



# Reguleringen af nominees og fuldmagter, empiri og konsekvenser

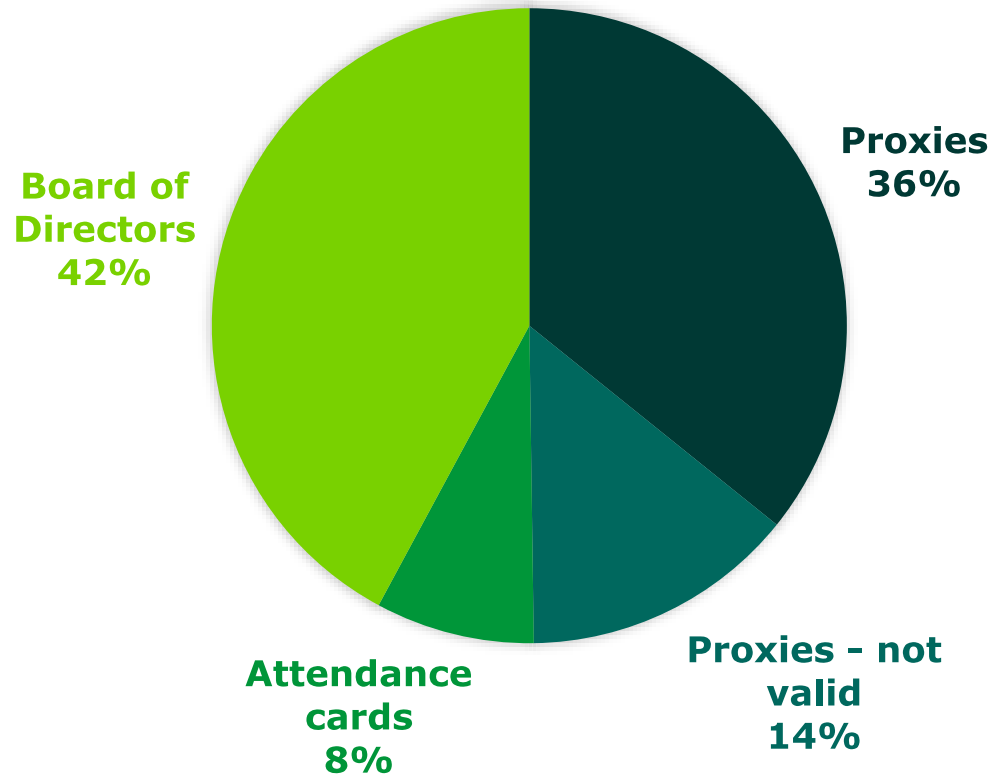
Maj 2023



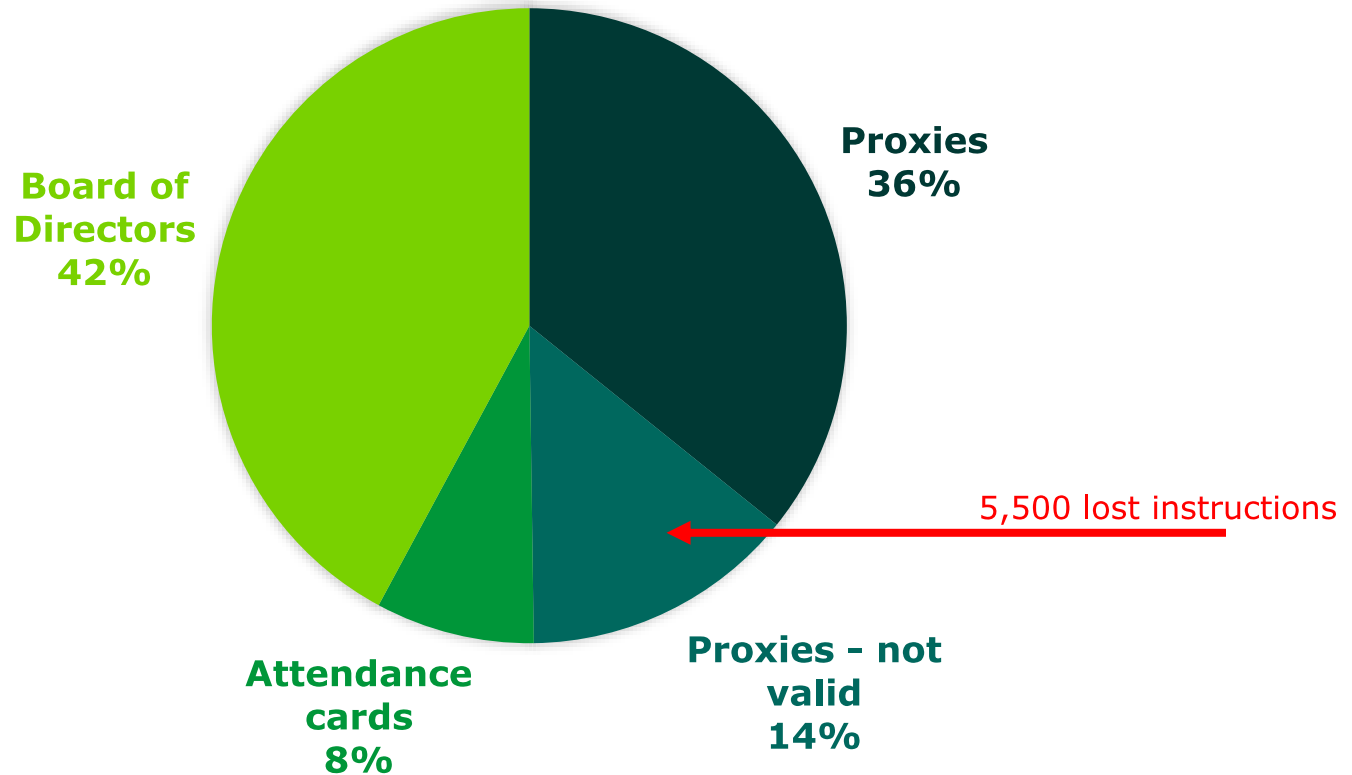
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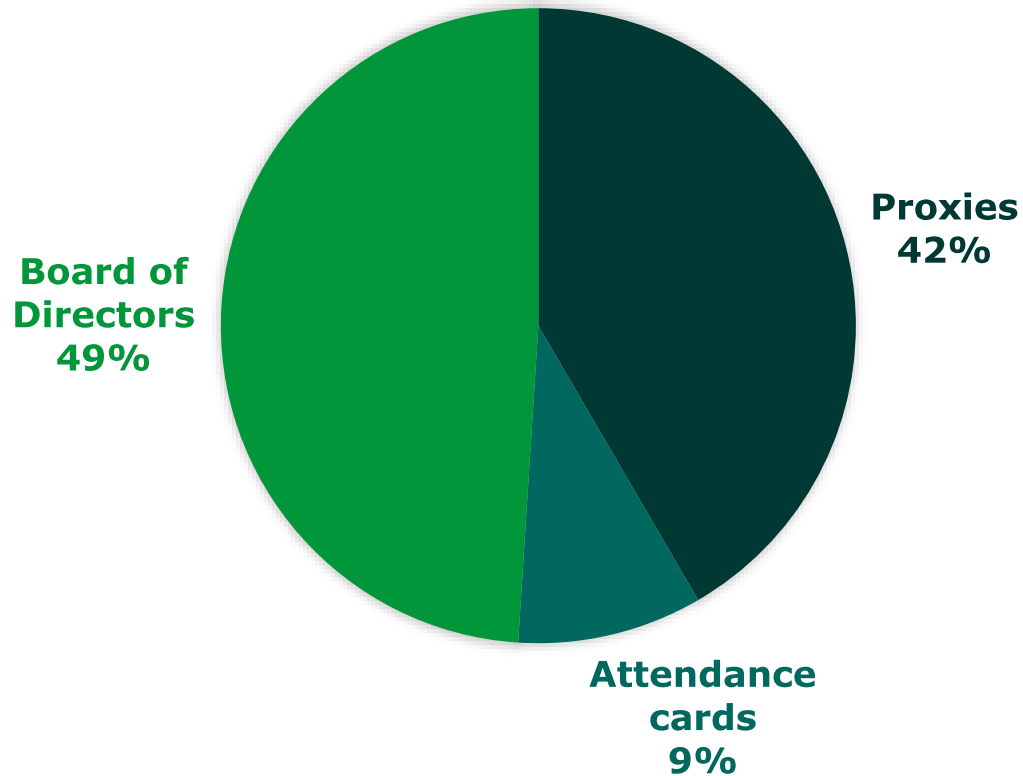
# How does share capital attend – 2022 GM season



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# What is new?

1

The nominee can cast votes in capacity as a shareholder and is no longer considered as a proxyholder



2

The Power of Attorney is no longer needed



3

The Nominee guarantees and is at the request of the company obliged to document as soon as possible that the nominee exercises the voting rights after express authorization and instructions from the owner of the share.



