

Introduction

The Corporate Governance Committee ("the Committee") believes that corporate governance will evolve with changing business circumstances and international financial markets requirements. A regular review of corporate governance practices and an adaptation of the recommendations are therefore required.

In September 2007, the Committee decided to review the Belgian Code on Corporate Governance ("the Code"). As a consequence, two public consultations were carried out. First, the Committee collected the views of the users of the Code. Secondly, the Committee consulted on a number of proposed amendments.

Both consultations were carried out before the outbreak of the financial crisis. Therefore, new supplementary elements need to be taken into account. As a result of the financial crisis, the corporate governance codes were criticized and many asked for legal intervention. In the same context, topical issues had an important influence on the review of the Code. Legal proposals, relating to the corporate governance statement, the remuneration committee and severance pay are still under discussion in Belgium. Furthermore, the law on the audit committee, including the criteria of independence for directors, has recently entered into force.

The Committee stresses the importance of self-regulation. Self-regulation provides a complement to legislation and offers flexibility which allows taking into account the specificities of a company. The financial crisis has shown how important confidence is. Good governance, based on transparency and accountability should reinforce the confidence of investors and financiers in companies and can benefit all other stakeholders.

The Committee expresses its gratitude to those who responded to its consultations. Each contribution has been carefully considered and has helped the Committee to adopt the 2009 Code.

This note gives an overall presentation of the main changes. Due to the general character of this note, it has unfortunately not been possible to answer all and each remarks of the respondents. The Committee apologizes to those respondents who cannot find in this note a direct answer to their remarks.

Consultation of the 2004 Code

The first public consultation ("first consultation") was carried out between October and November 2007, and invited the users of the Code to give their views on any aspect of the implementation of the 2004 Code. In particular, views were asked on the effectiveness, the structure and the scope, the 'comply or explain' approach and the transparency requirements.

The Committee collected 49 reactions. According to the respondents, the Code has raised consciousness while at the same time stimulating good governance practices; consequently, it had a positive influence on board effectiveness. While respondents indicated that it was too early to conclude on the effect of the Code on long term value creation, many of them support the view that improved governance practices will create benefits for the continuity and development of companies. The individual responses can be consulted on the Committee's website.¹

The Committee reviewed all comments. Some of the major areas of possible improvement mentioned are:

- The need to adapt the Code to the new European Directives and Belgian legislation, while also taking into consideration the development of governance practices and statutory rules in the neighbouring countries.
- The need to better comment and explain the complementarity between the Code and the relevant legislation.
- Special attention for the distinction between provisions and guidelines.

Moreover, the Committee made an analysis of new European and Belgian regulations with an impact on corporate governance, as well as the changes in corporate governance codes and good practices in other EU countries. It has gathered feedback and information from all members of the Committee, including IBR-IRE, Euronext Brussels and the CBFA.

This analysis and the outcome of the first consultation led to a number of amendments that were submitted to another public consultation in July 2008.

Consultation on the draft 2009 Code

Between July and September 2008, the proposed amendments to the Code were submitted for consultation ("second consultation"). All changes and the entire amended text are available on the Committee's website.²

The changes were grouped under seven main topics:

- Socially responsible business: corporate social responsibility, diversity and people governance;
- Balance within the leadership of the company;
- Company Secretary;
- Evaluation of the board;
- Respective roles of the board and of the executive management with regard to disclosure;
- Fair and responsible remuneration;
- Dialogue with shareholders and investors.

This consultation assembled 42 reactions. The answers can be consulted on the website of the Committee.³ All these reactions have been carefully reassessed and taken into account for the final phase of the Code's review.

¹ http://www.corporategovernancecommittee.be/en/corporate_governance_code/comments2/

² http://www.corporategovernancecommittee.be/en/corporate_governance_code/adaptation_2009_public_consultation/default.aspx

³ http://www.corporategovernancecommittee.be/en/corporate_governance_code/comments_2008/default.aspx

2009 Code

Objectives of the changes

Thanks to the proposed changes the Code will remain relevant and useful for listed companies and other market participants, and reinforce his role as Belgian reference code on corporate governance. The Committee highlights the importance of self-regulation, which makes it possible to adapt rules to the evolving needs of the companies. The Committee also stresses the central role of transparency.

