



Board remuneration

swissVR Monitor I/2023

February 2023





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About the survey

This is the 13th edition of swissVR Monitor and is based on a survey of 453 members of Swiss company Boards of Directors. The aim of the survey is to gauge Board members' attitudes to the outlook for the economy and business and to corporate governance issues. This edition also focuses specifically on the topic of remuneration for Board members.

The swissVR Monitor survey was conducted by swissVR in collaboration with Deloitte AG and the Lucerne University of Applied Sciences and Arts between 2 December 2022 and 3 January 2023. A total of 453 Board members took part, representing listed companies as well as small and medium-sized companies (SMEs) from every major sector of the Swiss economy. 32% of the participants are from large companies, 33% from medium-sized companies and 35% from small companies.

The aim of swissVR Monitor is to offer Board members a benchmark for comparing the issues facing their own Board with those facing their counterparts on other company Boards. swissVR Monitor also aims to share with the wider public the ways in which Board members perceive their role and the current economic situation.

A note on the methodology

When comparing survey results over time, please note that the sample may have changed. Percentage figures are rounded to add up to 100. Company size is determined by workforce: small companies have between 1 and 49 employees, medium-sized companies have between 50 and 249 employees, and large companies have 250 or more employees.



Foreword

Dear reader,

We are delighted to bring you swissVR Monitor I/2023, a survey conducted jointly by swissVR, Deloitte and the Lucerne University of Applied Sciences and Arts. For this edition, we surveyed 453 members of company Boards of Directors across Switzerland. The findings reflect their attitudes to the economy and the outlook for business, and to relevant areas of their own role.

The special focus topic in this 13th edition is the remuneration of Board members. Remuneration is influenced by a number of different factors, including time spent on Board activities, the responsibility and risk involved in a Board mandate, the requirements of Board members (specialist expertise, experience and networks), and market comparability. Both internal and external stakeholders are also increasingly concerned with the level and appropriateness of Board remuneration, often triggering debate both within companies and within the wider public arena. For all these reasons, Boards need to look more closely at their company's remuneration structures from time to time and to reflect on them.

swissVR Monitor last looked at Board remuneration in the II/2018 edition. There has been little change since that survey, so the picture this edition paints is robust.

Alongside the survey findings, swissVR Monitor I/2023 conducted interviews on the focus topic with:

- Manuel Leuthold, President of the Board of Directors of Banque Cantonale de Genève, compenswiss, Varia US Properties, Enki Capital, NID and Patrimonium Asset Management
- Philippe Weber, member of the Board of Directors and of the Remuneration Committee of EDAG Engineering Group, Leonteq, Medacta and Poly-Peptide


We would like to thank our interviewees and all the Board members who participated in this swissVR Monitor. We hope you will find this report an informative and enjoyable read.

Cornelia Ritz Bossicard
President swissVR

Reto Savoia
CEO Deloitte Schweiz

Prof. Dr. Christoph Lengwiler
Lecturer (external) IFZ/Lucerne
University of Applied Sciences and Arts

Summary and key findings

 **21%**
of Board members rate the prospects for the Swiss economy over the next 12 months as negative.

Board members remain downbeat about the economic outlook

Board members remain downbeat in their rating of the economic, sector and business outlook over the next 12 months. More respondents rate the prospects for the Swiss economy as negative than positive. On average, however, their rating of the outlook for their sector and their company is largely unchanged. Factors causing uncertainty include ongoing geopolitical risks (especially the war in Ukraine), continuing high inflation and the tightening of monetary policy by central banks.

 **74%**
think that time spent on Board activities is a major criterion for determining Board remuneration.

Time spent the main criterion for determining Board remuneration

Time spent on Board activities is the most frequently cited criterion for determining remuneration. This is followed by the responsibility and risk involved and the demands on Board members (experience, specialist expertise and networks). Other important criteria include fairness of remuneration and distribution within the Board, the size and financial strength of the company, and market comparability.

 **42%**
of Board members report being paid between CHF 15,000 and CHF 50,000.

Wide diversity of Board remuneration

The payment received by Board members varies widely, from less than CHF 5,000 to more than CHF 100,000. There is a clear correlation between company size and Board remuneration: the larger the company, the higher the payment its Board members receive. An individual's role on the Board also influences their remuneration. There has been a modest uptick in levels of remuneration since swissVR Monitor II/2018, when this topic was last surveyed.

 **61%**
receive only a flat-rate payment.

Flat-rate payments the most common remuneration model

Board members report many different remuneration models, but flat-rate payments are the most common. Other models, such as a flat-rate payment plus a payment per meeting attended or a flat-rate payment plus a variable component based on company profits, are rare. Around two Board members in five receive an expenses payment alongside their remuneration; this is usually based on a flat-rate sum, but in some cases, Board members submit individual claims.

 **95%**
of Board members play an active part in determining corporate strategy.

Board members actively involved in the strategy process

Survey responses indicate that almost all Board members play an active part in determining their company's corporate strategy. Around nine-tenths of all Board members say that they have enough time to discuss strategic issues and that individual Board members feel they are adept at tackling strategic issues. Board members also feel that management reporting to the Board is appropriate and meaningful. Very few Board members feel they are not given full and timely information.

 **36%**
have worked on formulating a new corporate strategy over the past 12 months.

Formulating new corporate strategy a focus for Board members

Formulating a new corporate strategy was the most important issue facing Board members over the past 12 months, followed by responding to market developments/behaviour of competitors and risk management. Digitalisation/robotics/automation and improving efficiency/optimising internal processes are cited by fewer respondents than in earlier surveys. Talent management, including recruitment and retention, is seen as the most important issue facing Boards over the next 12 months.

↘ Outlook



Economic, sector and business outlook

There has been little change in Board members' rating of the **prospects for the Swiss economy, their sector and their company** over the next 12 months compared with swissVR Monitor II/2022 (see Chart 1). Ratings continue to be influenced by a number of factors that are causing uncertainty for companies: ongoing geopolitical risks, such as the war in Ukraine, the energy crisis, persistent high inflation, and the resulting tightening of monetary policy by many central banks.

Overall, Board members' rating of the **economic outlook** is rather pessimistic: just 16% of Board members rate the prospects for the Swiss economy over the next 12 months as positive, compared with 21% who rate them as negative; two-thirds (63%) are neutral. These findings mirror other current economic forecasts, which predict only modest growth for the Swiss economy and stagflation as the most likely scenario for 2023.

