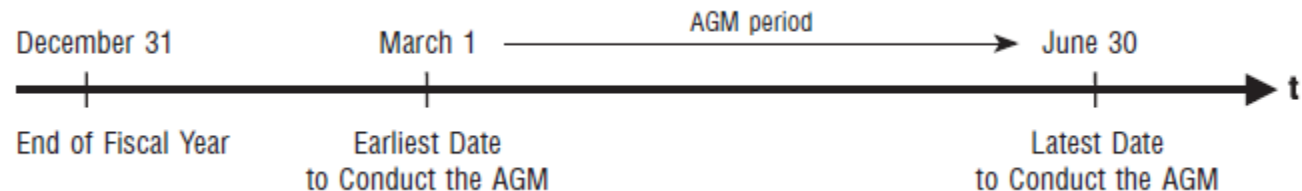
THE GENERAL MEETING OF SHAREHOLDERS

General Provisions

Types of General Meetings of Shareholders

The Annual General Meeting of Shareholders

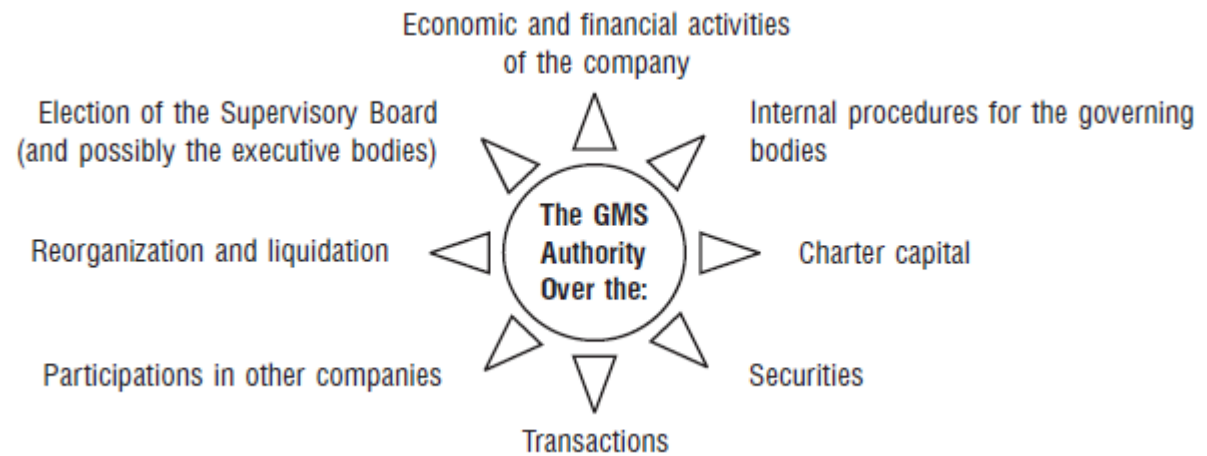
- The Company Law requires companies to hold a GMS **once every year**
- This Meeting is called the AGM, which must be held:
 - **Not earlier than two months after the end of the fiscal year**; and
 - **Not later than six months after the end of the fiscal year**



The Extraordinary General Meeting of Shareholders

- All GMS other than the AGM are called the EGM
- They are convened in response to specific company (or shareholder) needs

The Authority of the General Meeting of Shareholders



The Authority of the General Meeting of Shareholders (cont'd)

Reorganization and Liquidation of the Company

- **Reorganize** the company;
- **Liquidate** the company and appoint members to the Creditors Committee; and
- **Approve** the interim and final liquidation **balance sheets**

Election of the Governing Bodies

- Determine the **number of directors**, as well as to **elect** and **dismiss** them;
- Approve the **remuneration** of directors;
- **Appoint** and **dismiss** the General Director and **Executive Board members** (unless the charter delegates this authority to the Supervisory Board); and
- **Transfer** the **authority** of the General Director **to the External Manager**

Control over the Company

- **Approve the by-laws** for the Revision Commission;
- **Elect** and **dismiss Revision Commission** members;
- **Approve** the **remuneration** of the **Revision Commission** members;
- **Request** an **extraordinary inspection** by the **Revision Commission**;
- **Appoint** the External **Auditor**;
- **Approve annual reports** and annual financial statements; and
- **Declare** and pay **dividends**

The Authority of the General Meeting of Shareholders (cont'd)

Procedures for Governing Bodies

- **Amend** the **charter** or approve a new version of the charter;
- Establish the **procedures** for **conducting** the **GMS**;
- Elect and dismiss Counting Commission members and set the number of its members; and
- **Approve** the **by-laws** for the governing bodies of the company (the **GMS**, the Supervisory Board, the General Director, and the Executive Board)

Charter Capital

- **Increase** the charter **capital** by increasing the nominal value of issued shares;
- **Determine** the number, nominal value, types, and classes of **authorized shares** that may be issued and placed by the company;
- **Increase** the charter capital by **issuing additional shares** (unless the charter delegates this authority to the Supervisory Board);
- **Reduce** the charter **capital** by **decreasing** the **nominal value** of issued shares; and
- Reduce the charter capital **by reducing** the **number** of **issued shares** by retiring treasury shares

The Authority of the General Meeting of Shareholders (cont'd)

Securities

- **Split** and **consolidate shares**;
- **Approve** the **buy-back** of company shares in cases specified by the Company Law;
- **Issue bonds** and other convertible securities, unless the charter delegates this authority to the Supervisory Board; and
- **Issue shares** and other convertible securities through closed subscription

Transactions

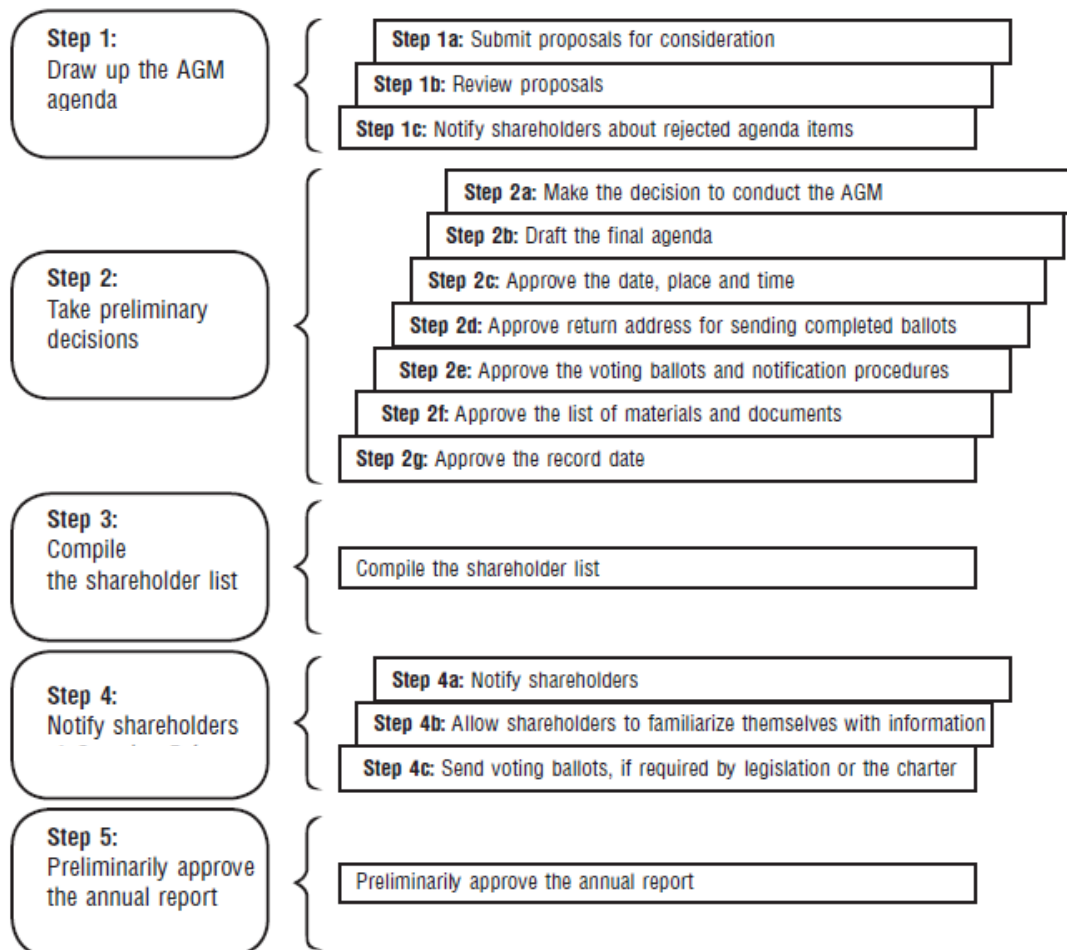
- Approve **extraordinary transactions**;
- Approve **related party transactions**; and
- Waive the obligation of the controlling shareholder(s) to make a buy-out offer during control transactions

Participation in Other Companies

- Authorize the company to participate in holding companies, financial and industrial groups, associations or other groups of commercial enterprises

Preparing for the Annual General Meeting of Shareholders

Preparation for the AGM



Drafting the Agenda

Who May Submit Agenda Items

- A shareholder (or a group of shareholders) holding **at least 2% of voting shares** may propose agenda items, including the nomination of candidates to the governing bodies

How and When to Submit Agenda Proposals

- Shareholders must submit **proposals in writing**

Required Proposal Information

- A shareholder (or a group of shareholders) owning **2% or more** of voting shares may propose **any number of issues for the agenda, which must contain:**
 - The name of the submitting shareholder(s);
 - The number, types, and classes of shares held by the shareholder(s);
 - The text of the proposal (it may also contain proposed wording for shareholders to vote on); and
 - The signature(s) of the submitting shareholder(s)

Information to Be Included in Candidate Proposals

- A shareholder (or a group of shareholders) owning at least **2% or more** of voting shares may **propose candidates** for the:
 - Supervisory Board;
 - General Director and Executive Board;
 - Counting Commission; and
 - Revision Commission

Drafting the Agenda (cont'd)

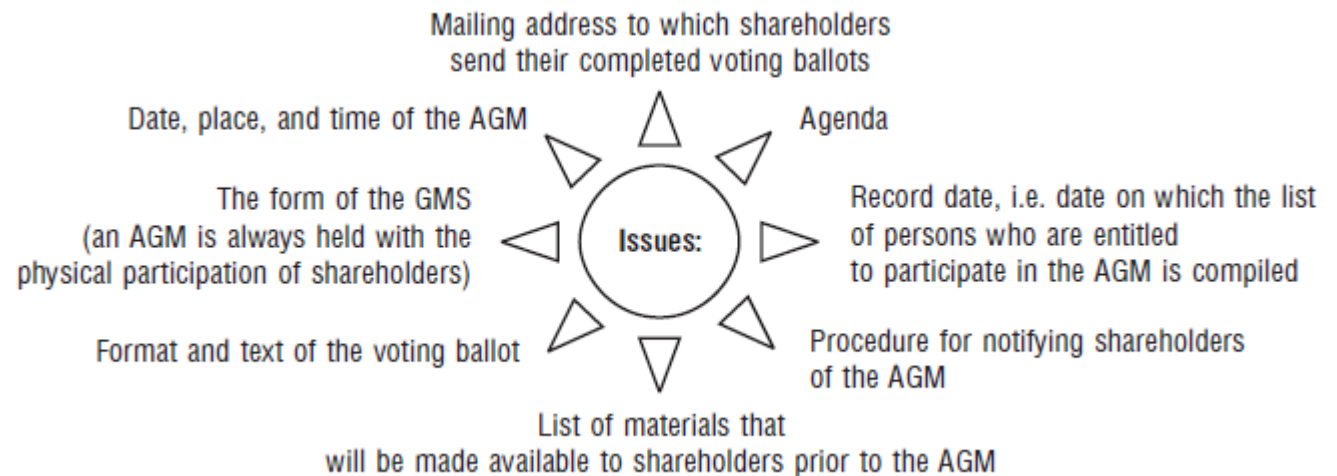
Proposal Review by the Supervisory Board

- The **Supervisory Board** must **decide whether to accept or reject shareholder proposals** within five days after the submission deadline
- It may **reject** a proposal **only** when:
 - The proposal is not submitted within the **period** determined by law and the charter;
 - A submitting shareholder (or a group of shareholders) does **not possess at least 2%** of voting shares;
 - The proposal is **incomplete** or does not meet the legal requirements for proposals;
 - The AGM does not have the **authority** to decide on the proposed item; or
 - The proposal does **not otherwise comply with legislation** (for example, if the shareholder proposes to declare dividends when this recommendation may only be made by the Supervisory Board)