The Committee has aligned the Code with the evolutions of Belgian law, European recommendations and international practices.

The Committee chose not to insert provisions or guidelines which only refer to legislation. However, for two fundamental issues, the audit committee and the criteria of independence, the Committee decided to include the text of recent legal provisions. This is done for a better understanding and for reasons of comprehensiveness, and to facilitate the application in practice of both legislation and recommendations.

Entry into force of the 2009 Code

The second edition of the Code is available since March 2009 and is named the "2009 Code". The 2009 Code applies to reporting years beginning on or after 1 January 2009. Companies are expected to adapt their governance in light of the 2009 Code's provisions and, where appropriate, adjust their governance practices and Corporate Governance Charter accordingly. Companies are expected to comply with these new provisions for disclosure in the 2009 Corporate Governance Statement of their annual report, to be published in 2010.

The 2009 Code: main changes

The following paragraphs give an overview of the changes as compared to the Corporate Governance Code issued in 2004.

The amendments to the 2004 Code are underlined and framed. In the margin you will find a short description of the amendments. For deletions of the 2004 Code, the text has been crossed out.

Preamble

Structure of the Code

The overall structure of the Code was appreciated and remains unchanged. However, special attention has been drawn to the distinction between provisions and guidelines, which was an important issue of discussion, especially in the perspective of enforcement. Provisions require an explanation, guidelines do not. Provisions and guidelines have therefore been reviewed: some have been deleted, reclassified or integrated. Certain guidelines became provisions because they are considered good governance practices.

The distinction between the Corporate Governance Charter and the Corporate Governance Chapter provided positive reactions and will be kept in place. However, the Corporate Governance "Chapter" has been renamed the Corporate Governance "Statement" and adapted to be aligned with the European Directive 2006/46/EC. Whereas the Charter highlights the governance policies, the Statement focuses more on yearly reporting on compliance with the Code.

Nature of the Code

The 'comply or explain' principle, on which the Code is based, has been recognised in the European Directive 2006/46/EC. The flexibility provided by this approach is widely welcomed and aims to take into account the specific circumstances of each company. When this European Directive will be implemented into Belgian law, this principle will be anchored.

Companies are expected to comply with the provisions, however, in specific cases, they may depart from some of the Code's provisions, if they give a considered explanation of the reasons for doing so.

The Code and the existing legislation

Belgian company law and financial legislation contain an extensive set of governance rules that apply to listed companies. The Code must be considered in this context. The Committee has based the Code on Belgian law, in particular the Belgian Code on Companies and financial legislation. The Code is complementary to existing Belgian law; no provision of the Code may be interpreted as derogating from Belgian law. Nevertheless, the Code can go beyond Belgian legislation (e.g. a minimum level of shareholding to make proposals for the agenda of the general shareholders' meeting, the term of mandate of a director).

Principle 1: The company shall adopt a clear governance structure

Leadership and Corporate Social Responsibility

→ → →
Amended
guideline
and new
guideline
under
provision
1.2

1.2	The board should decide on the company's values and strategy, its risk appetite and key policies.
Guideline	The board should ensure that the necessary <u>leadership</u> , human and financial resources are in place for the company to meet its objectives.
Guideline	<u>In translating values and strategies into key policies, the board should pay attention to corporate social responsibility, gender diversity and diversity in general.</u>

The Committee has decided to stress the importance of leadership of a company (cfr. provisions 1.6, 6.6...).

Corporate Social Responsibility (CSR) and diversity are some of the topics that have gained prominence over the last couple of years and also came up in the first public consultation. The objective of the Code is to issue recommendations on how companies should be directed, managed and controlled, without going into each and every dimension of companies' responsibilities. However, recognising the importance of issues such as CSR and diversity, the Committee deemed it appropriate to insert a supplementary guideline to Provision 1.2 of the Code.

Diversity cannot only be seen within this context, but needs to be considered as well to achieve a more balanced composition of the board (as in the amended provision 2.1).

