

Best Practice Guidelines for Board Members

AIJA-Seminar in Barcelona on Liability of Board Members
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Beat Brechbühl

Best Practice Guidelines for Board Members

Agenda

- Introduction
- Presentations
 - a) Laurence Jacques (B) Board Membership
 - b) Thomas Miller (G) Organization
 - c) Beat Mumenthaler (CH) Decision Making Process
 - d) Nick Surber (NL) Rights of the Board Members
 - e) Pauliina Tenhunen (F) Duties of the Board Members
- 3. Case Studies
- 4. Wrap up

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What's up on Board (s) ?

- 31% of the Directors don't know the Code of Best Practice
- 31% of the companies have insufficient Organizational Regulations
- 41% of the companies don't have a comprehensive strategy
- 94% of the directors are recruited in the personal network
- 70 % of the companies don't have institutional performance measurement
- 70 % of the boards don't engage in continuous education of directors
- 70 % of the companies don't have a fully fledged MIS
- 63 % of the companies don't have a communication concept

* 2006-Survey of University of Lucerne on **Private** Swiss Companies

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What's up on Board (s) ?

- Listed companies set “Best Practice” Standards
- The larger the companies, the better the results
- Positive trend (improvements since survey in 2004)
- Key elements missing....on the way to a Best Practice Standard:
 - Comprehensive Strategy
 - Recruitment Process
 - Risk Management Tools
 - Communication Guidelines

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Case 1

- Mr. P. is an important shareholder and executive board member of LOGITECH a logistics company listed at the UK regulated market. In 2002 LOGITECH entered into a joint venture with Swiss Pills, a Swiss pharmaceutical company listed at the SWX Swiss Exchange, acquired a 20% stake of Swiss Pills (5% ceiling for voting rights of any shareholder was lifted by the Board based on exemption for “strategic shareholders”) and Mr. P. was elected on the Board of Swiss Pills. The parties concluded a shareholders agreement providing for a stand still during the JV and for a right of first refusal in favor of Swiss Pills if LOGITECH wants to sell its stake. The JV is not very successful; in the beginning of 2007, the Chairman/CEO of Swiss Pills considers to terminate it; he wants to discuss the pros and cons in the Finance Committee (because Mr. P. is not a member of this committee) and thereafter in a board meeting without Mr. P.

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Case 2

- Add4U AG is a German outdoor advertising company listed at the “Geregelter Markt”. Mr. B. is a 5% shareholder and board member; Mr. T. is co-owner of a Spanish advertising company doing business in Europe (except for the German market) and holds (indirectly) 20% of Add4U AG.

The board is currently reviewing its strategy because a Private Equity Firm approached the chairman and made a non binding and friendly offer to submit a take-over bid. Mr. B. supports such a change in strategy because it would maximize the shareholder value. Mr. T., who was confidentially contacted by the chairman, is opposed to it because it would infringe “the company’s interests”. He threatens not to reelect the board members in the next shareholders meeting and alternatively suggests to focus on a growth strategy in the emerging Eastern European Markets.

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Case 3

- Mr. Van Gülden is the chairman of a large but family owned Dutch company manufacturing spare parts for cars. Its CEO just stepped down for personal reasons. Mr. Van Gülden is willing to take over this executive position as well. The vice chairman, a very good friend of him, suggests to the board of directors to promote Mr. Van Gülden as a CEO and to offer him a salary package of a fix salary of EUR 2.5 million per year, a target bonus of EUR 4 million per year (50% in shares) and a severance pay in case of change of control of 2 years salary.

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Case 4

- From form to spirit – how a “state of the art” board meeting should be structured