The Notification of Shareholders of Rejected Proposals

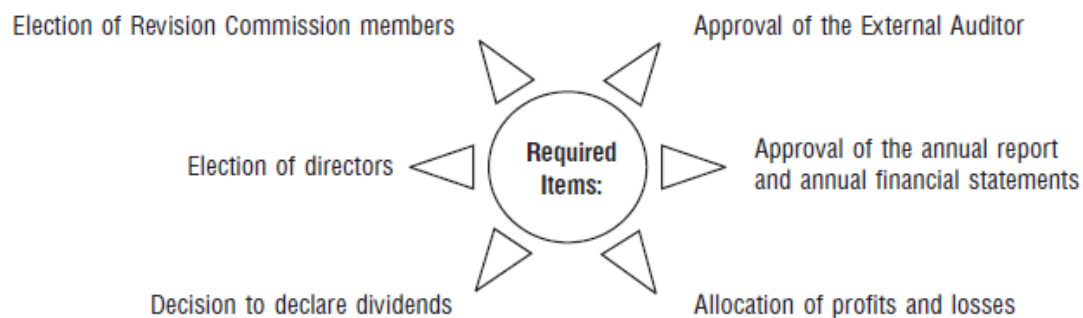
- The Supervisory Board must notify shareholders within three days of making the decision if their proposals are rejected

Issues that the Supervisory Board Must Decide



Making Key Decisions

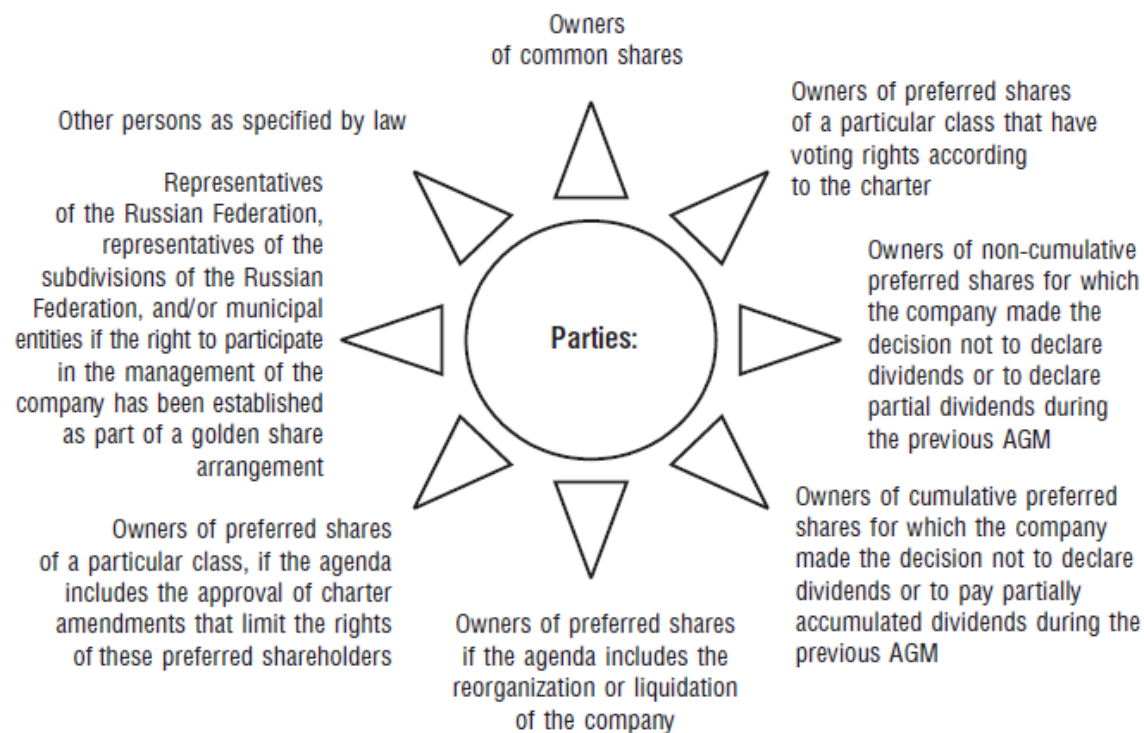
- The Decision to Conduct the AGM
- The Date of the AGM
- The Place of the AGM
- Approving the Agenda



- The Record Date

Preparing the Shareholder List

- Who Should be Included on the Shareholder List



Preparing the Shareholder List (cont'd)

Nominal Shareholders and the Shareholder List

- **Nominal shareholders** (such as brokers, banks, and investment funds that manage shares on behalf of shareholders) are required to **provide information** on the ultimate or **beneficial** they represent

Information in the Shareholder List

- The shareholder list must contain information on each individual and legal entity including: name; identification details; number, type, and class of shares held; and a mailing address in the Russian Federation

Disclosure of Information in the Shareholder List

- Shareholder list should be made **available to all shareholders who own at least 1%** of voting shares

Shareholder Obligations When Selling Shares After the Record Date, But Prior to the Annual General Meeting of Shareholders

- Shareholders lose voting rights when they sell their shares, as **voting rights** are **transferred automatically to the new owner**

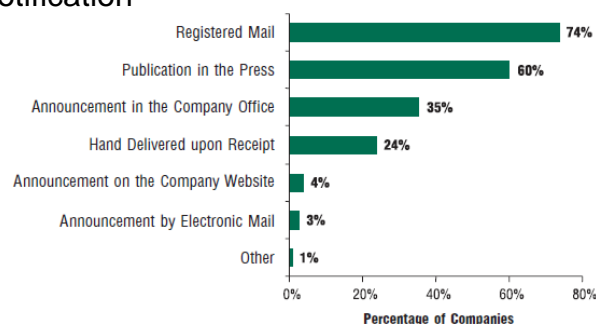
Providing Proper Notice

- Once the procedures are completed, all **shareholders** of record must be **notified** of the AGM
 - No later than **20 days** prior to the **AGM**; or
 - No later than **30 days** prior to the **AGM** if the agenda **includes** the **reorganization** of the company

Best Practices: It is good practice that notification of the AGM:¹⁴³

- Allows sufficient time for all shareholders to prepare for the AGM;
- Is given to all shareholders;
- Allows sufficient time for shareholders to contact other shareholders; and
- Occurs at least 30 days in advance.

- Method of AGM Notification



Information to Include in the AGM Notification

Information	Required	Recommended
Full name and location of the company	✓	✓
Date, place, and time of the AGM	✓	✓
Mailing address for sending voting ballots (if applicable)	✓	✓
Record date of the AGM	✓	✓
Agenda	✓	✓
Procedures for receiving background materials	✓	✓
The time when the registration of participants starts	✓	✓
The place where registration takes place		✓
The person to whom shareholders may report violations of the registration procedure		✓

AGM Materials

Information (Materials)	Required	Recommended
Annual report and annual financial statements	✓	✓
Report of the Revision Commission	✓	✓
Report of the External Auditor	✓	✓
Recommendations of the Supervisory Board regarding the distribution of profits, including the amount of dividends and the procedure for the payment of dividends, and regarding the distribution of losses	✓	✓
Draft charter amendments, draft of the new version of the charter, if any	✓	✓
Draft by-laws, if any	✓	✓
Drafts of decisions of the AGM	✓	✓
Information on proposed candidates for the position of General Director, and for members of the Executive Board, Supervisory Board, Revision Commission, and Counting Commission	✓	✓
Consent of nominees to accept the position if they are elected	✓	✓
Materials that must be made available when the agenda includes items that may trigger redemption rights: <ul style="list-style-type: none"> • The report of an Independent Appraiser on the market value of the company shares; • The net assets of the company based on the financial statements for the last reporting period; and • The minutes of the Supervisory Board meeting, which determined the redemption price for shares, including the redemption price. 	✓	✓
Materials that must be made available when the agenda includes the reorganization of the company: <ul style="list-style-type: none"> • The justification of the terms and procedures of the reorganization, contained in the decision on the division, separation, or transformation, or in the contract on merger or accession approved by the Supervisory Board; • The annual reports and financial statements of all companies involved in the reorganization for the last three fiscal years or for all completed fiscal years if the company was established less than three years ago; and • The quarterly accounting documents for the quarter that precedes the date of the AGM. 	✓	✓

Information That Must Be Included on the Voting Ballot

Required Information	The Company Law	The FCSM Code
The full name and location of the company	✓	✓
The form of the AGM (either in the presence of shareholders or by written consent)	✓	✓
The date, place, and time of the AGM	✓	✓
Deadline prior to which completed ballots must be sent to the company	✓	✓
The mailing address to which completed ballots must be sent	✓	✓
The wording of decisions on each issue and the names of candidates	✓	✓
The instruction that the ballot must be signed by the shareholder	✓	✓
The exact wording "for," "against," or "abstain" alongside each decision	✓	✓
An explanation of cumulative voting with the following text: "When Supervisory Board members are elected with cumulative voting, the shareholder may cast all his votes for one candidate or for several candidates"		✓
The ballot must have a designated area where shareholders must insert the number of votes they cast for each candidate		✓
The ballot must contain an explanation that fractions of a vote may only be cast for one candidate		✓
The ballot must show the number of votes each shareholder may cast to decide on each decision based on information from the shareholder list		✓
Instructions on how to complete the ballot → See also Section C.11 in this Chapter.		✓
The instruction that a shareholder who is a physical person must write his last name when he signs the ballot		✓
The instruction that an individual who completes the ballot on behalf of a shareholder that is a legal entity must indicate his name and position, and the full name of the legal entity which he represents		✓
The instruction that a copy of the power of attorney must be attached to the ballot, and that the representative of the shareholder must sign the voting ballot (if the voting is by proxy)		✓

Preliminarily Approving the Annual Report

- The last step in preparing for the AGM is for the **Supervisory Board** to **preliminarily approve the annual report**, which must occur **no later than 30 days prior to the AGM**
- **Before** it does so, the **Revision Commission must verify** the annual report
- The **AGM** then **approves** the **final version** of the annual report

Conducting the Annual General Meeting of Shareholders

Steps for Conduction the AGM

Step 1: The Counting Commission registers persons attending the AGM. C.2	
Step 2: The Counting Commission verifies and announces the quorum. C.3	
Step 3: The Chairman of the Supervisory Board opens the AGM, unless the charter provides otherwise. C.4	
Step 4: Shareholders elect a new Counting Commission if its term has expired. C.5	
Step 5: Shareholders elect the AGM Chairman, if the charter does not define who is to preside. C.6	
Step 6: Shareholders elect the AGM Secretary, if the charter does not define the Secretary. C.7	
Step 7: Shareholders decide on the presence of outside guests (other than those allowed by the charter). C.8	
Step 8: The AGM Chairman presents the agenda and the rules of order. C.9	
Step 9: The AGM Chairman opens the discussion on agenda items. C.10	
Step 10: Shareholders vote on agenda items. C.11	
OPTION 1: ANNOUNCING VOTING RESULTS DURING THE AGM	OPTION 2: ANNOUNCING VOTING RESULTS AFTER THE AGM
Step 11.1: The Counting Commission counts votes and prepares the minutes on the voting results. C.12	Step 11.2: The AGM Chairman closes the AGM. C.14
Step 12.1: The AGM Chairman announces voting results and decisions. C.13	Step 12.2: The Counting Commission counts votes and prepares the minutes on the voting results. C.12
Step 13.1: The AGM Chairman closes the AGM. C.14	Step 13.2: The Counting Commission archives voting ballots. C.15
Step 14.1: The Counting Commission archives voting ballots. C.15	Step 14.2: Shareholders are notified of the official voting results and AGM decisions. C.17
Step 15: The AGM Secretary prepares and archives the AGM minutes. C.16	

Shareholder Participation Options

- Shareholders may attend the AGM in person or grant a power of attorney to a representative (proxy) who attends the AGM on the shareholder's behalf
- Shareholders may **also participate** in the GMS **by sending completed voting ballots** to the company (if voting ballots are distributed in advance)
- If participation is by proxy, the power of attorney must be drafted in compliance with legislation or notarized to become valid

Shareholder Registration

Who Registers Shareholders

- Registration of participants must be done by: The body specified by the charter when the company has 100 or fewer shareholders with voting rights, or by the **External Registrar**; or The Counting Commission

Who Must Be Registered

- Shareholders, or shareholder representatives who did not return voting ballots; and Shareholders, or shareholder representatives who acquired shareholder rights due to the reorganization of the company or death of a shareholder

What Documents Must Be Verified for the Registration

- The identity of the participants; That participants are on the shareholder list; and that shareholder representatives, or proxies, have a valid power of attorney

Registration of Participants and Voting Ballots

- The registering body must provide voting ballots to participants after registration is complete, unless voting ballots were sent prior to the AGM

The Time for the Registration of Participants

- Officially starts at the time stated in the notice of the AGM and ends after the discussion of the last agenda item