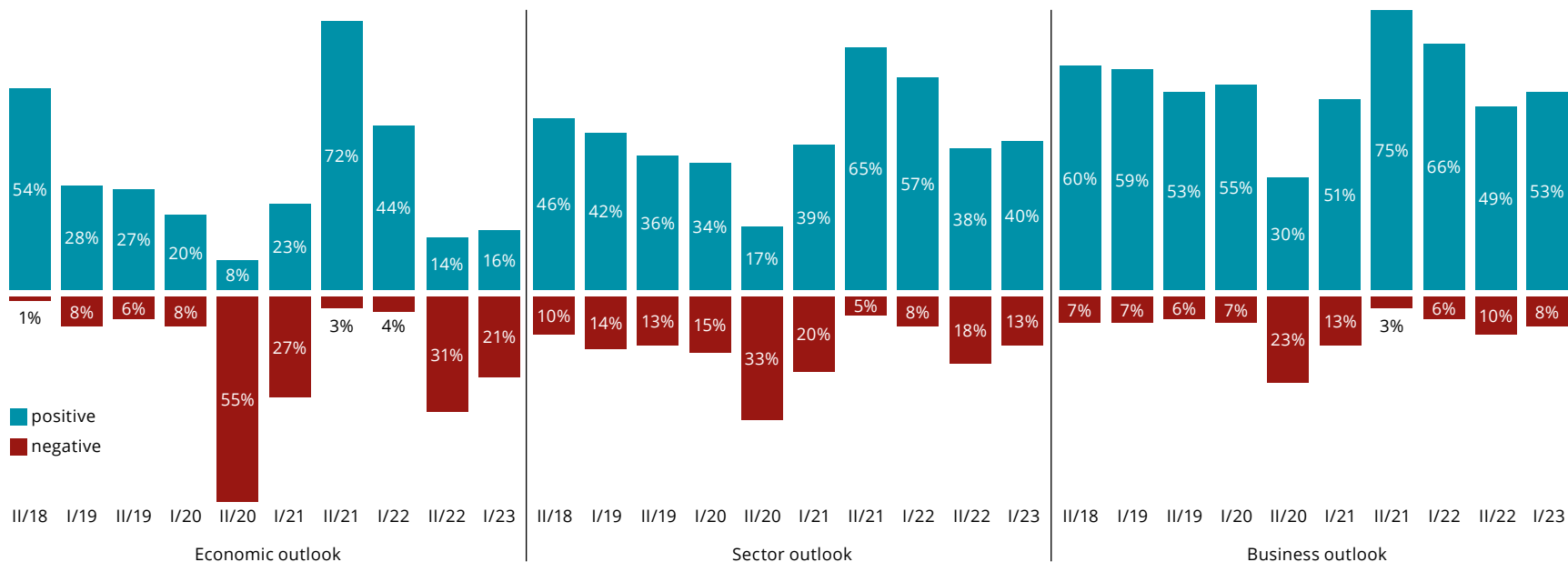
Board members are more optimistic about the **sector outlook**, with assessments largely unchanged from the previous survey (swissVR Monitor II/2022). 40% of Board members rate the prospects for their sector as positive compared with 13% who rate them as negative. Board members in the information and communications technology (ICT) sector remain particularly upbeat: 59% rate the outlook as positive compared with 7% who rate it as negative. This may reflect ongoing moves by Swiss companies to digitalise. Board members in the retail and consumer goods sector, by contrast, are more pessimistic than the average: 28% rate the outlook as negative, more than twice as many as those who rate it as positive (12%). This is likely to reflect the relatively high increase in the cost of raw materials and intermediate goods.

Just over half of all Board members (53%) rate the **business outlook** for their company as positive, with only 8% rating their company's prospects over the next 12 months as negative. These findings, too, broadly mirror those of swissVR Monitor II/2022. Once again, Board members in companies from the ICT sector are particularly optimistic: 68% rate the business

outlook as positive compared with just 7% who rate it as negative. Board members from the retail and consumer goods sector, by contrast, are less likely than on average to rate the business outlook as positive (42% compared with 19% rating it as negative).

Chart 1. Economic, sector and business outlook over the next 12 months [swissVR Monitor II/2018 to I/2023]

*Question: How do you rate the prospects for the Swiss economy / sector / your company over the next 12 months?
 Note: Neutral answers are reflected in the difference between the sum of positive and negative answers.*



↓ Focus topic: Board remuneration



Remuneration for Board members is complex, with several issues to consider. Serving on a Board of Directors is time-consuming, and the workload is increasing. Board members also need relevant expertise and experience. If companies are to recruit and retain skilled individuals to serve on their Board, remuneration must be sustainable, motivate Board members and also take account of additional factors, such as market comparability. Stakeholders, meanwhile, are increasingly demanding transparency from companies about Board remuneration. In this context, the level of payments and the differentials between companies are giving rise to debate both within companies and in the public arena. For this reason, every Board should periodically reconsider its remuneration policy. This edition of swissVR Monitor therefore focuses on Board remuneration and considers its findings in relation to the previous survey on this topic in swissVR Monitor II/2018.

General statements on Board remuneration

Board members are very positive about internal transparency and perceive Board remuneration as fair (see Chart 2). The vast majority (93%) **know what remuneration other Board members are receiving**, while nearly as many (92%) **think the allocation within the Board is fair**. Around nine Board members in ten (91%) also think that **good governance requires detailed information to be provided to shareholders about Board remuneration**. Slightly fewer (86%) think **remuneration reflects the diverse roles that Board members play**. Board members' views on these statements remain largely unchanged from those reported in swissVR Monitor II/2018.

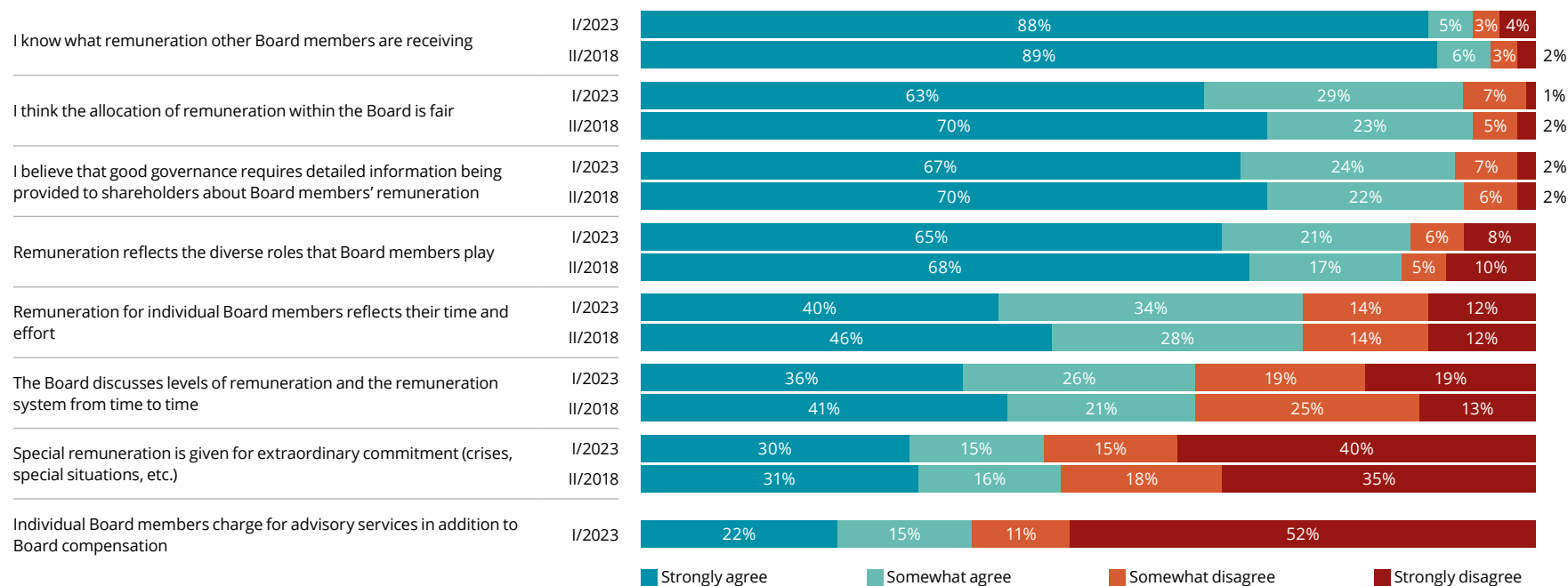
Board members are less likely to agree with the statement that **remuneration for individual Board members reflects their time and effort**: 74% strongly agree or somewhat agree with this statement, leaving just over a quarter somewhat disagreeing or strongly disagreeing. This seems to reflect the findings of earlier surveys (swissVR Monitor I/2022, I/2020 and I/2018): around 55% of Board members believe that the time spent on Board activities has increased over the last 12 months. However, levels of remuneration fail to reflect this in most cases and are only slightly higher than those reported in swissVR Monitor II/2018.