4

The change came into force on **1 July 2022**



## .. And what is still the same?

1

The nominee must have an agreement with the beneficial owner/shareholder "the explicit authorization and instruction"



2

The nominee must specify each of the underlying investors and their instructions



3

The nominee shall comply to the local implementation of the SRDII and the related EU regulation



# Changes to the Danish Companies Act

§ 80. Kapitalejere har ret til at møde på generalforsamlingen ved fuldmægtig. Fuldmægtigen skal fremlægge skriftlig og dateret fuldmagt. **En nominee, jf. § 104, stk. 3, anses ikke for at være fuldmægtig for de fysiske eller juridiske personer (klienter), som nominee'en i erhvervsmæssig sammenhæng handler på vegne af.** Stk. 2. En fuldmagt skal kunne tilbagekaldes til enhver tid. Tilbagekaldelsen skal ske skriftligt og kan ske ved henvendelse til kapitalselskabet. Kapitalejere kan udpege en fuldmægtig og tilbagekalde fuldmagten elektronisk

§ 104. En kapitlejer skal stemme samlet på sine kapitalandele, medmindre vedtægterne bestemmer andet, jf. dog stk. 3.

**Stk. 2.** Kapitalejere har mulighed for at brevstemme, dvs. for at stemme skriftligt, inden generalforsamlingen afholdes. I kapitalselskaber, der ikke har værdipapirer optaget til handel på et reguleret marked i et land inden for Den Europæiske Union eller i et land, som Unionen har indgået aftale med på det finansielle område, kan denne mulighed fraviges i kapitalselskabets vedtægter. Skriftlig stemmeafgivelse må kun underlægges de krav og begrænsninger, der er nødvendige for at sikre identifikation af kapitalejerne, og kun for så vidt de står i rimeligt forhold til dette mål.

**Stk. 3.** I aktieselskaber har en aktionær, som i erhvervsmæssig sammenhæng handler på vegne af andre fysiske eller **juridiske personer (klienter) (nominee), ret til at udøve stemmerettigheder på vegne af klienterne i tilknytning til aktier, som ikke er ejet af nominee'en, men som er registreret i ejerbogen i nominee'ens navn, og ret til at udøve sine stemmerettigheder i tilknytning til nogle af aktierne på en måde, der ikke er identisk med udøvelsen af stemmerettighederne i tilknytning til andre aktier.** Nominee'en, jf. 1. pkt., indestår for og er på begæring fra selskabet forpligtet til hurtigst muligt at dokumentere, at nominee'en udøver stemmerettighederne efter udtrykkelig bemyndigelse og instruks fra ejeren af aktien.

**80 (1)** Shareholders have the right to appear at the general meeting by proxy. The proxy holder must present written and dated power of attorney. **A nominee, see. Art. 104, 3, shall not be considered to be a proxy for the natural or legal persons (clients), as the nominee' in a business context acts on behalf of.** A power of attorney must be revocable at any time. The revocation must be made in writing and can be done by contacting the capital company. Shareholders may appoint a proxy holder and revoke the power of attorney electronically

**104(1)** Each shareholder must vote on his shares in aggregate, unless otherwise provided by the articles of association (but see subsection (3)).

**(2)** Shareholders may vote by post by casting their votes in writing before the general meeting. In capital companies that do not have securities admitted to trading on a regulated market in a country within the European Union or in a country with which the Union has entered into an agreement on the financial area, this possibility may be waived in the capital company's articles of associations. Written votes can only be subject to requirements and restrictions that are reasonably necessary to ensure identification of the shareholders.

**(3)** For public limited companies, where a shareholder acts in a professional capacity on behalf of other natural or **legal persons (clients) (nominee), the right to exercise voting rights on behalf of the clients in relation to shares which are not owned by the nominee but which are registered in the register of shareholders in the name of the nominee; and that shareholder will be entitled to distinguish between the different shares and exercise the voting rights attaching to the different shares in different ways. cf. point 1, the Nominee guarantees, and is at the request of the company obliged to document as soon as possible that the nominee exercises the voting rights after express authorization and instructions from the owner of the share..**

# The directives

2007/36/EC

**Article 13** Removal of certain impediments to the effective exercise of voting rights

This Article applies where a natural or legal person who is recognised as a shareholder by the applicable law acts in the course of a business on behalf of another natural or legal person (the client).