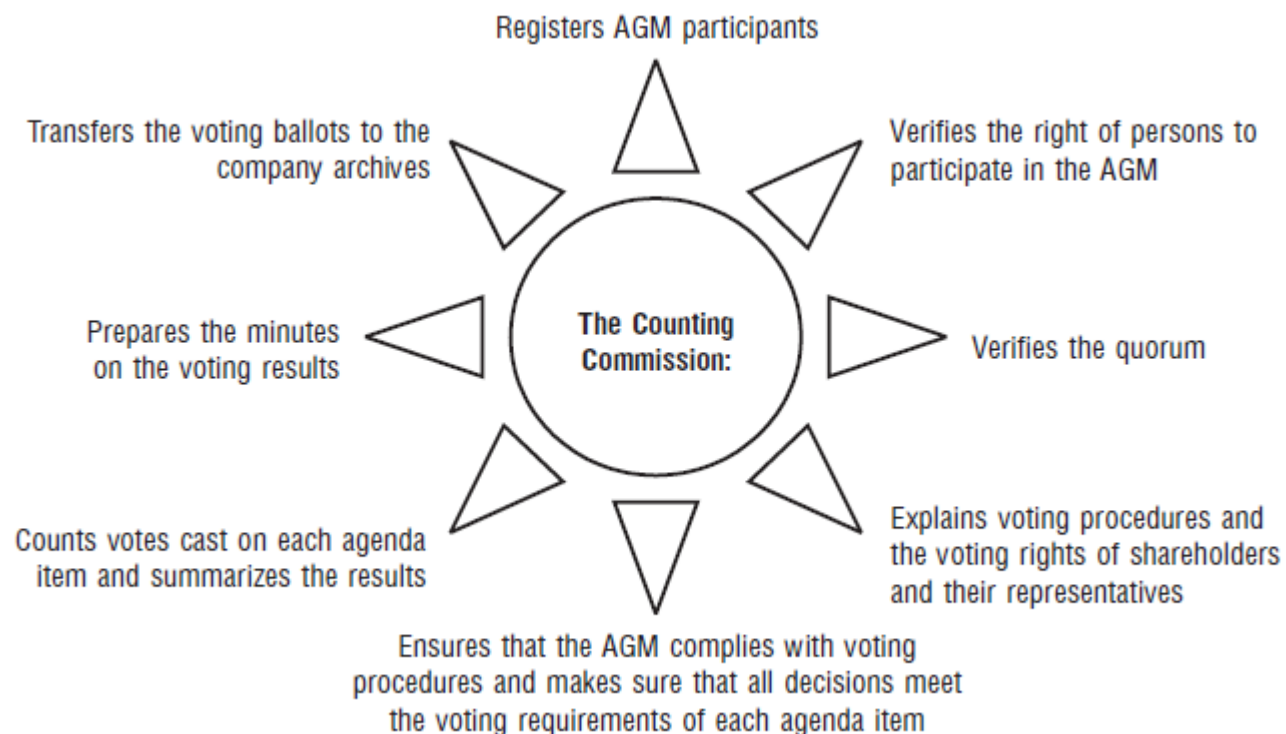
Verifying and Announcing the Quorum

- The Counting Commission must verify and announce that a quorum is present for the AGM after registration is complete and before shareholders may vote
- **Owners of more than 50%** of voting shares **must participate** in the AGM for it to commence and its decisions **to be valid**
- The shareholders participating in the AGM are those who:
 - Are registered (in person or by proxy); or
 - Have returned voting ballots no later than two days prior to the AGM

Opening the Annual General Meeting of Shareholders

- The AGM may be opened if a quorum exists on at least one agenda item
- The person who **opens the AGM**, typically the Chairman of the Supervisory Board, must invite shareholders to vote on:
 - The **Counting Commission** members if their terms have expired;
 - The **AGM Chairman** (unless the charter defines who presides over the GMS);and
 - The **AGM Secretary** (unless the charter defines who the Secretary is)

The Functions of the Counting Commission



Additional Opening Procedures

- Electing the Counting Commission
- Electing the Chairman of the Annual General Meeting of Shareholders
- Electing the Secretary of the Annual General Meeting of Shareholders
- Inviting Outside Guests as Observers
- Discussing Agenda Items

Best Practices: It is good practice that:²⁰⁵

- Shareholders have the opportunity to question Revision Commission members and the External Auditor;
- Shareholders receive clear answers to questions;
- Questions from shareholders are answered immediately. If a question cannot be answered immediately, a written response should be given as soon as possible after the AGM;
- The AGM be conducted so that all shareholders have an opportunity to make balanced and informed decisions on all agenda items;
- The External Auditor, the General Director, and members of the Supervisory Board, the Revision Commission, and the Executive Board are present at the AGM. If they are not, the AGM Chairman should explain their absence;
- Key officers of the company, including the chairmen of Supervisory Board committees, speak at the AGM;
- The agenda set aside some time for presentations by shareholders; and
- The Chairman of the AGM interrupt speakers only to maintain order or comply with procedural requirements.

Voting

- After one or several agenda items have been thoroughly discussed, the Chairman of the AGM invites shareholders to vote
- Voting is based upon the **principle of “one voting share — one vote,” except for cumulative voting** when directors are elected or when the charter includes voting limitations
- Shareholders have the right to vote on all agenda items from the moment the AGM is opened until the moment it is closed when voting results are not announced during the AGM

Counting and Documenting Votes

- The Counting Commission must **count the number of votes** cast during the AGM and **summarize voting results** in its minutes
- The Counting Commission **presents the voting results to the Chairman of the AGM, who then announces the results** (if the company decides to announce results immediately)

Announcing the Voting Results and Decisions

- The Chairman of the AGM announces the voting results by reading the Counting Commission minutes and the AGM decisions

Wrap-Up

Preparing the Annual General Meeting of Shareholders Minutes

- The company must prepare the AGM minutes within **15 days of its closure**
- The **AGM Chairman and Secretary** must each **sign** two original copies of the minutes

Notifying Shareholders of Voting Results and Decisions (After the Annual General Meeting of Shareholder)

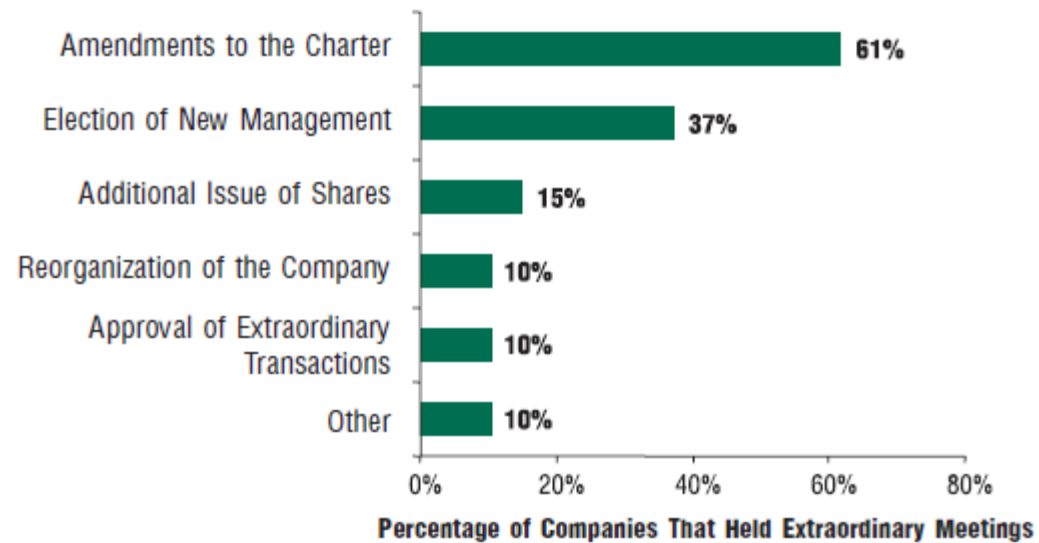
- If the voting results are not announced during the AGM, shareholders should receive a report detailing the results no later than **10 days after the minutes** on the voting results are drafted

Information Related to the Results of the AGM

Information	Must Be Included in:		
	The Minutes on the Voting Results	The AGM Minutes	The Report on the Voting Results
Full name and location of the company	✓	✓	✓
AGM address, i.e. location where it was held	✓	✓	✓
Date of the AGM	✓	✓	✓
Number of votes cast on each agenda item	✓	✓	✓
Number of votes on each agenda item and the required quorum	✓	✓	✓
Agenda	✓	✓	✓
Voting results (number of votes "for," "against," and "abstained" on each agenda item with a quorum)	✓	✓	✓
Type of GMS (AGM or EGM)	✓	✓	✓
Form of AGM (by physical attendance or written consent)	✓	✓	✓
Time when registration of participants started and ended	✓	✓	
Number of votes on each agenda item that were not counted because they were invalid	✓		
Names of Counting Commission members	✓		✓
Full name and location of the External Registrar or of persons authorized by the Registrar to act as the Counting Commission	✓	✓	✓
Date of writing the Counting Commission minutes on the voting results of the AGM	✓		
Name of the AGM Chairman and Secretary		✓	✓
Text of approved decisions		✓	✓
Summary of speeches and discussions		✓	
Time when the AGM was opened and closed		✓	
Time when the calculation of votes started, if the decisions approved by the AGM and the voting results were announced during the Meeting		✓	
Mailing address of the company to which the completed voting ballots were submitted by shareholders, if the company distributed ballots prior to the AGM		✓	
Date when the AGM minutes were prepared		✓	

An Overview of the Extraordinary General Meeting of Shareholders

Reasons for Calling an EGM



When the Supervisory Board is Required to Conduct an EGM

Circumstances	Agenda Items
The Supervisory Board suspends the authority of the General Director and appoints an interim General Director ²³⁰	The election of a new General Director
The Supervisory Board appoints an interim General Director because he cannot perform his duties due to illness, death, resignation, etc. ²³¹	The election of a new General Director
The Supervisory Board suspends the authority of the External Manager and appoints an interim General Director ²³²	The approval of the External Manager/General Director
The Supervisory Board appoints an interim General Director because the External Manager cannot perform the duties of the General Director due to illness, death, resignation, or the liquidation and bankruptcy of the Managing Organization	The approval of the External Manager/General Director
The number of serving Executive Board members becomes less than the quorum as specified by the charter ²³³	The election of a new Executive Board

Specific Timelines for an EGM

	Cumulative Voting	Standard Voting or Other Agenda Items
Maximum period between the decision to conduct a mandatory EGM and the Meeting	70 days	40 days
Maximum period between the request to conduct a voluntary EGM and the Meeting	70 days	40 days
The record date is not earlier than (and no later than)	65 days (45 days)	50 days (45 days)
The notification of shareholders is not later than	50 days	20 days (30 days in case of reorganization)

Decisions of the General Meeting of Shareholders

Decisions that Require a Simple Majority Vote

Decisions Related to the Governance of the Company

- **Approve** the **by-laws** for the company's **Supervisory Board**, and **executive bodies**
- Approve the by-law for the **Revision Commission**
- Determine the list of additional documents that must be kept by the company

Related to the Supervisory Board, General Director, and Executive Board

- Approve the **remuneration of Supervisory Board members**
- **Appoint and dismiss the General Director and Executive Board members**
- Transfer (and terminate the transfer) of the General Director's authority to the External Manager

Related to the Audit Function

- **Request an extraordinary inspection** of the financial and economic activities of the company by the Revision Commission
- **Elect and dismiss Revision Commission** members or the individual performing the functions of the Revision Commission
- Approve the terms of **compensation** and reimbursement of **Revision Commission** members
- **Appoint the External Auditor**
- Approve annual reports, annual financial statements, including profit and loss statements, the distribution of profits and losses, and the payment of dividends

Decisions that Require a Simple Majority Vote (cont'd)

Related to Shareholder Rights

- **Declare** and **pay dividends**
- **Establish procedures** for the **organization** of the **GMS** if this is provided be the charter or by-laws
- **Elect** and **dismiss Counting Commission** members
- Determine the number of Counting Commission members
- Approve the reimbursement of expenses if the EGM is conducted by parties other than the Supervisory Board
- Increase the charter capital by **increasing** the **nominal value of issued shares**
- **Increase** the charter **capital by issuing additional shares** (if this power has not been delegated to the Supervisory Board by the charter)

Decisions that Require a Simple Majority Vote (cont'd)

Decisions that Require a Simple Majority Vote

- Reduce the charter capital by **decreasing the nominal value of placed shares** or by **reducing the number of placed shares by retiring treasury shares**
- Decrease or increase the nominal value of shares (**split or consolidate shares**)
- **Approve related party transactions** in cases specified by the Company Law (only by shareholders who are not interested parties in a transaction)
- **Approve extraordinary transactions** involving 50% or less of the book value of company assets
- **Waive the obligation of the controlling shareholders to make a mandatory bid** in case of control transactions
- **Issue bonds or other convertible securities** through open subscription if these bonds and other securities may be converted into 25% or less of already issued common shares (if this power has not been delegated to the Supervisory Board by the charter)
- Participate in holding companies, financial industrial groups, associations, or other groupings of commercial entities

Decisions Requiring a Supermajority Vote

Per the Company Law

Decisions Requiring a 3/4-Majority Vote

- **Amend the charter** or approve a new version of the charter
- **Reorganize the company**
- **Liquidate the company** and appoint Liquidation Committee members
- **Approve** the interim and final **liquidation balance sheets**
- **Determine** the number, nominal value, types, and classes of **authorized shares**
- **Approve extraordinary transactions** involving more than 50% of the book value of company assets
- **Approve** the **buy-back** by the company of its issued shares

Per the Charter

Decisions Requiring a Supermajority Vote as Per the Charter

- Amend the charter that **limit the rights of preferred shareholders**
- Issue **additional shares** through **closed subscription**
- Issue convertible securities through closed subscription
- Issue **additional shares** through an **open subscription** that are more than 25% of the outstanding common shares
- Issue bonds or other convertible securities through open subscription if such bonds and other securities may be converted into more than 25% of the outstanding common shares

Decisions Requiring a Unanimous Vote

- The decision to reorganize the company **into a non-commercial partnership** must be approved by a unanimous vote of all shareholders