The findings also reveal that around two in five Boards do not regularly discuss remuneration: just 62% of Board members agree that **their Board discusses levels of remuneration and the remuneration system from time to time**.

Overall, Board members representing small companies are slightly more likely to agree with these statements than those representing large companies. This may reflect the fact that smaller companies usually have smaller Boards, enhancing internal transparency and the perceived fairness of Board remuneration.

Chart 2. General statements on Board compensation

Question: Please indicate your response to the following statements on remuneration for Board members in your company.



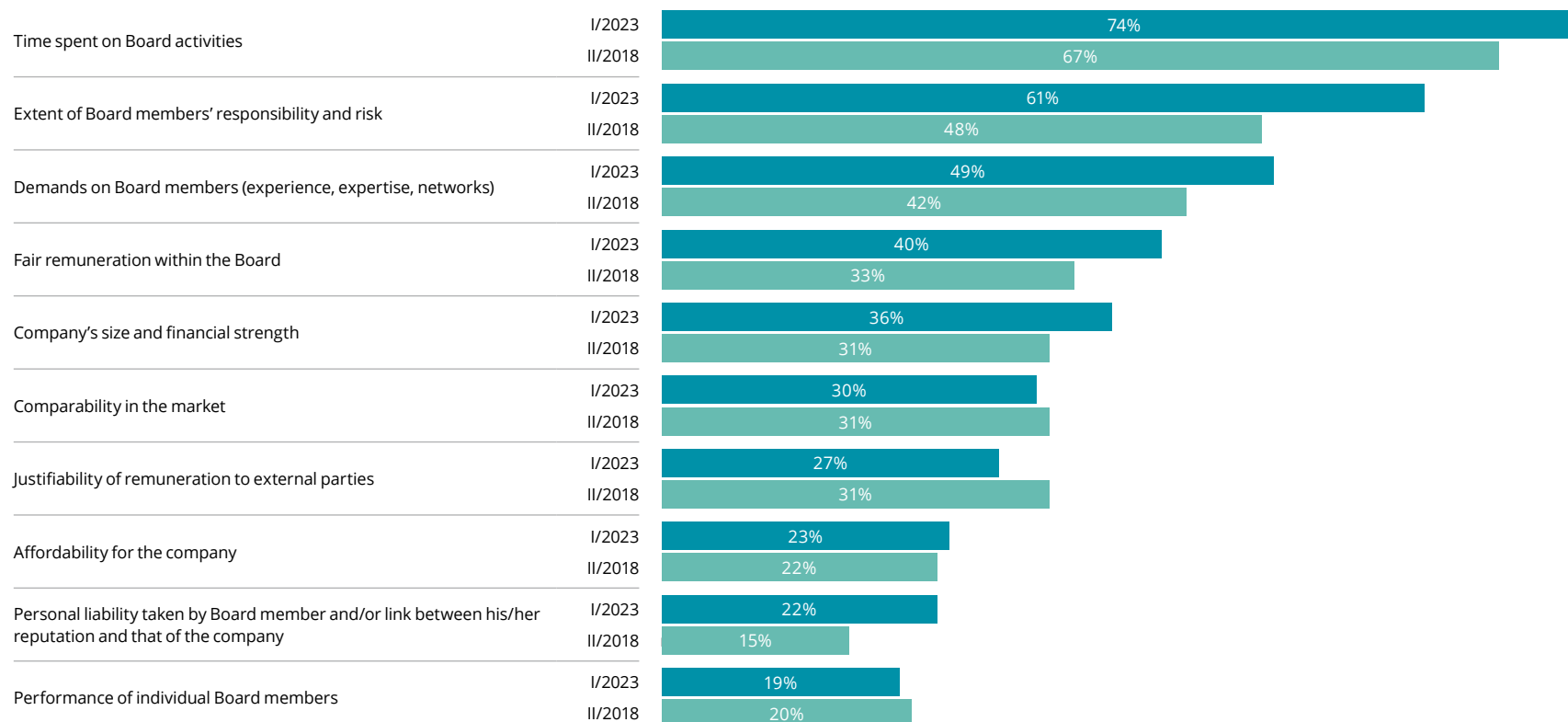
Criteria for determining remuneration

A number of criteria are used to determine Board remuneration (see Chart 3). Reflecting the findings of swissVR Monitor II/2018, Board members most frequently cite **time spent on Board activities** as one of the most important criteria (74% of Board members surveyed).

The **extent of Board members' responsibility and risk** and the **demands on Board members (experience, expertise and networks)** are the next most frequently cited criteria (61% and 49% respectively). Company size influences respondents' assessment of responsibility and risk, with Board members representing large companies markedly more likely to cite this criterion than those representing small companies (71% and 53% respectively).

Chart 3. Criteria determining remuneration (top 10)

Question: Which criteria you do think are most important in determining remuneration for Board members? Please select up to 5 criteria.



Further important criteria in determining Board remuneration include **fair remuneration within the Board** (40%), **the company's size and financial strength** (36%) and **comparability in the market** (30%). Less than 30 per cent of respondents cite any of the remaining criteria as being important for determining Board remuneration.

Level of remuneration and responsibility for setting remuneration

The survey findings reveal a wide range of remuneration for Board members, which is influenced both by company size and by the role individuals play on the Board (see Chart 4). 7% of Board members receive less than CHF 5,000 for their mandate (including those who receive no payment at all). At the other end of the range, 14% receive more than CHF 100,000.

The distribution of remuneration remains largely unchanged from five years ago (swissVR Monitor II/2018), although there is a modest upward trend: 27% of Board members receive less than CHF 15,000 (down 5 percentage points from 32% in 2018), while 42% receive between CHF 15,000 and CHF 50,000 (up by 5 percentage points from 37% in 2018). This may indicate growth in remuneration, though it is important to note that the 2018 and 2022 samples are not identical, so the findings may also reflect differing distributions according to company size, role and sector.