2. Where the applicable law imposes disclosure requirements as a prerequisite for the exercise of voting rights by a shareholder referred to in paragraph 1, such requirements shall not go beyond a list disclosing to the company the identity of each client and the number of shares voted on his behalf. 14.7.2007 Official Journal of the European Union L 184/23 EN

3. Where the applicable law imposes formal requirements on the authorisation of a shareholder referred to in paragraph 1 to exercise voting rights, or on voting instructions, such formal requirements shall not go beyond what is necessary to ensure the identification of the client, or the possibility of verifying the content of voting instructions, respectively, and is proportionate to achieving those objectives.

4. A shareholder referred to in paragraph 1 shall be permitted to cast votes attaching to some of the shares differently from votes attaching to the other shares. 5. Where the applicable law limits the number of persons whom a shareholder may appoint as proxy holders in accordance with Article 10(2), such limitation shall not prevent a shareholder referred to in paragraph 1 of this Article from granting a proxy to each of his clients or to any third party designated by a client.

(EU) 2017/828

Article 3c Facilitation of the exercise of shareholder rights

1. Member States shall ensure that the intermediaries facilitate the exercise of the rights by the shareholder, including the right to participate and vote in general meetings, which shall comprise at least one of the following: (a) the intermediary makes the necessary arrangements for the shareholder or a third party nominated by the shareholder to be able to exercise themselves the rights; (b) the intermediary exercises the rights flowing from the shares upon the explicit authorization and instruction of the shareholder and for the shareholder's benefit.

2. Member States shall ensure that when votes are cast electronically an electronic confirmation of receipt of the votes is sent to the person that casts the vote