Appealing Decisions

- GMS decisions may be appealed by:
 - A **shareholder** (or a group of shareholders) **who did not participate** in the GMS that approved the decision that is being appealed; or
 - A **shareholder** (or a group of shareholders) **who voted against** the approval of the decision that is being appealed; if
 - The **decision violates** his **rights** and lawful interests
- The court may leave the contested decision intact when the:
 - Vote of the claimant would not have changed the outcome; and
 - Violation of the legal and/or the charter requirements are not significant; and
 - Decision caused no losses to the claimant.
- The following violations are **significant** enough **to revoke a decision** taken by the GMS:
 - **Failure to provide timely notice of the GMS** to all shareholders;
 - **Depriving** the shareholder of the **opportunity to familiarize himself with the materials** for the GMS; or
 - **Failure to distribute voting ballots on a timely basis**

Appealing Decisions (cont'd)

- Even if a shareholder did not file a claim, the **court can still invalidate** a decision of the GMS, under the following conditions:
 - Parties in another court proceeding base their arguments on a particular decisions of the GMS; and
 - The court learns that the decision has been approved in **violation of the GMS' authority**; or
 - The GMS **lacked a quorum**; or
 - The issue in **question was not included in the agenda**

IMPLICATIONS OF THE CHARTER CAPITAL

General Provisions Related to the Charter Capital

The Definition of Charter Capital

- The charter capital has important legal **implications** for:
 - Determining the **minimum amount of a shareholder's liability**;
 - Determining **shareholder rights** in relation to their proportionate share in the charter capital; and
 - Offering support to **protect creditor rights** by setting the minimum amount of assets a company must have; this is one of the legal instruments upon which creditors can rely when seeking to ensure that the company will fulfill its contractual obligations
- The charter capital is defined as the par value of the company's shares that are issued and outstanding
- **Only shares that have been issued comprise the charter capital**
- **This includes treasury shares**, i.e. shares repurchased by the company for re-sale or for retirement that are issued but not outstanding
- Bonds and other credit instruments are not part of the charter capital

Charter Capital and Authorized Shares

- The Company Law provides that the charter may **specify the number and nominal value of authorized shares** of each type and class, as well as the rights attached to them
- Authorized shares are the **maximum number** of shares of any class that a company may create under the terms of its charter, in addition to already issued shares

Best Practices: Good corporate governance practice stipulates that the charter should authorize the Supervisory Board to increase the charter capital by issuing authorized shares. When doing so, the charter should include the following information:

- Maximum number of authorized shares. In general, the maximum amount must not exceed 100% of the charter capital at the moment of the authorization for the Supervisory Board to issue authorized shares;
- Types and classes of authorized shares; and
- Form of payment for additionally issued shares.

Payment for Shares

Payment for Shares

- Shares issued and placed during the establishment of the company **must be paid in full within one year from the moment of the company's state registration**, unless the founders' contract provides for a shorter period

Contributions to the Charter Capital

- The **form of payment** for shares during the establishment of the company must be **specified by the founders' contract**

Best Practices: A company should use a licensed Independent Appraiser to determine the market value of property,²⁷³ value debts, and assess liabilities.²⁷⁴ An Independent Appraiser can also play an important role in assisting management and shareholders during the company reorganization.

Increasing the Charter Capital

Methods of Increasing the Charter Capital

	Issuing additional shares for consideration	Issuing additional shares without consideration	Increasing the nominal value of shares
Source	External	Internal	Internal
Contributors	Shareholders and third parties	The company (using funds available from internal sources as defined by legislation)	The company (using funds available from internal sources as defined by legislation)
Purpose	To attract additional funding. It will, however, dilute the holdings of existing shareholders if they are unwilling/unable to make use of their pre-emptive rights	To pay stock dividends, increase the company's equity, etc.	To pay stock dividends, increase the company's equity, etc.
Recipients of new shares	Existing shareholders and third parties	Only existing shareholders	Only existing shareholders
Changing the company's ownership structure	Possibly	No	No
Method of share issue	Issue of additional (authorized) shares	Issue of additional (authorized) shares	Issue of shares with a higher nominal value
Method of placement	Subscription (open or closed)	Distribution	Conversion
Approving governing body	The General Meeting of Shareholders (GMS), unless delegated by the charter to the Supervisory Board	The GMS, unless delegated by the charter to the Supervisory Board	The GMS
Pre-emptive rights	Yes	No	No

Methods of Placement

There are three methods of placing shares:

1. **Distribution** of shares **among shareholders**;
2. **Conversion**, for example when the company increases the charter capital by increasing the nominal value of issued shares; and
3. **Subscription**, that is when the company floats shares for consideration

Internal Sources for Increasing the Charter Capital

- Depending on the method chosen to increase the charter capital, the company can use the funds of shareholders and/or third parties; it can also choose to capitalize using its internal resources
- The company may use the following internal resources for capitalization purposes:
 - **Additional paid-in capital;**
 - **Special purpose funds of the company that were not used during the previous year** (the reserve fund and the employees' fund cannot however be used for this purpose); and
 - **Retained earnings/undistributed profits.**
- When increasing the charter capital from internal sources, the amount of the increase **cannot exceed** the difference between the amount of the net assets, on the one hand, and, on the other, the sum of the charter capital and the reserve fund as of the date the decision to increase the charter capital is approved
- There are **two types of subscription** available

Open	Closed
<ul style="list-style-type: none"> • The offer is made to an unlimited number of subscribers; • The charter or legislation cannot limit the subscription. 	<ul style="list-style-type: none"> • The offer is made to a limited number or a pre-determined group of subscribers; • The charter or legislation can limit the subscription.

Rights Protection When Increasing the Charter Capital

- The company's ownership structure will likely change if the charter capital is increased from external sources
- Issuing additional shares results in the **dilution** of the ownership rights of existing shareholders
- Under certain circumstances, however, existing shareholders may have **pre-emptive rights** to protect them from dilution

Procedural Guarantees for Charter Capital Increase

The GMS Makes the Decision to Place Shares

- The decision to increase the charter capital by increasing the nominal value of issued shares must be **approved by the GMS**
- The GMS also decides to increase the charter capital by issuing additional shares (with or without consideration), unless the charter has delegated this right to the Supervisory Board

Majority Votes Required for the Decision to Increase the Charter Capital

$\frac{3}{4}$ -Majority in the Case of: ²⁸⁹	Simple Majority in the Case of: ²⁹⁰
<ul style="list-style-type: none"> • An issuance of additional common shares representing more than 25% of the total issued common shares through open subscription • An issuance of additional preferred shares which can be converted into common shares representing more than 25% of the total issued common shares through open subscription • Closed subscription 	<ul style="list-style-type: none"> • All other instances

Procedural Guarantees for Charter Capital Increase (cont'd)

The Supervisory Board Decides to Place Shares

- In general, the purpose **of authorized shares** is to enable the company to **attract additional capital in an uncomplicated manner**
 - Procedural requirements for increasing the charter capital by the decision of the GMS are cumbersome, time-consuming, and costly
- This may make it harder for the company to attract financing quickly in a rapidly changing business environment
- For this very purpose, the Company Law permits companies to **empower the Supervisory Board to issue authorized shares** (with or without consideration)
- In this case, a **unanimous approval** of all serving Supervisory Board members is, however, **required**

Information Included in the Decision to Place Shares

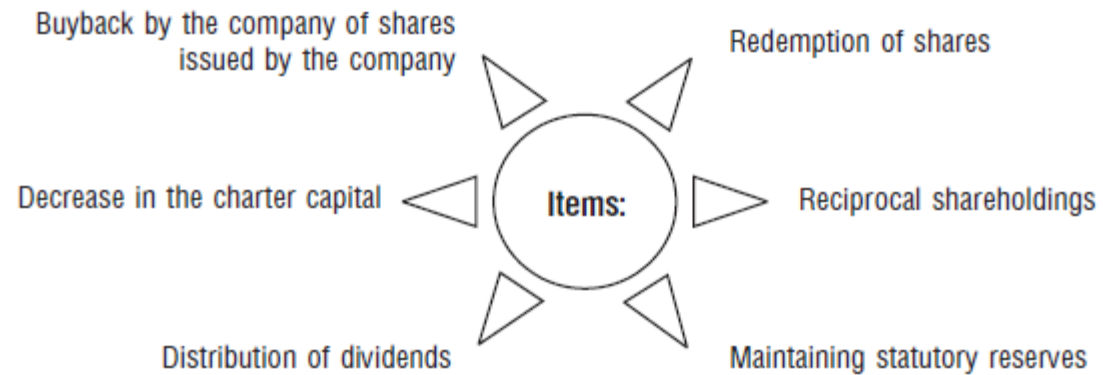
Required Information	Method of Placement		
	Conversion	Distribution	Subscription (Open or Closed)
The types and classes of shares, the nominal value of which will be increased	✓		
The nominal value of shares of each type and class after the increase	✓		
Information that the increase of the charter capital is from retained earnings (if it is so provided)	✓		
The method of placement	✓	✓	✓
The number of shares of each type and class that will be issued within the limits of authorized shares		✓	✓
The price of additional shares, or the procedure to determine the price, of additional shares → For more information on the placement price, see Chapter 11, Section C.			✓
The price of additional shares, or the procedure to determine the price, for shareholders who exercise pre-emptive rights			✓
The form of payment for additionally issued shares (if required)			✓
The list of persons (names and/or categories of persons such as the company's employees, shareholders, credit institutions, etc.) to whom the company intends to issue additional shares if the issue takes place through closed subscription			✓

Optional Information Included in the Decision to Place Shares

Optional Information	Method of Placement		
	Conversion	Distribution	Subscription (Open or Close)
The date, or the procedure to determine the date, of placement (the dates of the beginning and end of the period of placement)	✓	✓	✓
The sources from which the increase in charter capital will be paid	✓	✓	
The procedure and the period for making the payment for additional shares			✓
The procedure for concluding contracts during the placement of additional shares			✓
The number of additionally issued shares that is necessary for the issue to be recognized as completed, and the procedure for returning payments that have been made for additionally issued shares ²⁹⁶			✓

Protecting the Charter Capital

Protection the Charter Capital



Overview of Decreasing the Charter Capital

- A decrease in the company's charter capital is generally used as a tool to **create returns for shareholders without paying dividends**
- Decreases in charter capital — more specifically, share buybacks — do however have the **potential for abuse**
 - A decrease in the charter capital can favor some shareholders at the expense of others
- If a decrease in the charter capital involves a share buyback, it is **essential to ensure the equitable treatment of all shareholders**
 - This holds particularly true if the company has several classes of shareholders with different rights or holders of other securities

Thus, any decrease in the charter capital can be:

- **Real** when it involves a share buyback from shareholders; or
- **Nominal** when the charter capital is decreased by writing off losses, intended to either reorganize the company's financial position or create reserves that can be used for future distribution

Methods of Decreasing the Charter Capital

	Decrease the Nominal Value of Issued Shares	Retire Treasury Shares	Buyback Outstanding Shares and Retire These
Type of Decrease	Nominal	Nominal	Real
Legal Stipulation	Mandatory and/or voluntary	Mandatory and/or voluntary	Voluntary
Charter Stipulation	Always permitted	Always permitted	Only if permitted by the charter
Who Can Propose the Decrease	Shareholders or the Supervisory Board	Shareholders or the Supervisory Board	The Supervisory Board, unless the charter provides otherwise
Approving Governing Body	The GMS	The GMS	The GMS
Class by Class Voting	Yes, if the rights of preferred shareholders can be limited as a result of decreasing the charter capital	No	No
Implementation of the Decrease	Conversion of shares with a higher nominal value into shares with a lower nominal value	Retiring treasury shares	Purchasing and retiring shares

Mandatory and Voluntary Decreases of the Charter Capital

A decrease in the charter capital is **required by legislation**, if:

- At the end of the second and every subsequent financial year the value of the **net assets of the company is less than the charter capital**; and
 - **Treasury shares are not replaced within one year** after the company has purchased them
-
- Decreasing the charter capital by retiring treasury shares is only possible if permitted by the charter

Procedures for Decreasing the Charter Capital

- Regardless of which method is chosen, the decision to decrease the charter capital must be taken by a simple majority vote of shareholders participating in the GMS

Best Practices: The quorum for the Supervisory Board meeting proposing to decrease the charter capital should be defined as $\frac{2}{3}$ of all directors.³⁰⁸

Information Included in the Decision to Place Shares

The decision to decrease the charter capital is also called the decision to place shares and must include information on:

- The **types and classes of shares**, the nominal value of which will be decreased;
- The **nominal value of shares for each type** and class after the decrease has taken place; and
- The **method of placing shares** (in this case, the conversion of shares with a higher nominal value into shares with a lower nominal value)

Decreases in the Charter Capital and Creditor Protection

- The decrease of the charter capital **typically affects creditor rights** since it decreases the minimum amount of the company's assets serving as a guarantee that the company can meet its obligations toward creditors
- The **company must then notify creditors** in writing of a reduction in the charter capital
- It must further publish an announcement in the print media that publishes information on the state registration of legal entities regarding the decrease in its charter capital within 30 days after the decision is taken
- Within 30 days after the submission of the notification to creditors, or after the publication of the announcement, a creditor has the **right to demand** in writing:
 - **Early termination of the company's obligations** and the reimbursement of losses caused by early termination; or
 - **Early fulfillment of obligations** by the company and the reimbursement of losses related to early fulfillment

