

# Corporate Governance Report 2017

Corporate governance stands for the responsible, transparent management and control of an enterprise that is directed at the long-term creation of added value. Corresponding guidelines have been prepared. These are summarised for German companies in the German Corporate Governance Code (GCGC) and were updated on 7 February 2017.

The Board of Management and the Supervisory Board believe firmly that good corporate governance, which is manifested in compliance with the Code, is an essential part of the foundation on which the lasting success of the company and the confidence of business partners and employees, as well as the trust of financial markets in our company, is built. Therefore, the Board of Management and Supervisory Board continue to observe the principles of the German Corporate Governance Code even though Berlin Hyp is no longer a listed company, so that some GCGC provisions (e.g. regarding the organisation of Annual General Meetings) are no longer relevant to Berlin Hyp.

## Board of Management

Berlin Hyp's Board of Management leads the Bank at its own responsibility with the objective of sustainable value creation and in the best interests of the company. It is committed to the principles of good, responsible and efficient business management and control. It manages the Bank in compliance with statutory provisions, the Articles of Association, the Rules of Procedure and the internal company guidelines. The Board of Management develops the strategic orientation of the bank, agrees on it in consultation with the Supervisory Board and ensures its implementation.

In the financial year 2017, the Board of Management continued to consist of three persons. Regardless of the overall responsibility of the Board of Management, the individual members lead the divisions assigned to them by the business organisation plan at their own responsibility. The members consistently act for the benefit of the company as a whole. The members of the Board of Management inform each other about all material developments in their divisions and coordinate all measures affecting multiple spheres of responsibility.

The varied expertise of the individual Board of

Management members ensures that the Board of Management remains sufficiently diversified. On 26 June 2017, the Supervisory Board set a target of 0 % for the proportion of women on the Board of Management based on the current contractual relationships. The target is initially valid until 30 June 2022. The target will be reviewed when a contract of employment is terminated, a member is reappointed or a new member is appointed.

## Supervisory Board

The Supervisory Board of Berlin Hyp – which, in 2017, consisted of 15 members until 30 November 2017 and 14 members from 1 December 2017 – advises and monitors the Board of Management in the management of the Bank, works with it to ensure long-term succession planning ensures a degree of diversity in the composition of both the Board of Management and the Supervisory Board that is appropriate to the bank's business activities. According to the regulations of the German One-Third Participation Act, it comprises five Supervisory Board members on the staff side and ten on the shareholder side. The Chair of the Supervisory Board coordinates the work within the Supervisory Board, chairs its meetings and represents the interests of the Supervisory Board in relation to third parties. The Supervisory Board has formed three committees from its own members. Its functioning is governed by the Rules of Procedure.

The employees vote for their representatives in their own election in accordance with the provisions of the German One-Third Participation Act. The Supervisory Board cannot influence the selection of employee candidates.

The Supervisory Board has decided to pursue the following aims when new Supervisory Board members are nominated:

The diversity of the Board is established so that the qualifications and personalities of the individual members guarantee optimal supervision of the company in accordance with legal stipulations, including the German Corporate Governance Code, and in the interests of the company, its shareholders and the employees. This requires that all Supervisory Board members have knowledge, in particular, of Berlin Hyp's relevant market

environment and its banking business.

The Supervisory Board has recorded the detailed requirements in writing in a selection and diversity strategy. It describes details of the knowledge, skills and experience required for effective monitoring of the Board of Management. These include, in particular, knowledge and experience in the fields of securities, real estate, the capital market and accounting. Independence rules are also defined pursuant to the German Corporate Governance Code.

Based on the assumption that the employee representatives also fundamentally fulfil the independence criteria for Supervisory Board members within the meaning of the Code, the Supervisory Board finds all members to be independent. The members of the Supervisory Board are not subject to any conflicts of interest, particularly any that could result from an advisory function or board membership on behalf of customers, suppliers, lenders or other business partners of the company.

Members of the bodies do not participate in the discussion and passing of resolutions by the bodies if conflicts of interest or the impression of a conflict of interest exist in individual cases.

The composition of the Supervisory Board therefore corresponds to the stated goals.

According to the equality law provisions of the Equality Act, relevant for Berlin Hyp, the Supervisory Board set a target for itself in a resolution dated 26 June 2017 to maintain the status quo of 13 % (two women) with regard to the proportion of women on the Supervisory Board until 30 June 2022. Two women are currently members of the Supervisory Board.