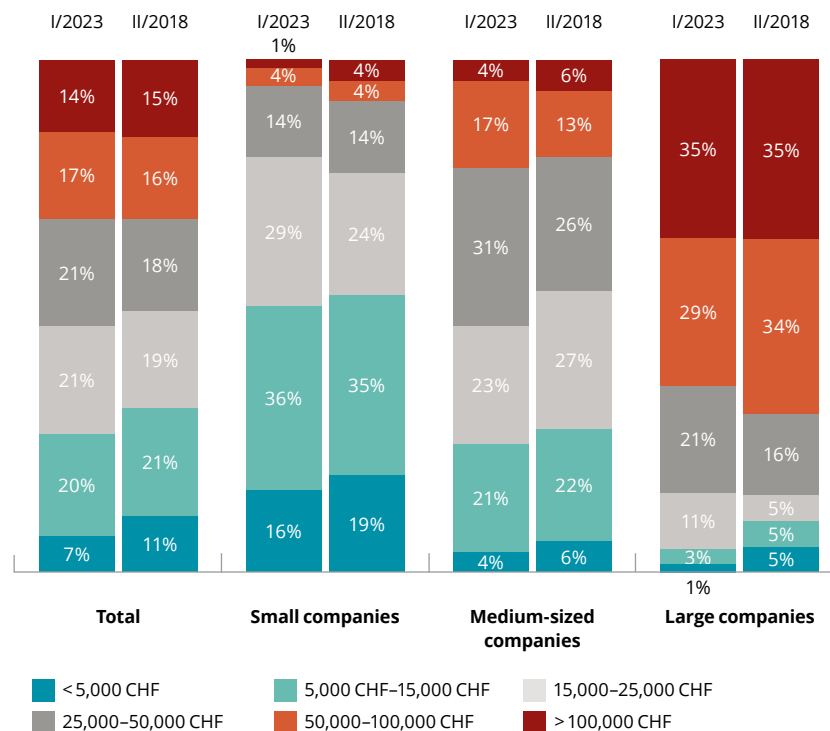
A closer analysis of Board remuneration by company size shows the same pattern as five years ago, when swissVR Monitor last surveyed this issue: the larger the company, the higher the payments. The median remuneration of Presidents of the Board and of Board members delegated by management is one band higher than for non-executive Board members:

- In small companies, the median remuneration of non-executive Board members is between CHF 5,000 and CHF 15,000. The President of the Board and delegated members receive between CHF 15,000 and CHF 25,000.

- In medium-sized companies, the median remuneration of non-executive Board members is between CHF 15,000 and CHF 25,000. The President of the Board and delegated members receive between CHF 25,000 and CHF 50,000.
- In large companies, the median remuneration of non-executive Board members is between CHF 50,000 and CHF 75,000. The President of the Board and delegated members receive between CHF 75,000 and CHF 100,000.

Chart 4. Remuneration level

Question: Approximately what total level of remuneration do you receive for your work on the Board of Directors every year?



Several bodies within a company may be responsible for determining the remuneration of Board members (see Chart 5). In interpreting the findings, however, it should be noted that some survey respondents might have misunderstood the distinction between responsibility for determining remuneration and responsibility for actually setting payments.

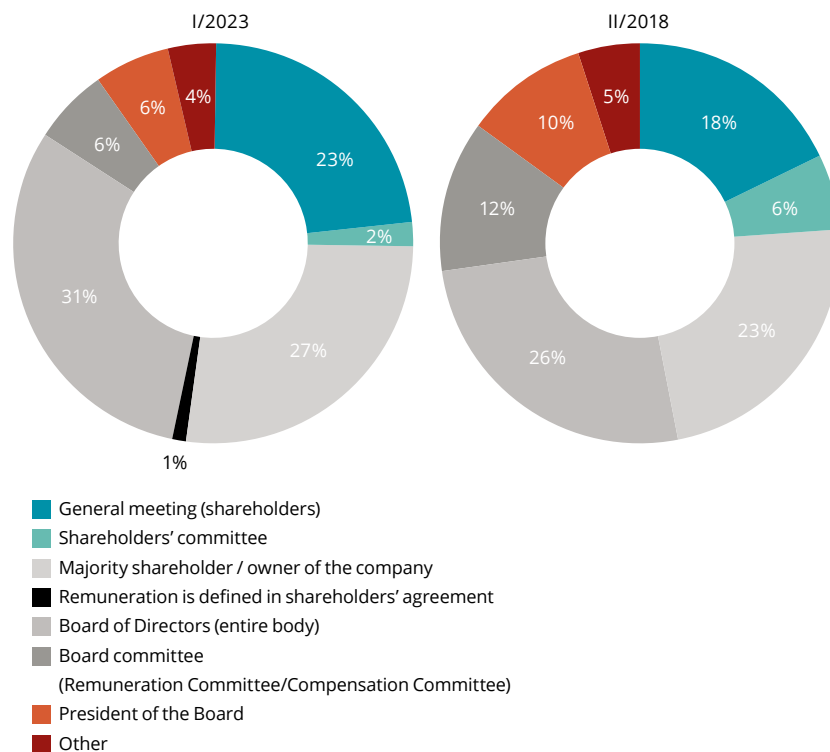
As in swissVR Monitor II/2018, around half of Board members (52%) report that the shareholders are responsible for determining Board remuneration. 27% say this is the **majority shareholder/owner of the company**,

2% a **shareholders' committee** and 23% the **general meeting (of shareholders)**.

Fewer than half of Board members (43%) report that the Board itself fulfils this responsibility. Around one-third (31%) say that **the entire Board of Directors** fulfils this responsibility, 6% cite a **Board committee (Remuneration Committee/Compensation Committee)**, and the same percentage cite the **President of the Board**.

Chart 5. Responsibility for proposing level of remuneration

Question: Who proposes the amount of Board remuneration in your company?



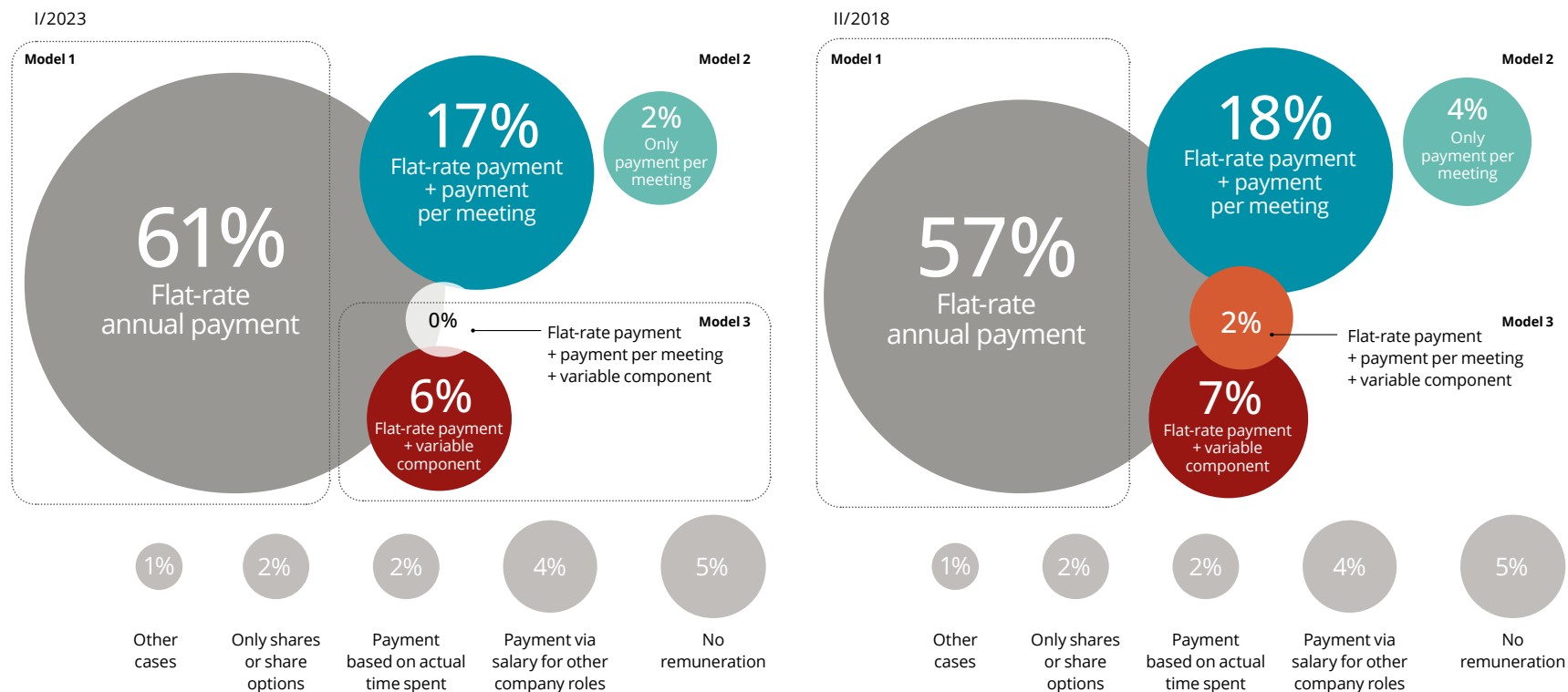
Remuneration models and types of payment