Share Buybacks

Share Buybacks

Share buybacks may have a number of corporate governance implications

1. First, there may be a **financial planning concern**: since cash is used to purchase shares, fewer funds may be available for further business development
2. Second, **shareholder rights** can be **abused** if the company does **not** provide **equal opportunity** to all shareholders to sell their shares back to the company
3. Third, the company **distributes cash directly to selling shareholders** and may therefore **diminish** the company's **ability to service its debts** or otherwise meet its obligations to creditors

Types of Buybacks

Specific ³¹⁴	General ³¹⁵
The shares issued by the company are repurchased and retired to decrease the charter capital	The shares issued by the company are repurchased for any reason
The repurchase is carried out by decision of the GMS to decrease the charter capital	The purchase is carried out by decision of the GMS, unless the charter delegates this right to the Supervisory Board
The share buyback is only permitted if allowed by the charter	The share buyback is only permitted if allowed by the charter
Shares must be retired upon buyback	Purchased shares must be re-placed or retired within one year

Buyback Procedures

	Specific	General
Initiation	On the basis of the decision to decrease the charter capital	At the discretion of the Supervisory Board or a shareholder proposal
Decision-making	The GMS	The GMS, unless delegated to the Supervisory Board
Purchase price	Market value	Market value
Limitations	The charter capital may not become less than the legal minimum	The nominal value of the outstanding shares must not be less than 90% of the charter capital after the shares have been repurchased ³¹⁶
Share retiring	Must be retired upon purchase	Must be retired within one year or re-placed

The decision to buyback shares issued by the company must be approved by either:

- **A 3/4-supermajority** of shareholders participating in the **GMS**, upon the proposal of the Supervisory Board, unless the charter provides otherwise; or
- A **simple majority** vote of directors participating in the **Supervisory Board** meeting, if the **charter delegates** this **authority** to the Supervisory Board
- The Supervisory Board must **set the purchase price** of shares for each type and class and also define the form of payment for the shares
- In addition, the Supervisory Board must **set the period** within which the share buyback must take place. This period cannot be less than 30 days

Information Included in the Buyback Decision

The decision to buyback shares must include information on:

- The type and class of shares to be repurchased;
- The number of shares of each type and class;
- The purchase price;
- The form of payment;
- The period for making payments to shareholders; and
- The period within which the buyback will take place

Limitations on Share Buybacks

The Company Cannot Repurchase if:	Common Shares ³²²	Preferred Shares ³²³
The nominal value of the outstanding shares will be reduced to less than 90% of the charter capital after repurchase ³²⁴	✓	✓
The charter capital is not fully paid	✓	✓
The company is bankrupt	✓	✓
The company would be bankrupt as the result of a buyback	✓	✓
The company had not redeemed the shares upon the demand of shareholders ³²⁵	✓	✓
The value of the company's net assets is less than the sum of the charter capital, the reserve fund, and the positive difference between the liquidation value of preferred shares of all classes and their nominal value	✓	
The value of the company's net assets will become less than the sum of the charter capital, the reserve fund, and the positive difference between the liquidation value of preferred shares of all classes and their nominal value specified by the charter as a result of the repurchase by the company of common shares	✓	
The value of the company's net assets is less than the sum of the charter capital, the reserve fund, and the positive difference between the liquidation value of preferred shares of a specified class, the owners of which have priority in receiving the liquidation value of their shares in relation to the preferred shares of the specified class that must be purchased by the company, and their nominal value		✓
The value of the company's net assets will become less than the sum of the charter capital, the reserve fund, and the positive difference between the liquidation value of preferred shares of a specified class, the owners of which have priority in receiving the liquidation value of their shares in relation to the preferred shares of the specified class that shall be purchased by the company, and their nominal value specified by the charter as the result of the repurchase by the company of preferred shares		✓

Redemption of Shares

- Shares redeemed by a company are commonly retired so as to reduce the charter capital
- **A company cannot use more than 10% of its net assets to redeem shares**
- **If** shareholders request the redemption of shares with a total value of **more than 10% of the company's net assets**, the company **must redeem shares from all shareholders pro rata** to the number of shares offered for redemption

Statutory Reserves

Statutory Reserves

The Reserve Fund

- Every company must have a reserve fund
- This fund is used to cover (a portion of) the company's **losses**, and covers the costs of **redeeming shares and bonds** when company profits are insufficient for such payment

Other Funds

- **Employees' Fund:** The GMS can establish a special fund from its net profits for company employees
- **Other Funds of a Company:** The charter or a decision of the GMS may establish other internal funds, such as for stock option plans or dividend payments

Additional Paid-In Capital

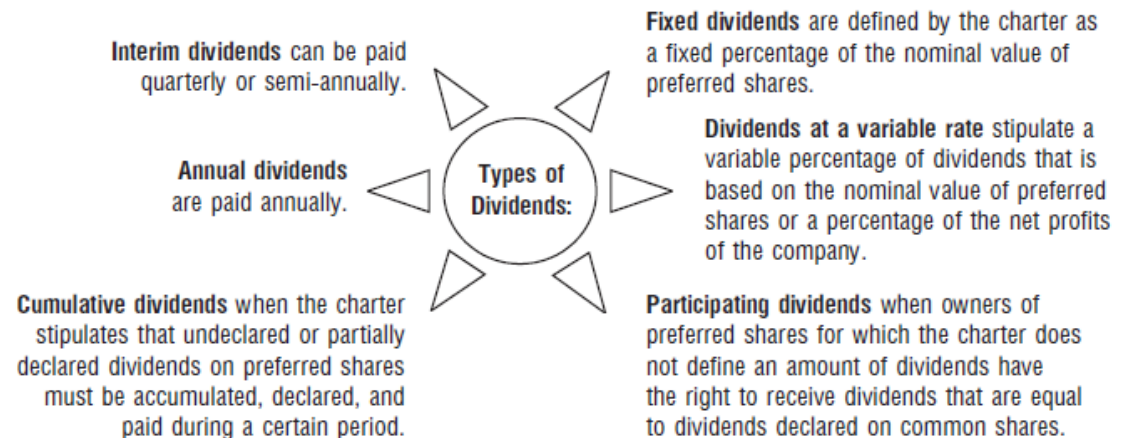
- Additional paid-in capital is part of the company's equity and is typically composed of the following sources:
 - Any increase resulting from the re-valuation of non-current assets; and
 - The positive difference between the nominal value and the placement value of the company's shares

DIVIDENDS

General Provisions on Dividends

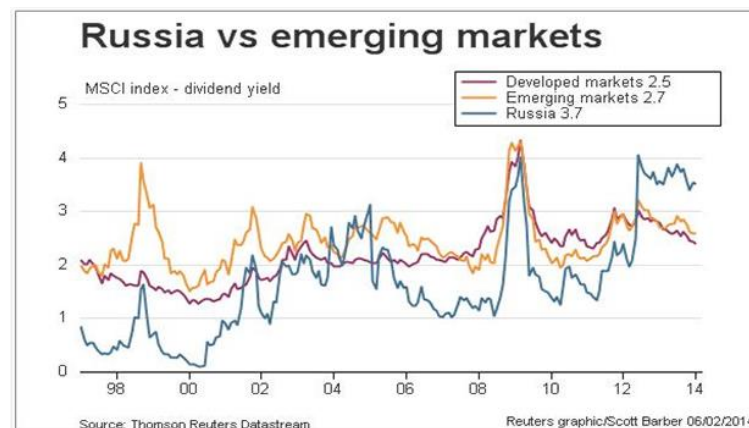
Distributable Profit

- The accounting treatment of dividend payments is determined both by the Company Law and accounting standards
- Dividends can **only be paid out of the net profits of the company**
- Dividends on **preferred shares** can, **however**, be paid out of **funds** that are **specifically established** for that purpose
- Under **no circumstances** can dividends be paid **out of the charter capital**



Dividend Rights

- Owners of **common** and **preferred** shares have **different dividend rights**
- Distributing dividends on **common** shares is solely at the **discretion of the company**
- On the other hand, owners of **preferred** shares have **a right to dividend payments**
- If the company does not declare dividends, or declares only a partial payment of dividends to owners of **preferred** shares, these shares are automatically granted **voting rights**



Decision-Making Authority Regarding Dividends

- The **Supervisory Board** has the authority to **recommend** the amount of dividends to pay out to the General Meeting of Shareholders (GMS)
- The authority to **approve** dividends, however, rests with the **GMS**
- The **GMS** approves or disapproves the Supervisory Board's recommendation by a **simple majority** vote of participating shareholders
- The amount of dividends declared by the **GMS** may not exceed that recommended by the Supervisory Board

The Amount of Dividends

- The Supervisory Board should seek to maximize shareholder value when formulating its recommendation on the amount of dividends to be distributed
- The **target payout ratio** — defined as the percentage of net income to be paid out as cash dividends — should be **based on shareholder preferences**
- The **Supervisory Board** will then need to **define** its **optimal dividend policy**, which ideally should strike a balance between current dividends and future growth
- For any given company, the optimal payout ratio is determined by four factors:
 1. **Investor preference** for capital gains *versus* dividends;
 2. The **company's investment opportunities** (for example, companies with excess cash but limited investment opportunities would typically distribute a large percentage of their income to shareholders via dividends, while companies in high-growth sectors typically reinvest their earnings in the business);
 3. The **company's target capital structure**; and
 4. The **availability and cost of external capital**

Procedures for Declaring and Paying Dividends

The Procedure for Declaring and Paying Dividends

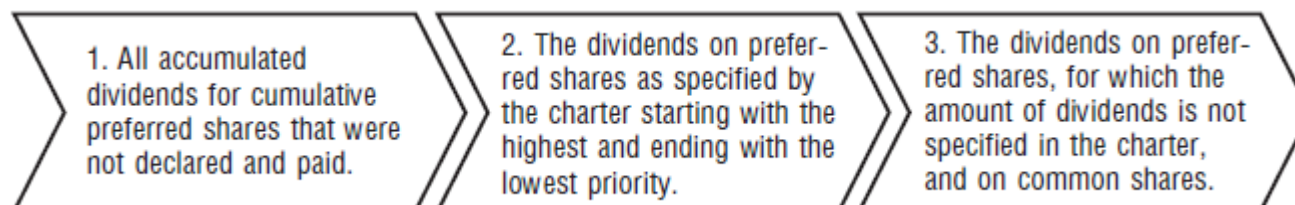
Step 1: The Supervisory Board recommends that the GMS declare dividends, as well as the amount of dividends and procedure for their distribution.

Step 2: The Supervisory Board prepares a list of shareholders entitled to receive dividends.

Step 3: The GMS votes to declare a dividend payment.

Step 4: The company pays declared dividends.

Order of Declaring and Paying Dividends



Best Practices: In order to help shareholders properly assess a company's capacity to make dividend payments, companies are advised to:³⁵¹

- Establish a transparent and shareholder-friendly mechanism for evaluating the payment of dividends;
- Provide sufficient information to shareholders to enable them to understand the conditions that must be met before the company will pay dividends;
- Provide sufficient information to shareholders to enable them to understand the procedures for the payment of dividends;
- Prevent the dissemination of any misleading information on the company that might influence shareholders' assessment of policies governing dividend payments;
- Provide simple dividend payment procedures; and
- Impose (financial) sanctions on the General Director and Executive Board members for incomplete or delayed payments of declared dividends.

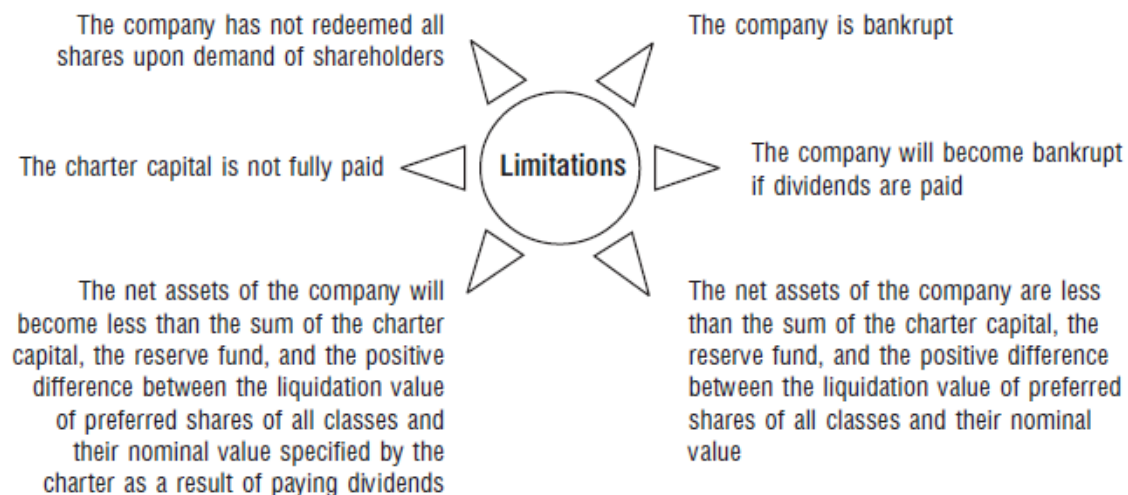
Dividend reports are a useful tool for assessing a company's dividend policy and its dividend payment record. Dividend reports are published by commercial firms that track the dividend performance of companies. These reports are usually available for a fee.