Attention is given to potential conflicts of interest and compliance with the age limit of 70 years as stipulated in the Rules of Procedure. A criterion for new Supervisory Board members is that they are able to commit the expected amount of time.

The Supervisory Board submits itself to efficiency reviews each year. The most recent review was conducted at the Supervisory Board meeting on 18 September 2017 and was based on a detailed

questionnaire, as in the past, which addressed relevant topics according to the German Corporate Governance Code and Section 25d (11) Nos. 3 and 4 German Banking Act (KWG) and which each Supervisory Board member was able to individually fill out before the meeting. The findings of the evaluation were then presented by the Supervisory Board Chair at the meeting and jointly discussed and debated by the body. The 2017 review indicated that the efficiency of Supervisory Board activity was given. Furthermore, the Supervisory Board noted that its members have the required knowledge, abilities and experience for the activities of the Supervisory Board and its committees. The staggered scheduling of committee and Supervisory Board meetings and the written reports by the committees, which were introduced in 2017 and permit better preparation for Supervisory Board meetings, received positive feedback. According to statements by the members, the new way of holding meetings brings Berlin Hyp's dates more in line with the timing of the LBBH Group's committee meetings.

The members of the Supervisory Board are responsible for obtaining the necessary training and continuing education for their duties at their own responsibility and are supported in this process by Berlin Hyp. The company regularly informs the Supervisory Board about the latest changes in statutory law and offers opportunities for continuing education within the framework of in-house events.

In addition, the Staff and Strategy Committee also reviewed compliance with the GCGC at the meeting on 9 November 2017 using an analysis report prepared by the Board of Management. No objections were raised.

#### **Close Cooperation between the Board of Management and the Supervisory Board**

Berlin Hyp's Board of Management and Supervisory Board work together closely based on mutual trust. At least four Supervisory Board meetings usually take place during the financial year, as in 2017. The Supervisory Board monitors and advises the Board of Management with regard to company management. The Board of Management informs the Supervisory Board

extensively and promptly on all issues relevant to the company relating to strategy, planning, business development, the risk situation, risk management and bank compliance. The Supervisory Board coordinates the company strategy and its implementation with the Board of Management. It explores deviations in business performance from plans and goals and states the reasons for these.

The Supervisory Board reviews and approves the annual financial statements in consideration of the auditor's reports and decides on the Board of Management's proposal regarding the appropriation of the balance sheet profit. Furthermore, it decides on the resolutions to be proposed to the Annual General Meeting.

The Board of Management's reporting obligations and duties to inform are stated in specific terms in the Rules of Procedure for the Board of Management. The Supervisory Board has also defined important transactions that the Board of Management may only conduct with the Supervisory Board's consent. In addition, it has also established rules designed to prevent conflicts of interest. There was one conflict of interest requiring disclosure in the 2017 financial year. The member did not participate in the discussion of the topic and did not receive any documents or records. In one additional decision, four members of the body abstained from voting to avoid the appearance of a conflict of interest. The Board of Management continuously exchanges information with the Chair of the Supervisory Board.

The approach to risks in connection with the bank's business activity is extremely important to the Board of Management and the Supervisory Board. Both bodies require regular reports about risks and their development. Berlin Hyp's risk management system is continually developed further by the bank and is examined by the auditors. The Board of Management passes on information that is significant from a risk standpoint to the Chair of the Supervisory Board without undue delay.

The work of both organs and of the three Supervisory Board committees is regulated in the Rules of Procedure. These are checked regularly to ensure that they are up to date. In 2017, changes were made following the revision of the assigned spheres of competence for the lending business, and an amendment was adopted due to the requirements of the German Audit Reform Act (Abschlussprüferreformgesetz – AReG).

The composition of the Board of Management and the Supervisory Board, as well as the

spheres of responsibility of the individual members of the Board of Management, is presented on pages 2 and 38 of the Annual Report.

### **Efficiency Improvement by Committees**

The Supervisory Board has formed three committees to support the work of the Supervisory Board. These are the Staff and Strategy Committee, the Audit Committee and the Loans Committee. The Staff and Strategy Committee also acts as a nomination committee and remuneration controlling committee. The Loans Committee is also active as the Risk Committee pursuant to the German Banking Act (KWG). Written and additional oral reports are used at the Supervisory Board meetings to provide information about the work of the committees. The Chair of the Supervisory Board does not chair the Audit Committee. For details regarding the responsibilities of the various committees and the areas they focused on in 2017, see the Supervisory Board Report in this Annual Report.