Chart 6 lists the most common remuneration models for Board members. By far the most common is an **annual flat-rate payment** (61% of Board members); this payment generally reflects the role Board members play on their Board and, therefore, also the time they spend on their mandate (Model 1).

The second most common model is a **payment per meeting**, either in **combination with a flat-rate payment** (17% of Board members) or **as the sole form of payment** (2%). In Model 3, Board members receive a **flat-rate payment plus a variable component based on company performance** (6%). None of the Board members surveyed report receiving a **combination of all three elements (flat-rate payment, payment per meeting and variable component)**. Indeed, very few Board members re-

Chart 6. Remuneration models

Question: How are you remunerated for your work on the Board of Directors?

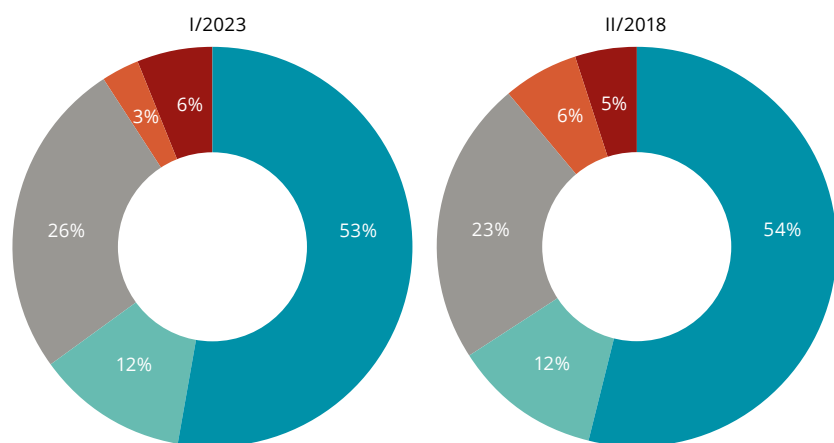


ceive a variable component. This could reflect corporate governance recommendations that the Board remuneration model should not make use of the same incentives as that for the company's management team.

5% of Board members receive **no remuneration**, 4% receive payment **via their salary for other company role(s)**, 2% **are paid based on the actual time spent** and 2% **receive only shares or share options**. Other cases make up the remaining 1%. There have been few, if any, changes from swissVR Monitor II/2018 with regard to the relative frequency of these remuneration models.

Chart 7. Type of payment

Question: How do you receive payment?



- Direct payment, with social security contributions deducted (AHV/IV/ALV/EO/FAK)
- Direct payment, with social security contributions (AHV/IV/ALV/EO/FAK) and contributions to company pension scheme deducted
- Payment to my own company (GmbH/AG), including VAT
- Payment to my employer (third party), including VAT
- Other (please specify)

Two Board members in five (40%) report that they also receive reimbursement of expenses, either as a **flat-rate payment** (23%) or as **compensation for actual time spent** (17%).

A Board member's individual performance is rarely cited as an explicit criterion for or component of remuneration (just 2% of responses). One reason for this may be that the performance of the Board is assessed as a whole and it is often (very) difficult to quantify the precise contribution made by any individual member.

A majority of Board members surveyed (53%) report that they receive a **direct payment, with social security contributions deducted (AHV/IV/ALV/EO/FAK)** (see Chart 7). Around half as many (26%) receive a **payment to their own company (GmbH/AG), including VAT**. The remaining Board members receive either a **direct payment, with social security contributions and company pension scheme contributions deducted** (12%), a **payment to their employer (third party), including VAT** (3%) or **some other form of payment** (6%). The frequency of these types of payment remains largely unchanged from the findings of swissVR Monitor II/2018.

Strategic and structural issues facing the Board of Directors

Strategy and corporate goals

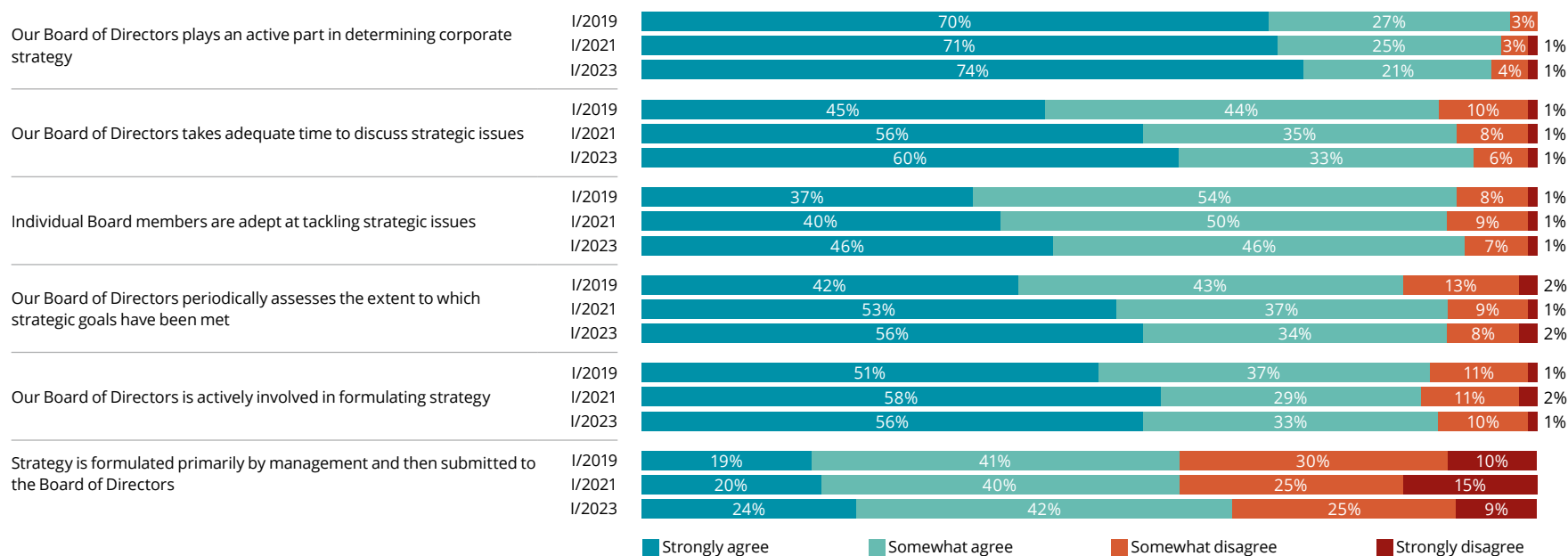
Strategy and corporate goals are core issues for the Board of Directors, so swissVR Monitor regularly surveys Board members on these issues (see Chart 8). As expected, almost all respondents (95%) agree that their Board **plays an active part in determining corporate strategy**. Almost as many report that their Board **takes adequate time to discuss strategic issues** and that **individual Board members are adept at tackling strategic issues** (93% and 92% respectively). Nine out of ten respondents agree that