When Declared Dividends Are Paid

- A company is **obliged to pay** dividends **once** they have been **declared**
- The period for paying dividends is established either in the charter or by decision of the GMS
- **If not specified**, companies must pay dividends **no later than 60 days** after they are declared

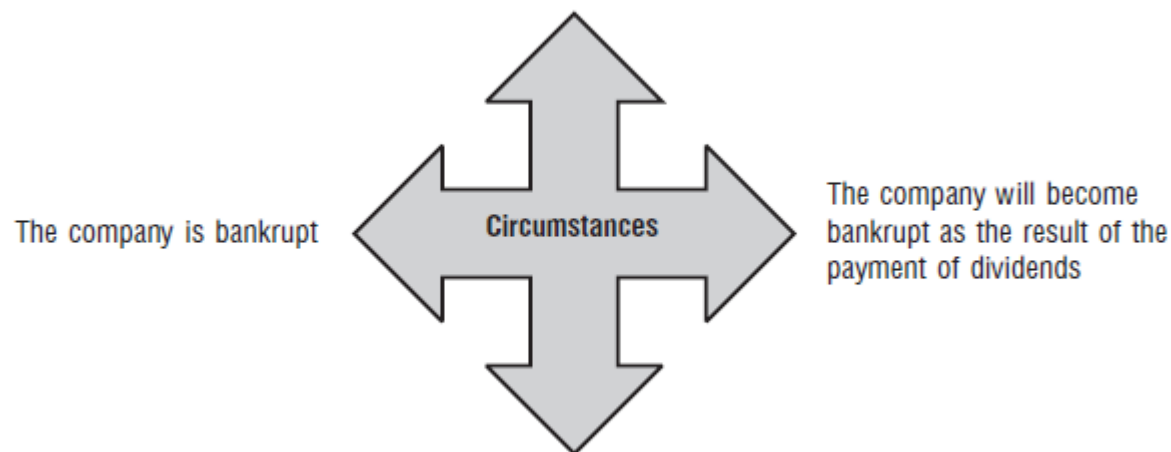
Best Practices: The FCSM Code recommends that companies penalize the General Director, Executive Board members, or the External Manager when dividend payments are incomplete or in arrears. In particular, it is recommended that the Supervisory Board have the authority to reduce the remuneration of the General Director, Executive Board members, and/or the External Manager, or to terminate their authorities, when the company fails to pay declared dividends in full and/or on time.³⁵⁸

When the Company Cannot Declare Dividends



When the Company Cannot Pay Declared Dividends

The net assets of the company are less than the sum of the charter capital, the reserve fund, and the positive difference between the liquidation value of preferred shares of all classes and their nominal value, as specified by the charter



The value of the net assets of the company will become less than the sum of the charter capital, the reserve fund, and the positive difference between the liquidation value of preferred shares of all classes and their nominal value, as specified by the charter because of a share buyback

Dividend Policy

Dividend Policy

Best Practices: Companies should inform the markets of their dividend policy, for example, through the print media. This disclosure should be in the same publication specified by the charter for publishing notice for the GMS. The company should also consider using the internet for this purpose.³⁶⁷ It is essential that shareholders receive information — at a very minimum — on the following issues:³⁶⁸

- The method the company uses in determining the portion of profits that may be paid as dividends;
- The conditions under which dividends may be paid;
- The minimum amount of dividends payable for shares of each type and class;
- The criteria the Supervisory Board uses in deciding on the recommendation to declare dividends; and
- The procedure for dividend payment, including the time, place, and form of payment.

Companies should further implement a transparent and easy-to-understand mechanism for determining dividends. To do so, the company should approve a by-law on dividends that includes information on:³⁶⁹

- The percentage of net profits for dividend payments;
- The terms and conditions for dividend payments;
- The amount of dividends payable for shares of a specific type and class if this amount is not specified by the charter;
- The minimum amount of dividends payable for shares of each type and class;
- The procedure for the payment of dividends, including the schedule, place, and methods; and
- Circumstances when dividends will not be declared, or when dividends may be partially declared on preferred shares.

CORPORATE SECURITIES

Equities and Bonds

Comparison of Equities and Bonds

	Equities	Bonds
Duration of investment	Unlimited. The company does not repay the investment. The company is not restricted in how it may invest funds.	Bonds have a maturity date. While bonds differ, the principal is generally repaid with interest. Repayment is predictable and regular, which reduces bondholder risks.
Obligations in return for the investment	Investors may expect dividend payments when the company generates sufficient cash flow. However, dividend payments are made at the discretion of the company.	The company must repay the principal and generally makes coupon payments.
Governance rights	If common shares are issued, the investor is granted governance rights. If preferred shares are issued, the investor holds governance rights only in specific circumstances. Governance rights and their enforcement reduce the equity investment risk.	No governance rights are granted to bondholders.
Ease of securing the investment	<p>The ease of securing equity investment depends on numerous external and internal factors. Ultimately, the attractiveness of a share offering depends on the company's future prospects and its ability to assure investors that good governance and, in particular, investor rights to the company's free cash flow, will be observed.</p> <p>In addition, the company's health, including compliance with good corporate governance practices, influences the price it pays for equity capital.</p>	Bonds are attractive to investors interested in predictable, secure returns. The company's health, including compliance with good corporate governance practices, is important for the credit rating of the company and will influence the price at which it may borrow.
Cost	From the company's perspective, equities can be more expensive than bonds. Investors charge a risk premium for the higher risk associated with equities.	Bonds are less risky, and investors charge a lower risk premium. Bonds are, consequently, less expensive for the company than equities.

Comparison of Equities and Bonds (cont'd)

	Equities	Bonds
Advantages	<p>Most investors are compensated through capital gains (the increase in share prices on the equities markets). If the company generates sufficient free cash flow, the shareholder may receive a dividend.</p> <p>The potential long-term returns on equities as an investment class are higher than bonds.</p>	<p>The bondholder receives his principal back with some compensation for the investment, usually in the form of interest. Generally, interest payments are fixed in advance and predictable.</p> <p>If the company defaults, the bond may, under certain circumstances, still be sold on the market at a discount, meaning that the bondholder may not lose the full amount of his investment.</p>
Risks	<p>The higher returns on equities are in exchange for a higher level of risk. Share prices go up and down, at times quite dramatically. Capital gains on shares are uncertain and dividend payments are not guaranteed.</p> <p>If the company becomes insolvent, shareholders are typically last in line to receive compensation. In practice, shareholders may lose the full value of their investment in case of bankruptcy or liquidation.</p>	<p>Once the company has the cash, it may use the money for riskier activities than those foreseen by the bondholder. In this case, the bondholder may have little recourse.</p> <p>In case of default, the bondholder is granted a set of legal mechanisms to enforce his contractual rights, including seeking the insolvency of the company. However, seeking insolvency is not generally in the interest of the bondholder. If the bond is secured, the risk of the bondholder may be minimized.</p>

Types of Securities

Shares

Shares (stock or equities) entitle their holder to a set of property and governance rights, and have several fundamental characteristics:

Name of the holder

- Shares in Russia can only be issued as registered securities
- This means that the identification of their holder is mandatory to exercise shareholder rights, and the shareholder identity is entered in a shareholder register

Rights of the holder

- Shares may be common or preferred

Nominal value

- Each share has a nominal value (also referred to as “par value” or “face value”)
- The nominal value of shares is established in the charter and is used to calculate the charter capital

Bonds

Registered and Bearer Bonds

- As with shares, bonds can be issued as registered securities.

Nominal Value

- Bonds are issued at a certain nominal value.

Rights of Bondholders

- The bondholder has the rights of a creditor, and is entitled to:
 - Redeem the bond at maturity for its face value
 - Receive interest payable on the bond

Secured and Unsecured Bonds

- Companies may issue both unsecured and secured bonds
 - Pledges of property
 - A third party guarantee

Convertible Bonds

- Companies can also issue bonds that can be converted into shares

Differences Between Bondholder and Shareholder Interests

Interests diverge most distinctly during insolvency

- In general, creditor claims (including those of bondholders) are always satisfied before those of shareholders

Another difference is in the conversion of bonds

- **Shareholders** are always interested in **minimizing** the **dilution** of their holdings
- Similarly, holders of convertible bonds are interested in preventing the reduction of capital or the redemption of shares when this conflicts with the exercise of their conversion rights

The interests of shareholders and bondholders also diverge with respect to risk

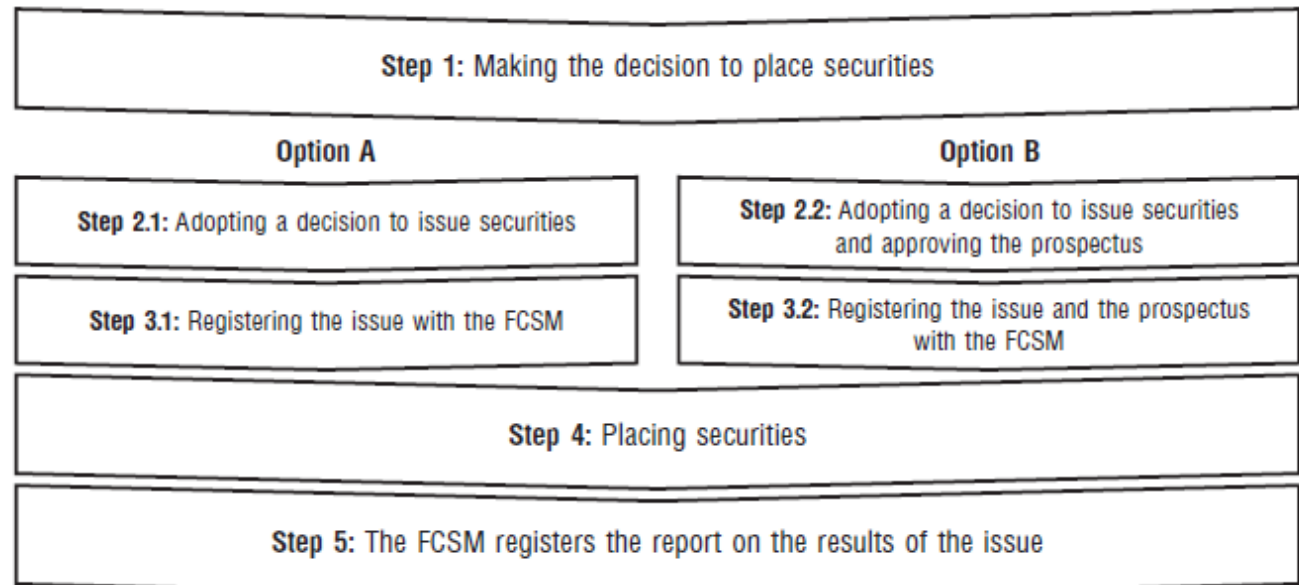
- Shareholders generally accept a higher level of risk than bondholders in exchange for potentially higher returns
- Bondholders will, on the other hand, always receive the same contractually stipulated return regardless of the level of risk of the projects that the company undertakes; bondholders only stand to lose if the level of risk to the enterprise ultimately results in corporate insolvency
- This holds particularly true for holders of unsecured bonds. Bondholders always hope to see a predictable, stable cash flow, and, if possible, a reduction in the company's risk profile

Issuing Securities

Overview of Share Issue Methods

Method of Placement	Legal Requirements
Closed subscription, if the number of potential investors is less than 500	<ul style="list-style-type: none"> • The decision to issue securities, and the report on the results thereof, are subject to state registration; and • A prospectus may be registered on a voluntary basis.
Closed subscription, if the number of potential investors is more than 500	<ul style="list-style-type: none"> • The decision to issue securities, and the report on the results thereof, are subject to state registration; • It is mandatory to prepare and register a prospectus with contents prescribed by law; • A securities market financial consultant may be invited to certify the prospectus;⁴⁰³ and • Specific information must be disclosed at every step of the issue process.
Open subscription ⁴⁰⁴	<ul style="list-style-type: none"> • The decision to issue securities, and the report on the results thereof are subject to state registration; • It is mandatory to prepare and register a prospectus with contents prescribed by law; • The prospectus must be certified by a securities market financial consultant;⁴⁰⁵ and • Specific information must be disclosed at every step of the issue process.

Securities Issue Procedure



The Decision to Place Different Types of Securities

Shares	The GMS generally approves the decision.
Convertible bonds (or options)	The GMS (or the Supervisory Board, if specified in the charter) approves the decision. ⁴⁰⁷
Bonds	The Supervisory Board approves the decision, unless otherwise provided for by the charter. ⁴⁰⁸ The decision-making procedure for issuing bonds may be simpler than for other securities, which may serve as an additional incentive for their use. However, the charter can provide for stricter approval requirements, for example, with regard to specific types of bonds.