### **Annual General Meeting of the Sole Shareholder**

The sole shareholder exercises its rights at the Annual General Meeting. The Annual General Meeting decides on the tasks incumbent upon it by law, including the appropriation of net earnings, discharge of the Board of Management and the Supervisory Board, appointment of the auditor, election of Supervisory Board members, amendments to the Articles of Association and capital measures. Berlin Hyp's shares are held by Landesbank Berlin Holding AG. As a result, the Annual General Meeting of Berlin Hyp takes place as a plenary meeting behind closed doors.

### **Transparency**

The Bank's website provides information about all significant developments and events related to the Bank. For example, the planned publication dates for financial reporting are found in the financial calendar. All annual reports and interim reports are also archived and available on the website. All compliance declarations hitherto provided by the Board of Management and the Supervisory Board pursuant to Section 161 Stock Corporation Act can also be accessed on the company website. Almost all information published by the Bank online is also published in English.

### **Accounting and Auditing the Annual Accounts**

Berlin Hyp's annual accounts in the reporting year were produced in accordance with the German national provisions (German Commercial Code), as there is no statutory duty for Berlin Hyp to produce consolidated accounts in accord-

ance with the International Financial Reporting Standards (IFRS). The annual accounts, the half-year financial report and any interim reports are published within 90 days after the end of the financial year or 45 days after the end of the respective reporting period.

Before the proposal for selection of the auditor is submitted to the General Meeting, the Supervisory Board obtains a declaration from the auditor as regards existing relations with the Bank or its organs. The current declaration of independence of the auditor dates from 20 February 2018. According to this declaration, there is no doubt about the independence of the auditor. The Supervisory Board has agreed with the auditor that the auditor will report without undue delay on all findings and occurrences that become evident during the conduct of the audit and that are important for the Supervisory Board's tasks. Likewise it was established that the auditor shall inform the Supervisory Board or make a notation in the audit report if divergences from the German Corporate Governance Code and the Declaration of Compliance issued jointly by the Board of Management and the Supervisory Board are found. No such divergences were found.

#### **Essential Features of the Remuneration System for Board of Management Members and Supervisory Board Members**

The remuneration of the Board of Management members and Supervisory Board members is published in a separate report as part of the Management Report. Furthermore, in accordance with the stipulations of the German Corporate Governance Code, the remuneration of Board of Management and Supervisory Board members is shown individually in the Notes and is broken down into fixed and variable elements.

Directors' and officers' insurance exists for the members of the Board of Management and the Supervisory Board. In order to emphasise the Bank's responsibility and attitude towards the shareholders, a reasonable deductible of at least 10 % of the damage up to one and a half times the fixed annual remuneration was agreed.

#### **Joint Compliance Declaration by the Board of Management and the Supervisory Board**

The compliance declaration of the Board of Management and the Supervisory Board pursuant to Section 161 Stock Corporation Act was updated in November 2017. It reads as follows:

1. Berlin Hyp AG has complied with all recommendations of the Government Commission

on the German Corporate Governance Code, as revised on 7 February 2017, announced by the Federal Ministry of Justice in the official part of the electronic Federal Gazette, with the exception specified in Section 2.

2. Berlin Hyp AG deviates from the following recommendations of the German Corporate Governance Code:
- a) At the time of the conclusion or extension of Board of Management contracts, such contracts have not always included and do not always include a settlement payment cap stipulating that, in the case of premature termination of work for the Board of Management without good cause, settlement payments are limited to an amount corresponding to two years' remuneration including ancillary benefits (Section 4.2.3 German Corporate Governance Code).

The general agreement of settlement payment caps removes the possibility of considering the circumstances of each individual case in case of contract agreements or extensions. For this reason, decisions should be made in each individual case as to whether a settlement payment cap should be agreed.

- b) The Supervisory Board has not decided to impose a general maximum term limit for the length of membership of the Supervisory Board (fig. 5.4.1 German Corporate Governance Code).

The general establishment of a maximum term for the duration of membership restricts the possibility of flexible succession planning. For this reason, nomination is instead decided in the respective individual case regardless of the length of membership duration to date.

3. Furthermore, Berlin Hyp AG has complied with all recommendations of the Government Commission on the German Corporate Governance Code, as revised on 5 May 2015, announced by the Federal Ministry of Justice in the official part of the electronic Federal Gazette, with the exception specified in Section 2, since the last Declaration of Compliance was issued on 14 December 2016.

Berlin, 26 March 2018

**Board of Management and Supervisory Board of Berlin Hyp AG**