their Board **periodically assesses the extent to which strategic goals have been met** (90%) and that the Board **is actively involved in formulating strategy** (89%). The larger the company, the more likely the Board is periodically to assess the extent to which strategic goals have been met. This may reflect the fact that large companies and their Board take a more formal approach to strategic monitoring than small companies do.

Overall, the picture that emerges is similar to the findings of swissVR Monitor I/2019 and I/2021. The percentage of participants strongly agree-

Chart 8. Strategy and corporate goals

Question: Please rate your response to the following statements:



ing or somewhat agreeing with each of the statements is very high, with a modest upward trend, so there is little scope for further improvement. The Board members surveyed rate the formulation of corporate strategy and the company's main corporate goals as very positive. However, in interpreting these findings, readers should bear in mind that similar proportions of Board members only 'somewhat agree' with the relevant statement.

Information and reporting

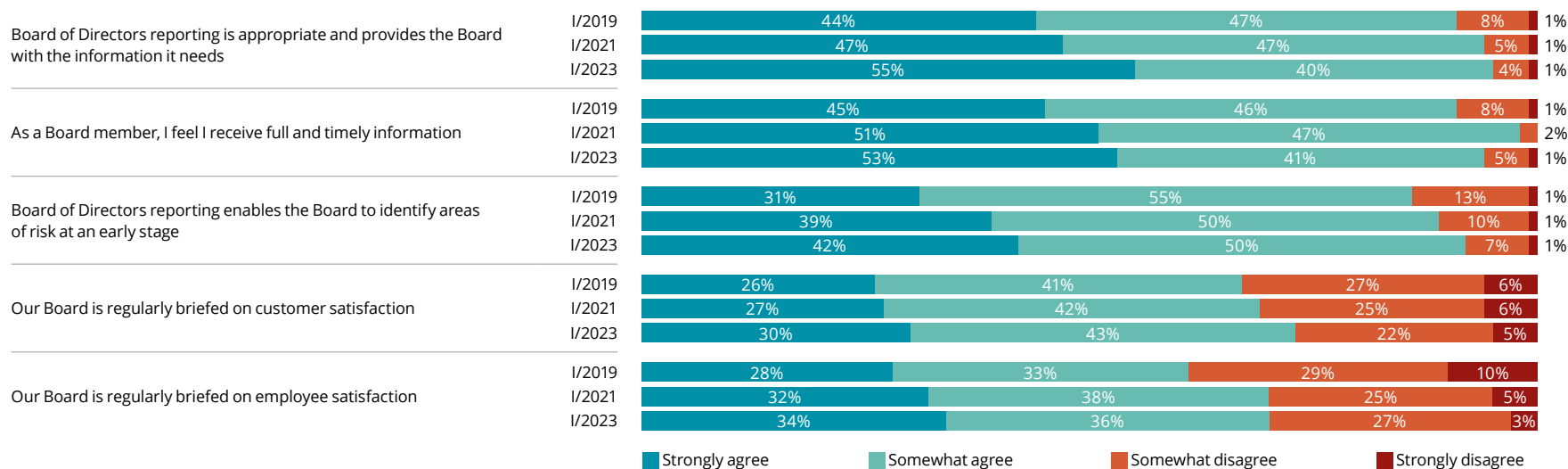
Board members also report on information and reporting within their company (see Chart 9). The highest proportion (95%) strongly agree or somewhat agree with the statement that **Board of Directors reporting is appropriate and provides the Board with the information it needs**. Almost the same percentage (94%) **agree that they receive full and timely information**, while 92% report that **Board of Directors reporting**

enables the Board to identify areas of risk at an early stage. Agreement with other statements is noticeably lower, with 73% reporting that the Board is **regularly briefed on customer satisfaction** and 70% that it is **regularly briefed on employee satisfaction**. However, here too, the overall positive picture is qualified by the fact that a very large number of respondents only somewhat agree with each of these statements.

The overall picture is very similar to that of swissVR Monitor I/2019 and I/2021, although it is noticeable that the percentage of respondents who strongly agree with each statement is in all cases somewhat higher than in previous surveys. This is particularly marked for the statement relating to reporting being appropriate and providing the Board with the information it needs: the I/2023 finding is 8 percentage points higher than in 2021 and 11 percentage points higher than in 2019. This scale of improvement may be attributable to the fact that Board members are becoming more professional and are making greater demands of management in terms of information and appropriate reporting.

Chart 9. Information and reporting

Question: Please rate your response to the following statements:



Key issues for the Board of Directors

Boards of Directors tackle a wide range of issues. Chart 10 illustrates how they ranked the importance of these issues over the last 12 months and the issues they expect to be important over the next 12 months.


Board members cite **formulating a new corporate strategy** as one of the most important issues their Board has had to tackle over the last 12 months (36% of responses). This was also the most frequently cited issue

in swissVR Monitor II/2022. However, Board members are less likely to cite it as one of the most important issues they will have to tackle over the next 12 months, ranking it ninth with 19% of responses.

34% of Board members report that **responding to market developments/behaviour by competitors** has been a major issue over the past 12 months. This is probably the result primarily of factors causing uncertainty, such as ongoing geopolitical risks and inflation coupled with tighter monetary policy.

Chart 10. Key issues for the Board of Directors

Questions: What have been the most important issues that your Board of Directors has had to tackle over the last 12 months?
In your view, what will be the most important issues that your Board of Directors will have to tackle over the next 12 months?

	Rank I/2023		Rank II/2022	Next 12 months	Issues
	1 (36%)	▶	1 (36%)	9 (19%)	Formulating a new corporate strategy
	2 (34%)	▲	4 (27%)	2 (35%)	Responding to market developments / behaviour by competitors
	3 (33%)	▲	6 (26%)	4 (27%)	Risk management
	4 (28%)	▼	2 (34%)	1 (36%)	Talent (recruitment, retention, etc.)
	5 (26%)	▲	8 (21%)	6 (24%)	Sustainability / corporate social responsibility
	6 (25%)	▼	3 (31%)	5 (25%)	Digitalisation / robotics / automation
	7 (24%)	▲	– (17%)	8 (20%)	HR challenges at management level
	8 (23%)	▲	– (19%)	– (17%)	Corporate transactions (acquisitions, cooperation arrangements and mergers)
	9 (21%)	▼	4 (27%)	3 (33%)	Improving efficiency / optimising internal processes
	10 (18%)	▼	8 (21%)	– (11%)	Compliance (with legislation and internal codes of conduct)

“–” means “not one of the top-10 issues”.