Adopting the Decision to Issue Securities

- The decision to issue securities is made by the **Supervisory Board** based on, and **in compliance with, the decision to place them**; this decision must then be **adopted within six months**
 - This requirement is important, in as much as the decision to issue securities becomes the main document certifying the rights of the holders of securities and of the company
- Although the contents of the decision depend on the circumstances of each issue, it must generally include **information** on the
 - Issuing company, i.e. full name, place of business, and postal address;
 - Decision to place securities, i.e. date and the decision-making body;
 - Decision to issue securities, i.e. date and the decision-making body;
 - Securities to be issued, i.e. type and class, their nominal value, the rights of the holders of securities, and number to be issued; and
 - Conditions of the placement.
- In the case of **bonds**, the decision must include information on the:
 - Form of bond redemption (monetary or in-kind);
 - Maturity date (and details regarding early redemption, where applicable);
 - Other terms of redemption, i.e. the value of the payment, if early redemption is possible;
 - If convertible bonds are issued, the procedure for their conversion into shares;
 - If secured bonds are issued, information on the security or the person submitting the guarantee and the conditions of the guarantee; and
 - If registered bonds or bonds in paper form are issued with mandatory centralized storage, the date of record for compiling the bondholders list

Approving the Prospectus

The Contents of the Prospectus

1. Information about members of the company's governing bodies, the bank accounts of the company, the bodies controlling its financial and economic activities, the External Auditor, the Independent Appraiser, and other persons signing the prospectus;
2. Information on the terms and procedures for the issue of securities, including information on the volume, terms, and procedures;
3. Essential information about the financial health of the company, including risk factors;
4. Detailed information on the issuing company;
5. Information on the financial and economic activities of the issuing company;
6. Detailed information about the members of the governing bodies of the issuing company, and the bodies controlling its financial and economic activities; and
7. Information on the company's shareholders, related parties, and related party transactions

Prospectus Approval and Certification

- The Supervisory Board must approve the prospectus
- The following individuals must sign the prospectus to certify the truthfulness and completeness of the information included therein:
 - The General Director and the Chief Accountant (or the person fulfilling this function);
 - The External Auditor;
 - The Independent Appraiser in circumstances envisaged by the FCSM; and
 - The (securities market) financial consultant in the case of a public offering, except with regard to information already certified by the External Auditor and/or the Independent Appraiser

Procedures for the Registration of Securities Issues

Step 1: The FCSM reviews submitted documents.

Step 2: The FCSM makes a decision on the state registration within 30 days of the date when all documents have been received, or conducts an investigation of the truthfulness of the information, included in the prospectus and other required documents, of no longer than 30 days.

Step 3.a: The FCSM grants a registration number to each issue.

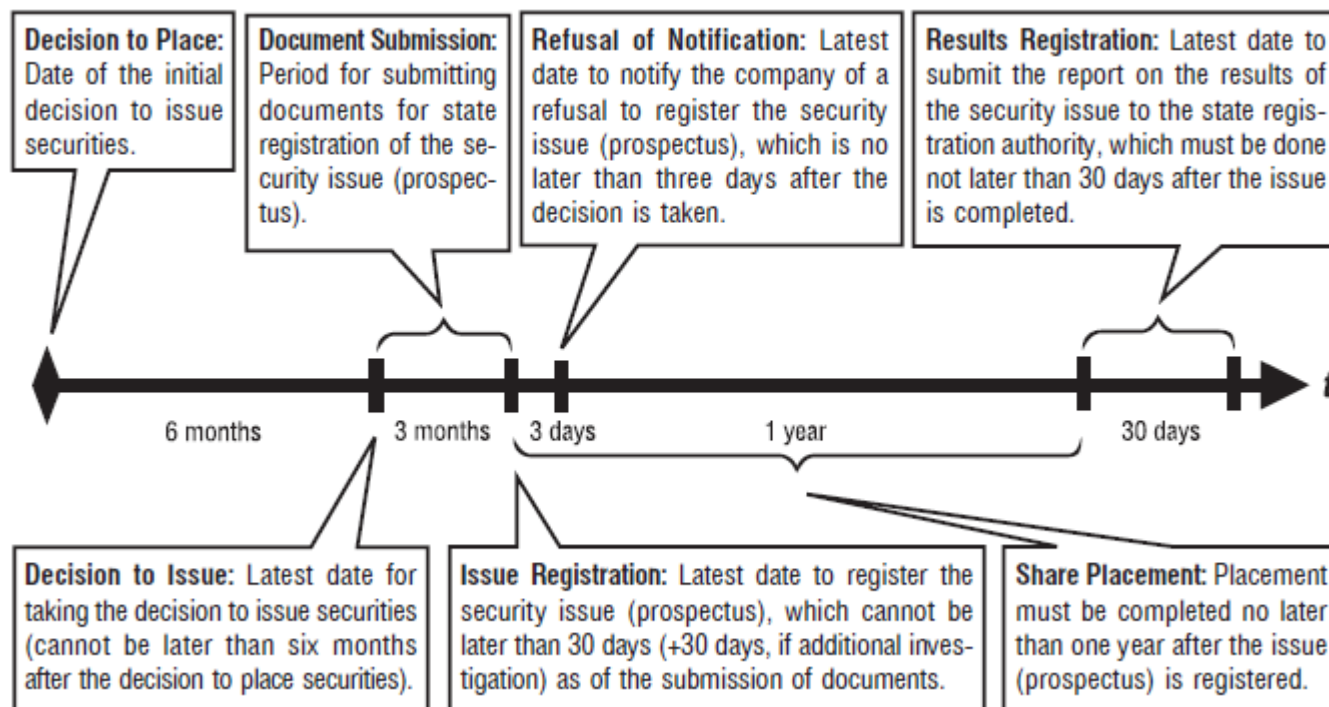
Step 3.b: The FCSM can refuse the registration under certain circumstances.

Step 3.c: The issuing company may be granted an opportunity to remedy technical shortcomings.

Step 4: In the case of refusal, the FCSM notifies the company of its refusal within three days of adopting the decision.

Step 5: In the case of refusal, the issuing company has the right to appeal in court.

Share Issue Time Chart



Issue Price

Security	Price
Shares	<ul style="list-style-type: none"> The issue price must correspond to the market value.⁴⁴¹ An Independent Appraiser can determine the market value of shares. The use of an Appraiser is not mandatory when share prices are quoted; and The issue price cannot be lower than the nominal value. <p>When shareholders exercise pre-emptive rights, the price cannot be lower than 90% of the market value.⁴⁴²</p>
Convertible bonds (or options)	<ul style="list-style-type: none"> The issue price must correspond to the market value;⁴⁴³ and The issue price cannot be lower than the nominal value of the shares into which they are to be converted.⁴⁴⁴ <p>In this case, similar to shares, shareholders, when exercising their pre-emptive right, can acquire convertible bonds at a price no more than 10% lower than the price determined for other investors.⁴⁴⁵</p>
Bonds	<ul style="list-style-type: none"> The issue price must correspond to the market value.⁴⁴⁶

Share Splits and Consolidations

The Procedure for Splitting and Consolidating Shares

Step 1: The Supervisory Board submits a proposal to the GMS agenda to split or consolidate.

Step 2: The GMS approves the decision to split or consolidate.

Step 3: The Supervisory Board makes a decision to issue shares.

Step 4: The FCSM registers the share issue.

Step 5: The company converts issued shares.

Step 6: The FCSM registers the report on the results of the issue.

Step 7: The company amends the charter.

Step 8: The state registration authority registers the charter amendments.

Decision to Split or Consolidate Shares

- The **GMS** approves the decision to split or consolidate shares by a **simple majority** vote of participating shareholders
- If the decision to split shares results in charter amendments that limit the rights of preferred shareholders, separate votes of the following groups of shareholders are required with the following majorities:
 - A 3/4-majority vote of preferred shareholders whose rights are being limited, unless the charter requires a greater number of votes; and
 - A 3/4-majority vote of all other shareholders participating in the GMS

	Required	Optional
Consolidation ⁴⁵⁷	<ul style="list-style-type: none"> • Types and classes of shares to be consolidated; • The number of shares of each type and class to be consolidated into one share of the same type and class (the consolidation ratio). The ratio must be a whole number. Fractions of a whole number are not allowed; and • The form of placement of shares (in this case the conversion of placed shares into shares of the same type and class but with a higher nominal value). 	<ul style="list-style-type: none"> • The date, or the procedure for determining the date, when shares must be converted; and • Other significant terms and conditions of the consolidation.
Split ⁴⁵⁸	<ul style="list-style-type: none"> • Types and classes of shares to be split; • The number of shares of each type and class into which one issued share of the same type and class will be split (the split ratio). The ratio must be a whole number; and • The form of placement of shares (in this case, the conversion of issued shares into shares of the same type and class but with a lower nominal value). 	<ul style="list-style-type: none"> • The date, or the procedure for determining the date, when shares must be converted; and • Other significant terms and conditions of the split.

MATERIAL CORPORATE TRANSACTIONS

Extraordinary Transactions

Definition

A transaction (or several related transactions) is extraordinary when it meets all five of the following criteria:

The Nature of the Transaction

- The transaction directly or indirectly involves the acquisition, sale, or the possibility of sale of corporate assets;
- The transaction is a credit, pledge, or guarantee transaction; and
- The transaction is not related to the issue of additional common shares or securities convertible into common shares

The Value of the Transaction

- The assets involved have a value of 25% or more of the book value of the company's assets as determined by financial statements as of the most recent reporting date

The Relation of the Transaction to the Business of the Company

- The transaction is not being carried out in the “ordinary course of business” of the company

Definition (cont'd)

Related Transactions

- Two or more related transactions involving company's assets totaling 25% or more of the book value of the company's assets are considered a single extraordinary transaction
- Factors that determine whether several transactions must be considered as a single transaction extraordinary

Additional Charter Criteria

- The charter may define additional transactions that should be treated as extraordinary transactions

Exempted Transactions

- Under certain circumstances, companies are not required to follow all the approval procedures for concluding an extraordinary transaction
- Exceptions are granted when the extraordinary transaction is:
 - Executed by a company owned by a single shareholder who is also the General Director; or
 - Simultaneously a related party transaction. In this case, the company follows the procedures for related party transactions

Determining a Transaction's Value

Type of Transaction	Basis of Valuation
Sale, or the possibility of a sale, of assets	The value of assets involved in the transaction as determined by reference to the company's financial statements as of the most recent reporting date before the transaction.
Acquisition of assets	The acquisition price of assets involved in the transaction.

Best Practices: An Independent Appraiser should assist the Supervisory Board in determining the value of assets.⁴⁷⁵

The Approval of Extraordinary Transaction

Value of Assets	Approving Governing Body
Between 25% and 50% of the book value of the company's assets	The Supervisory Board ⁴⁷⁷
More than 50% of the book value of the company's assets	The General Meeting of Shareholders (GMS) ⁴⁷⁸

How Shareholders Can Protest Extraordinary Transactions

- If a shareholder does not agree with an extraordinary transaction conducted in full compliance with procedural requirements and the law, he may:
 - **Sell his shares.** Practically, this is only possible if the company's shares are liquid, i.e. there are interested buyers and shareholders are able to sell their shares at a fair price; or
 - **Demand redemption of shares in part or whole:** Shareholders have the right to have their shares redeemed by the company

Disclosure Requirements

- Companies are required to include information on extraordinary transactions in their annual reports

Control Transactions

Affiliated Persons

An affiliated person is defined as an individual or a legal entity that can influence the activity of legal entities, and/or individual engaged in entrepreneurial activity

Consequently, the following are considered affiliated persons of a legal entity:

- A Supervisory Board member;
- The General Director or an Executive Board member;
- The External Manager;
- Any legal entity that is part of the same group of companies⁴⁹⁵ to which the company belongs;
- Any individual who possesses more than 20% of votes in the company;
- Any legal entity, in which the company possesses 20% of votes; and
- A member of the Supervisory Board or the Executive Board, the General Director, and the External Manager of other members of the company's Financial and Industrial Group (FIG)

The following persons are considered affiliated persons of an individual, e.g. Individual (B) who carries out entrepreneurial activity:

- Any individual or legal entity belonging to the same group to which Individual (B) belongs; and
- Any legal entity in which Individual (B) has more than 20% of voting shares (participatory shares, units)

Pre-Acquisition Requirements

An individual, legal entity, or group of affiliated persons must notify the company in writing when they intend to acquire:

- 30% or more of the company's common shares; or
- Shares that will lead to the ownership of 30% or more of common shares
- This notification must be sent to the company no earlier than 90 days before the shares will be acquired, and no later than 30 days before the acquisition

Best Practices: If notice of an intent to acquire control is received by the company, the Supervisory Board should:⁴⁹⁸

- Have an Independent Appraiser determine the market value of common shares; and
- Inform shareholders of the possible consequences of the acquisition of shares.

This should enable shareholders to make an informed decision regarding whether to sell their shares to the person who intends to acquire a controlling block.