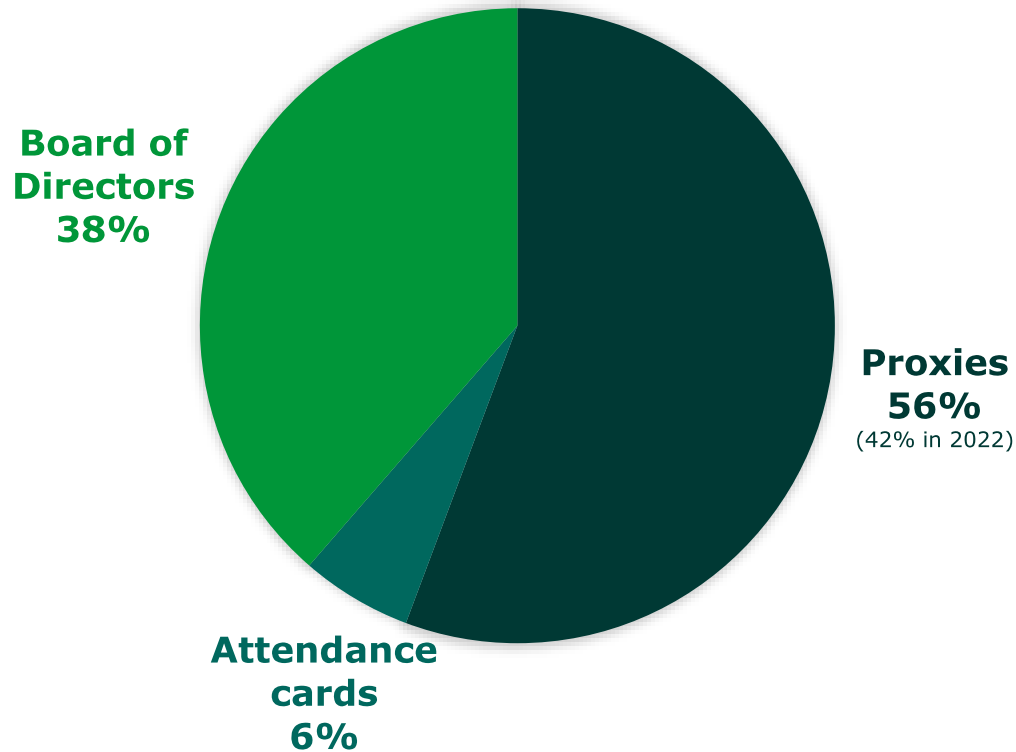


# Has the change had any effect?

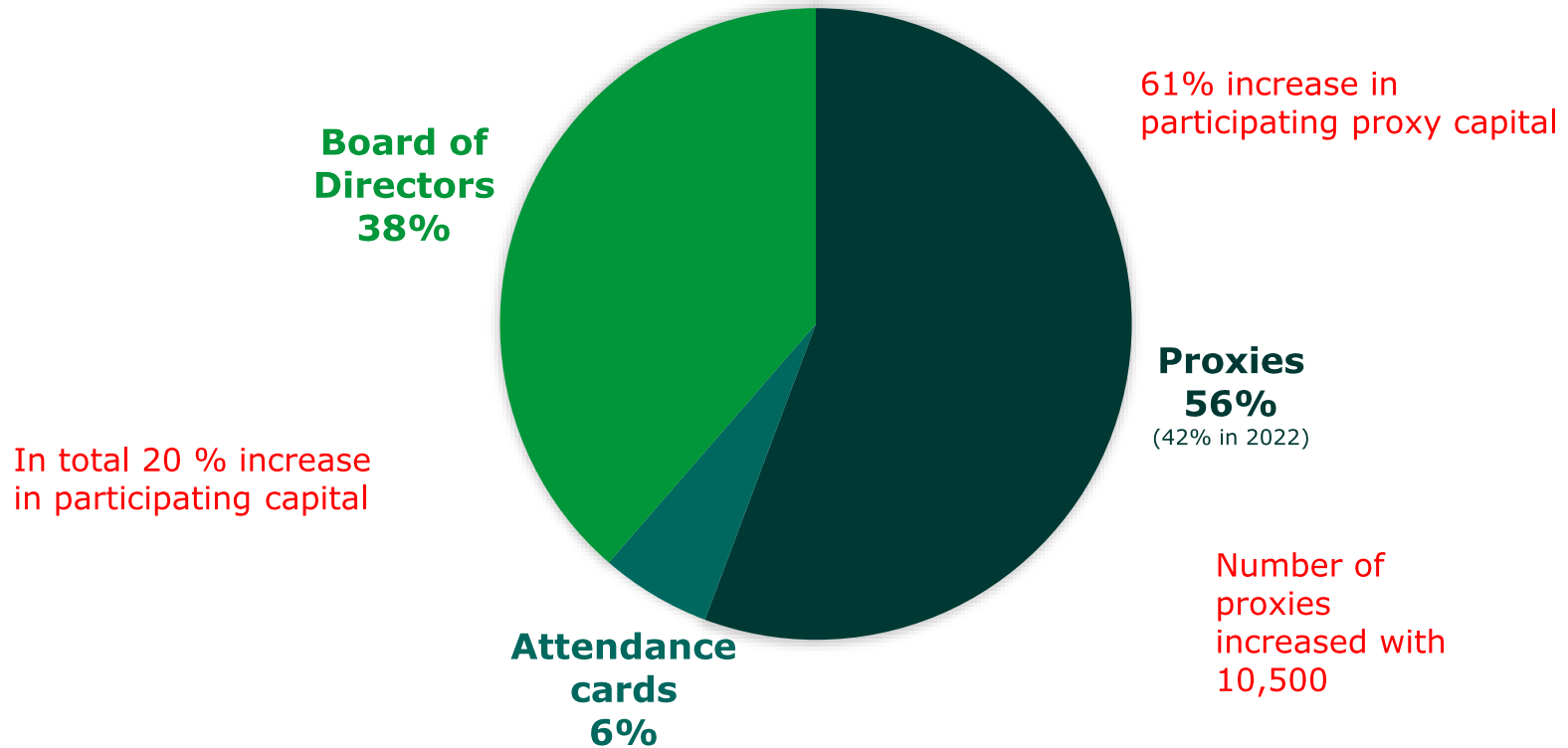
Which conditions can have an influence:

- 1. Individual conditions in each company**
- 2. Post pandemic?**
- 3. Geopolitical conditions**
- 4. Other regulation**
- 5. General market trends**
- 6. Coincidence**

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# Issues on top of the change

- 1. The number of instructions will most likely increase over the coming years**
- 2. Voting methods in the infrastructure and do they fully support the general meeting market practice**
  - Deadlines
  - continuity
- 3. Name registration**
- 4. Who is going to pay**

# Continuity - decisions

From the Carlsberg 2023 form



recommendations. If the form is only partly filled in, the votes in respect of agenda items for which no instructions are given will be deemed cast in accordance with the Supervisory Board's recommendations.

The proxy authority can be exercised in respect of all matters discussed at the Annual General Meeting. If new proposals are put to vote, including any proposed amendments or new proposals not on the agenda, the proxy may vote on your behalf according to his/her own belief.

The proxy/postal vote applies to shares owned by the undersigned at the registration date, i.e. Monday, 6 March 2023, cf. Article 20(1) of the Company's Articles of Association, determined on the basis of the Company's shareholders' register as well as notifications on ownership received by the Company but not yet registered in the shareholders' register.

The form must be received by Euronext Securities no later than Thursday, 9 March 2023. Please send the form by letter to Euronext Securities, Nicolai



# Questions?

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# CONTACT



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