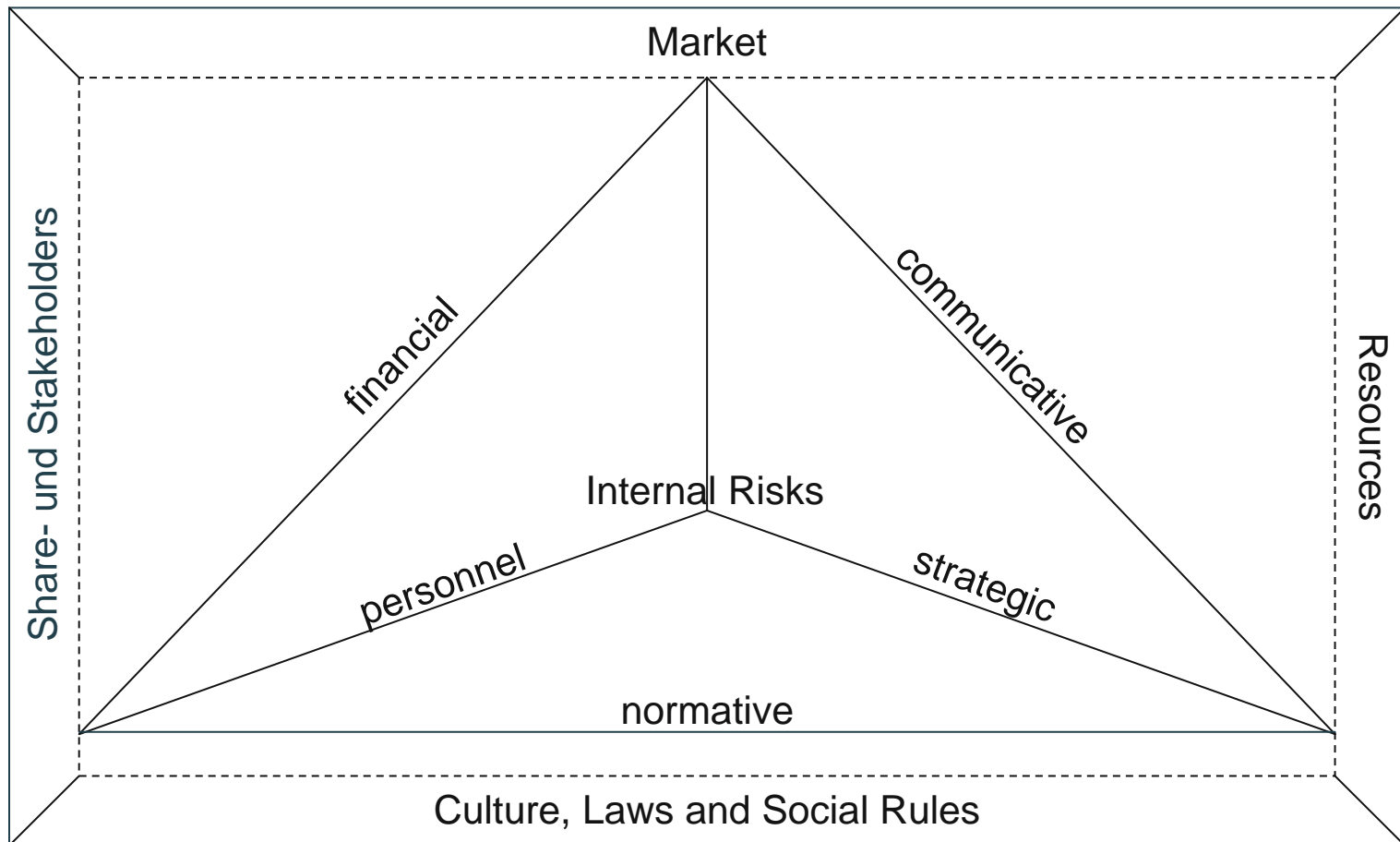
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“Wrap up / Conclusions”

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The 6 Functions of the Board



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1. The Normative Function

■ Articles of Association

- Up to date
- transparent
- shareholder friendly (notice periods, quorums etc)

■ By-Laws / Organizational Regulations

- Specific
- Tasks, competences and grants of authority

■ Shareholders Meeting

- Shareholders ledger
- Agenda including proposals and reasoning of the Board
- Efficiency vs. equal treatment
- Information

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2. The Strategic Function

■ Strategy

- Defining the Strategy (and the strategies)
- Actions, responsibilities, controlling

■ Structure

- Structure follows strategy

■ Culture

- Code of Ethics (?)
- Measurement

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3. The Leadership Function

■ Decisions

- “You have to accept risks. Those who avoid them are taking the biggest risk of all”

■ Risk management

- “Risk-appetite review” of board members
- Risk assessment

■ Power sharing

- CEO = Chairman ?
- Committees (Audit, Compensation, Nomination; Strategy? Market?)

■ Management of Meetings by the chairman

- Standard Agenda (time management, controlling based on minutes, no ad hoc papers)
- No Micromanagement !!!!

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4. The Financial Function

■ Organization

- Instruments, Quality
- MIS and Key Figures

■ Planning

- Budgeting (timely, process)
- Mid-term financial plan

■ Controlling

- Internal Controlling System vs. Internal Auditors
- Auditor (Management Letter, Meeting)
- Audit Committee

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5. The Personnel Function

■ Board Profile

- Number, Key competences, executive / independent, conflict of interests, time

■ Nomination

- Standard Procedure vs. FF(F)
- Nomination Committee?

■ Evaluation and Education

- 1x year: Self evaluation
- Systematically (program) – do you know the company?

■ Compensation

- Basic rules and yearly decision
- Flat, performance, time

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6. The Communicative Function

■ Communication Guidelines

- Internal and external Communication (Who? When? What? To whom? How?)

■ Website and Annual Report

- Transparency
- Value of Information

Thank you!

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