Post-Acquisition Requirements

A far more important procedural requirement found in the Company Law arises after the acquisition of a controlling block of shares

Mandatory Bid

- The controlling shareholder (or group of affiliated persons) is obliged to make an offer to purchase or buyout the remaining common shares (and other securities convertible into common shares) within 30 days after the acquisition of a controlling block
- This “mandatory bid” or “fair price requirement must be sent to all common shareholders in writing and include:
 - The name and address of the acquirer of the controlling block of shares;
 - The number of acquired common shares;
 - The price offered by the acquirer to shareholders (the buyout price);
 - The period for accepting the mandatory bid; and
 - The period for making the payment for shares and convertible securities.
- Non-controlling shareholders have the right to accept the mandatory bid in no later than 30 days after they receive it. If accepted, the controlling shareholder is obliged to purchase the shares and/or convertible securities within 15 days of the non-controlling shareholder’s acceptance of the mandatory bid at the buyout price

Post-Acquisition Requirements (cont'd)

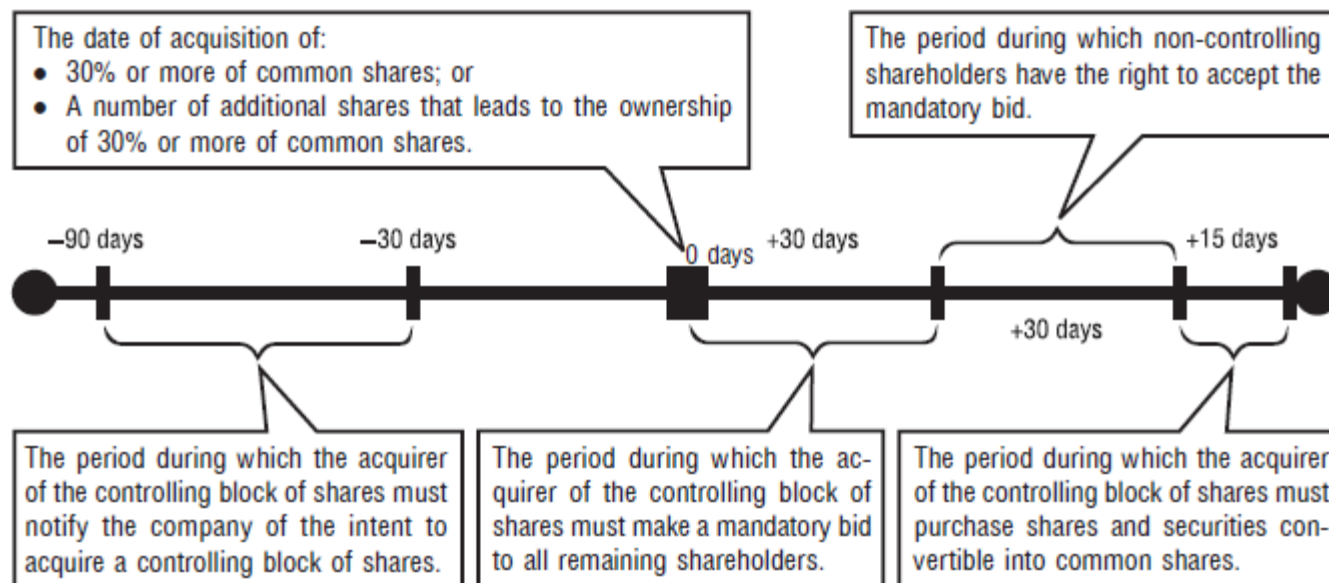
The Buyout Price

- The buyout price for common shares and convertible securities must be at market value
- At the same time, the price for common shares may not be below their average weighted market price over the six months preceding the acquisition

Waiver of the Mandatory Bid Requirement

- The acquirer of a controlling block of shares can be released from the obligation to make the mandatory bid in the following two situations:
 - **Charter exemption.** The charter may exempt the acquirer from the obligation to make a mandatory bid in relation to control transactions; or
 - **Transaction-specific exemption.** The GMS can exempt the acquirer from the obligation to make a mandatory bid. A simple majority vote of participating shareholders (excluding the votes of the acquirer of the controlling block of shares) is sufficient

Time Chart for a Control Transaction



Anti-Takeover Measures

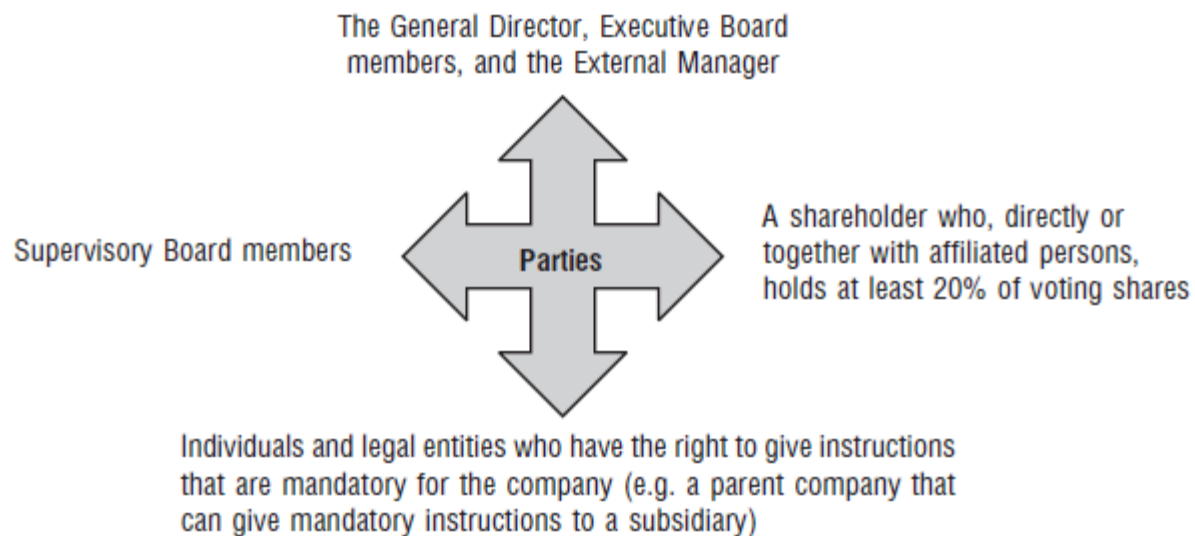
- There are many legitimate reasons for opposing takeovers
- Potential acquirers may not have credible business plans, or the price offered for the company may be too low
- However, managers and directors often oppose takeovers simply because they will likely lose their jobs

Best Practices: A guiding principle for Supervisory Boards to follow is for companies to never employ anti-takeover measures at the expense of shareholder rights and interests. There are different takeover defenses available under various legal systems. In any given jurisdiction, the application of various defenses depends on the national legal and regulatory framework, and judicial practice. Anti-takeover measures range from pre-takeover to post-takeover mechanisms. Some of the more famous measures include poison pills, crown jewels, golden parachutes, and white knights.⁵⁰⁷

The Supervisory Board should not issue additional shares, convertible securities, or securities that entitle holders to purchase shares of the company during the acquisition period of a controlling block of shares (even if an issue is authorized by the charter).⁵⁰⁸

Related Party Transactions

Potentially Related Parties

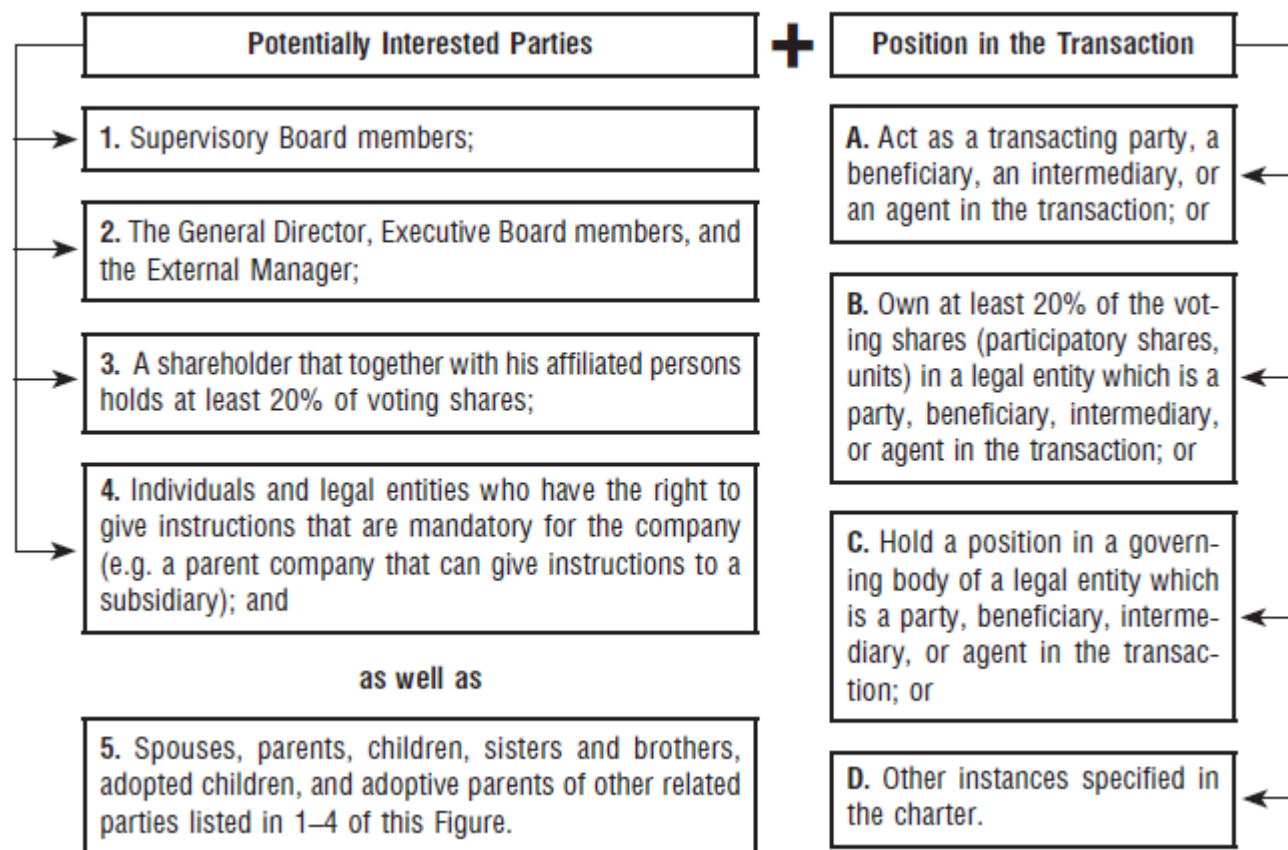


Related Parties Are Involved in the Transaction

For the purposes of defining related party transactions, the parties specified in the previous section as well as spouses, parents, children, sisters and brothers, adopted children, and adoptive parents of other potentially related parties must be involved in the transaction in one of the following capacities:

- Act as a transacting party, a beneficiary, an intermediary, or an agent in the transaction;
- Own at least 20% of voting shares (participatory shares, units)⁵¹⁵ in a legal entity which is a party, beneficiary, intermediary, or agent in the transaction;
- Hold a position in a governing body of a legal entity which is a party, beneficiary, intermediary, or agent in the transaction; or
- Other instances specified in the charter

Components of Related Party Transactions



Exempted Transactions

Companies are not required to comply with approval procedures if:

- The transaction is executed by a company consisting of a single shareholder who is simultaneously the General Director;
- All shareholders are related parties in the transaction;
- The transaction is the exercise of pre-emptive rights by shareholders;
- The transaction is the buyback or the redemption of shares; or
- The transaction is a reorganization through merger (consolidation), and the other entity that participates in the merger (consolidation) owns more than 75% of voting shares of the company being reorganized

The Approval of Related Party Transaction

Nature of the Transaction	Approving Body
<ul style="list-style-type: none"> Value of assets involved in the sale (or the offer price) is 2% or more of the book value of the company's assets according to its financial statements for the last reporting period; or Transaction relates to the placement by subscription or a sale of shares that are more than 2% of issued common shares and convertible securities; or Transaction relates to the placement by subscription or a sale of convertible securities that are more than 2% of issued common shares and convertible securities. 	The GMS ⁵¹⁹
<ul style="list-style-type: none"> All other related party transactions. 	The Supervisory Board ⁵²⁰

Disclosure Requirements

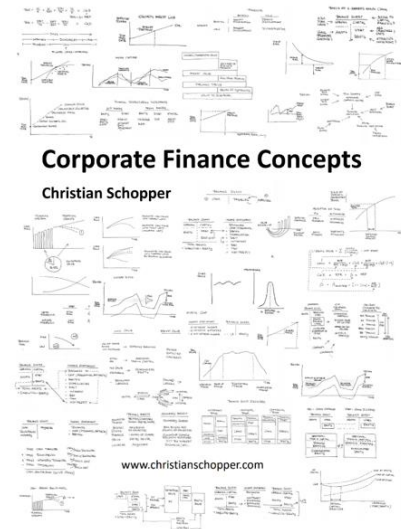
- The Company Law requires persons who are potential related parties to disclose information to the Supervisory Board, the Revision Commission, and the External Auditor regarding:
 - Legal entities in which they, either independently or together with affiliated persons, own 20% or more of voting shares (participatory shares, units);
 - Legal entities in which they hold managerial positions; and
 - Pending

Invalidation of Related Party Transactions

- A court may nullify a related party transaction in a legal action filed by the company or a shareholder if procedural requirements were violated.

Contact

For more concepts click on:



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