Strategy



Organisation & processes



HR



Compliance & risk

The backdrop of current challenges also explains why **risk management** ranks third with 33% of Board member responses. It is unlikely that the risks and issues causing uncertainty will decrease in importance in the short term, so responding to market developments and behaviour by competitors (ranking second with 35% of responses) and risk management (ranking fourth with 27% of responses) remain the most important issues facing Boards over the next 12 months.

Talent management, ranked fourth in terms of issues tackled over the past 12 months (28% of responses) and is likely to be the most important issue Boards will face over the next 12 months (36% of responses). The relevance of this issue is largely the result of current skills and staff shortages, caused partly by demographic change. Board members in the pharma/life sciences/medtech/health and ICT sectors are particularly likely to cite talent management as one of the most important issues facing their Board over the last 12 months (40% and 45% respectively).

It is striking that **digitalisation/robotics/automation** and **improving efficiency/optimising internal processes** are cited relatively infrequently by survey respondents, since these were regularly top-ranking issues in previous surveys. They now rank sixth and ninth, with 25% and 21% of responses respectively. The priority Board members attach to them may have decreased as the focus has shifted to risk factors and factors causing uncertainty for companies. However, improving efficiency/optimising internal processes ranks third in the issues Boards say they will have to tackle over the next 12 months, with 33% of responses.



Interviews

The criteria, decision-making and future prospects of Board remuneration

Manuel Leuthold, President of the Board of Banque Cantonale de Genève, compenswiss, Varia US Properties, Enki Capital, NID and Patrimonium Asset Management

“I believe the Board’s long-term objective is to create value for the shareholders. If this objective is properly understood, it should encompass all stakeholders and all other major long-term dimensions.”

swissVR Monitor: What do you rate as the most important criteria for determining Board remuneration (time spent, responsibility and risk, etc.)?

Manuel Leuthold: The most important criterion is the responsibility linked to the role of member of the Board of Directors. This responsibility mainly depends on the level of risk that Board members face. This varies widely and reflects various factors: the size of the company (turnover and balance sheet), its leverage, the type of activities it is involved in, the size of its workforce, the country in which it operates, the statutory and regulatory framework, and whether it is independent or part of a group of companies that provides support and guidance. And of course, Board members in listed companies face more risks and constraints than those in non-listed companies. Remuneration also needs to reflect the time individuals spend on Board activities and the scope of their role within the Board, such as committee membership and additional roles, such as Secretary, President or Vice-President of the Board. Finally, Board members are not allowed to serve on other company Boards in the same sector to



Manuel Leuthold holds a master’s degree in economics and a master’s degree in law from the University of Geneva. He spent 27 years with UBS, holding a number of positions. As a member of the Executive Committee of UBS Switzerland, he headed the Corporate and Institutional Clients business unit in Switzerland and was then Group Chief Administrative Officer of the Edmond de Rothschild Group for around four years. Since 2016, Manuel Leuthold has served as an independent Board member. He is President of the Board of compenswiss (the Swiss Federal Social Security Funds) and of the Board of Banque Cantonale de Genève. He also serves on the Board of a number of other companies and organisations.

prevent conflicts of interest. This should also be a criterion, especially in relation to mandates on smaller Boards.

swissVR Monitor: What role do long-term goals play when it comes to performance-based Board remuneration? We’re thinking of sustainability/ESG, for example.

Manuel Leuthold: I believe the Board’s long-term objective is to create value for the shareholders. If this objective is properly understood, it should encompass all stakeholders and all other major long-term dimensions: these include compliance with the law and regulation, environmental issues, motivating employees, talent recruitment, putting clients and their needs front and centre of the company’s activity, being active members of their communities, and creating a positive and solid culture based on values. Splitting the profit generated between shareholders, employees,

the state (via taxes), clients and communities is one of the most important and challenging tasks a Board has to undertake.

A good and sound way of including a variable dimension in Board remuneration in the long term is to offer Board members an opportunity each year to buy a fixed number of company shares at a discounted price. Board members who have no faith in the future of the company will not take up this opportunity and will probably leave their role sooner or later. The remaining members will have to invest, demonstrate commitment and work hard to make their investment grow!

swissVR Monitor: Who within the company should propose payments for Board remuneration?

Manuel Leuthold: The Board should reach its own view on its responsibilities, its expertise and its workload and do some market research to align its remuneration with that of comparable competitors. It should define and discuss a model – as simple as possible – that aligns Board members' long-term interests with those of the company and then submit it to the AGM and shareholders.

swissVR Monitor: And who should take the final decision on Board remuneration?

Manuel Leuthold: Regulation increasingly requires the remuneration model and the remuneration packages for the Board and management to be validated annually by the shareholders' AGM. In Switzerland, the revised Code of Obligations includes this requirement from 1 January 2023.

swissVR Monitor: And how will Board remuneration systems change in the future?

Manuel Leuthold: I don't think remuneration models and levels of remuneration will change much overall. However, the market is moving. The current focus in recruitment of Board members is on diversity, but I think the pendulum will swing back in future to a greater emphasis on professionalism in managing increasing complexity and understanding companies' business models, the sectors within which they operate, statutory and regulatory constraints (including cross-border dimensions), financial

aspects and risk. I also expect there to be broader recognition of the profile of the 'professional Board member' alongside that of Board members who fulfil their mandate as an additional part-time activity. Finally, and as long as the labour market remains so tight, the shortage of experienced Board members will probably push levels of remuneration upwards.

The challenges, disclosure and statutory aspects of Board remuneration

Philippe Weber, member of the Board and the Compensation Committee at EDAG Engineering Group, Leonteq, Medacta and PolyPeptide

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swissVR Monitor: What are the dos and don'ts of Board compensation?

Philippe Weber: I think three aspects are crucial: appropriateness, independence and transparency. Remuneration should enable Board members to spend the time and take the care they need to fulfil their role of overseeing management, both in good and in bad times. In any assessment of appropriateness, benchmarks – comparisons with other companies, ideally of a comparable size and operating in the same sector – can help. However, such peer reviews must always reflect the fact that time spent on Board activities and the risk Board members face vary significantly from case to case and, specifically, reflect the size, complexity, financial strength and level of maturity and/or dynamic of the company, the regulatory environment, the ownership structure, the size of the Board and specialist expertise of its members, the number of committees and how often they meet, and the Board's relationship with the company's management team. Time spent on Board activities and the statutory and reputational risk to the Board are also likely to be higher in a listed company than a privately owned company. To sum up, the appropriateness of remuneration has to be assessed in the round; it is unhelpful simply to compare one company with others.



Philippe Weber studied law at the University of Zurich, where he also gained his PhD (summa cum laude) in 1995. After obtaining an LL.M. (with distinction) at the European University Institute in Fiesole, he joined Niederer Kraft Frey (NKF) and became a partner in 2002. Between 2015 and 2021, he was Managing Partner at NKF. As joint Head of NKF Transaction Teams, Philippe Weber regularly represents Swiss and international clients, including large corporates, investment banks, private equity, sovereign wealth funds and other investors, in complex major corporate/M&A and capital market transactions. He was, for example, the lead Swiss lawyer in the IPOs of Stadler Rail, SFS, VAT, Landis+Gyr, Medacta, PolyPeptide, EFG International and EPIC Suisse AG. Chambers Global and other rankings have for many years awarded Philippe Weber top tier ranking for M&A and capital markets. He has recently been named Swiss M&A Lawyer and Swiss Capital Markets Lawyer of the Year 2022 by Legalcommunity.

The criterion of independence is increasingly important for the Boards of listed companies. That's why I think it is important for non-executive Board members to maintain financial independence – that is, they should not be so dependent on their Board remuneration that they are in some way constrained in the way they operate. Companies also often want the Board to 'have skin in the game', so it may be sensible to allocate shares – perhaps with minimum holding periods – as part of a flat-rate payment. The Swiss Code of Best Practice for Corporate Governance, however, recommends that options and similar arrangements should not form part of Board remuneration. It also recommends that non-executive directors should not be paid a profit-related bonus and that such bonuses do not form part of long-term incentive plans.

The Swiss Corporate Law now integrates provisions from the Final Ordinance against Excessive Remuneration as a result of what is known as the ‘Minder initiative’, so listed companies are generally very transparent, and this transparency is a statutory requirement and enforced by law. In the case of non-listed companies, however, the Swiss Corporate Law makes very little provision for transparency, in particular under Article 697 ff. of the amended Swiss Code of Obligations. In individual cases, it is therefore advisable to include further-reaching provisions in the company statutes, for example in relation to having the Annual General Meeting determine or approve Board remuneration rather than the Board of Directors itself (as is actually laid down by law). In the case of larger non-listed companies, we could also envisage voluntary application of (parts of) the Swiss Code of Best Practice for Corporate Governance or of statutory rules for remuneration in listed companies. However, this would need to be considered very carefully and on a case-by-case basis.

swissVR Monitor: What are the biggest challenges in Board remuneration (appropriate rates/amounts, fair distribution, differences between Board members, etc.)?

Philippe Weber: I would echo a lot of my previous answer. In my experience, the differences between Board members’ remuneration are based on objective criteria and seldom give rise to debate. For example, it is common for all Board members to receive a flat-rate basic payment plus further payments for those with additional roles, such as member of the Executive Committee, Lead Independent Director, President or committee member. In some cases, companies also pay a fee per meeting attended. As mentioned earlier, I think variable remuneration for non-executive Board members is very much the exception.

Over recent years, Board members in many companies have faced unusually high workloads and spent much more time on their mandate as a result of the pandemic, the war in Ukraine, supply chain difficulties, interest rate changes and rising inflation, among other factors. You often hear the argument that when a company is going through tough times, Board remuneration should be reduced. Of course, this may be appropriate, but companies also need to bear in mind that most Board members receive a flat-rate payment. If Board members do not receive a variable bonus in good times, then it is only fair that in bad times, they receive an appropri-

ate payment for their workload and the higher statutory and reputational risk they often face.

swissVR Monitor: In your opinion, how important is the disclosure of Board remuneration to stakeholders such as shareholders?

Philippe Weber: Shareholders are the owners of the company and deserve transparency in relation to Board remuneration. Against that backdrop, I welcome Switzerland’s progressive rules for listed companies, which were introduced following the ‘Minder initiative’ and now form part of the amended Swiss Corporate Law. I think the requirement for transparency has improved the quality of the work done by Remuneration Committees in listed companies, for example by enhancing the importance of remuneration issues. Shareholders in non-listed companies have only limited statutory rights to information, and getting those rights upheld in the courts is an onerous process. In individual cases, such as large companies preparing to float on the stock market, it is advisable for Boards voluntarily to agree further-reaching information rights or include the specific rules applying to listed companies in their company statutes or in the shareholder agreement.

swissVR Monitor: How has the disclosure of Board remuneration evolved over time? Is there greater transparency today?

Philippe Weber: The remuneration reports of listed companies are becoming more and more detailed. This is partly a result of the law but also reflects the fact that shareholder representatives – proxy advisers – and other stakeholders now scrutinise remuneration reports with a view to influencing remuneration. This may, for example, take the form of recommendations for voting at the Annual General Meeting or detailed feedback to companies. Meanwhile, corporate governance ratings by such institutions, including of remuneration, are now a popular tool.

Interestingly, companies are sometimes punished by shareholder representatives or the media for voluntarily being more transparent about remuneration issues than is required by law or for being more transparent than peer companies. Companies therefore need to find the right level of transparency and to ensure continuity and consistency in reporting, so that the information disclosed remains comparable from year to year.

swissVR Monitor: From your perspective as a lawyer, what are the legal challenges facing Board remuneration?

Philippe Weber: The remuneration rules for listed companies laid down in the Code of Obligations are very detailed and very rigid, and individuals breaching them may incur substantial penalties, including personal liability and long-term reputational damage, so it is essential that they comply strictly with the rules. If a Board is uncertain about how to apply the rules – for example whether a payment can be classed as ‘remuneration’ or is covered by the company statutes – then it would be well advised to seek guidance. Mistakes happen, but if a Board can demonstrate that it has exercised due care, complied with the legal formalities, declared any conflicts of interest and been advised by an expert, it is much less likely to run the risk of legal action. However, statutory risk is only part of the equation; reputational damage is now just as important to companies. My recommendation in relation to critical issues is therefore not only to commission a legal analysis but also to conduct what we might call a ‘sniff test’. We now know of a number of cases where a Board has technically complied with the law but suffered long-term reputational damage as a result of not making the right judgement calls. In general terms, non-listed companies have greater flexibility, but it is important that there is no obvious imbalance between performance and reward and to note that, in some cases, unjustified payments may have to be repaid.

Another challenging issue is how social security rules handle remuneration for Board members. From a social security point of view, serving on a Board of Directors is normally considered as an employee-like gainful activity, so under Switzerland’s pension rules, remuneration is subject to the provisions of both the AHV (the so-called «first pillar» of Swiss social security) and BVG (the so-called «second pillar» of Swiss social security) schemes. The specific application of these provisions in individual cases can, however, be a very complex question, for example where Board members have their principal residence outside Switzerland, have other employment, and/or have already retired. In these and other complex cases, it is best to obtain expert advice, not least as breaching the rules can, in the worst-case scenario, result in Board members facing individual liability.

Although directors and officers insurance (D&O) is not in legal terms an element of remuneration, Boards should ensure that the company has an appropriate D&O policy in place. ‘Appropriate’ means not just the level of cover but also cover for aspects excluded under other policies, such as lawsuits arising in the US.

To sum up, Board remuneration in listed companies is very closely regulated, and compliance is closely monitored not only by shareholders but also by their representatives (proxy advisers), the media and other stakeholders. Failure by a Board of Directors to comply with the principles of appropriateness and transparency may not just have legal consequences but also cause reputational damage both to the company and to individual Board members. The law applying to non-listed companies is different, and they do not have to follow the same rules on transparency; in such companies, shareholders have responsibility for establishing rules, either contractually or in the company statutes.



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