People governance is another concern which came up in the public consultation. The Committee has not made explicit reference to this issue. It may be framed within the guideline concerning corporate social responsibility.

Responsibilities of the board of directors

→ → →
Amended
provision
1.3

1.3	With respect to its monitoring responsibilities, the board should at least:
-	<u>review executive management performance and the realisation of the company's strategy;</u>
-	<u>monitor and review the effectiveness of the board's committees;</u>
-	<u>take all necessary measures to ensure the integrity and timely disclosure of the company's financial statements and other material financial and non-financial information disclosed to the shareholders and potential shareholders;</u>
Guideline	<u>"Timely disclosure" means the disclosure in due time according to the existing legislation and regulations.</u>
-	<u>approve a framework of internal control and risk management set up by the executive management;</u>

<p><u>Guideline</u></p> <ul style="list-style-type: none"> - <u>review the implementation of this framework, taking into account the review made by the audit committee;</u> - <u>supervise the performance of the statutory and/or registered auditor (hereinafter "external auditor") and supervise the internal audit function, taking into account the review made by the audit committee;</u> - <u>describe the main features of the company's internal control and risk management systems, to be disclosed in the Corporate Governance Statement (hereinafter "CG Statement").</u> 	<p>Such a framework should be clear, define the meaning of <u>'internal control' and 'risk management' and help the executive management to put internal control and risk management systems in place.</u></p>
--	--

The Committee has clarified and emphasized the tasks and responsibilities of the board. The attention has been drawn more explicitly to the monitoring responsibilities, specifically the monitoring of the effectiveness of the boards' committees, the approval of the framework of internal control and risk management and its implementation as well as the disclosure of the information published by the company.

Framework

Following the second consultation, some respondents have underlined that for maintaining a sound system of internal control and risk management, it is necessary for the companies to refer to a framework in order to help the board to adequately identify and manage risks, and to help the executive management to put in place internal control and risk management systems. For those reasons, the Committee has considered that the board should approve such a framework and review its implementation.

Non-financial information

In the draft 2009 Code, the Committee proposed to specify the responsibility of the board on ensuring the integrity and timely disclosure of financial and non financial information that "needs to be disclosed". Some respondents considered that the disclosure of such information should not be limited to the legal requirements, considering the growing importance of non binding disclosures of non-financial information, such as the Corporate Social Responsibility report. For such voluntary information, the same standards of integrity and timely disclosure should apply.

The reporting on internal control

The Committee has aligned the reporting on internal control and risk management systems with the provisions of the European Directive 2006/46/EC, and therefore recommends that the board describes the main features of the company's internal control and risk management systems, in the Corporate Governance Statement.

Relationship between the chairman and the CEO

→ → →
Earlier
guideline
under 1.5
becomes
provision
1.6

1.6	The chairman should establish a close relationship with the CEO, providing support and advice, while fully respecting the executive responsibilities of the CEO.
-----	--

The former guideline under provision 1.5, promoting a close relationship between the chairman and the CEO has been upgraded to provision as it is fundamental for a company to have a clear dialogue at the top of the company while respecting each others' position.

Dialogue between the board and the shareholders

→ → →
New
provision
1.7

1.7	<u>The board should foster - through appropriate measures - an effective dialogue with the shareholders and potential shareholders based on a mutual understanding of objectives and concerns.</u>
-----	--

In the first consultation, many reactions brought up the relationship between the board and the shareholders. A new provision has been included stating that the board should encourage a dialogue with all shareholders, based on mutual understanding. (More on shareholder issues: see Principle 8).

Principle 2: The company shall have an effective and efficient board that takes decisions in the corporate interest

Gender diversity

→ → →
Amended
provision
2.1

2.1 The board's composition should ensure that decisions are made in the corporate interest. It should be determined on the basis of gender diversity and diversity in general, as well as complementary skills, experience and knowledge. A list of the members of the board should be disclosed in the CG Statement.

The reactions to this amendment were divided. While a number of respondents were against this proposal, others have shown their support and even requested to insert certain quota or specific provisions. For the Committee, it is beyond discussion that companies should, in the first place, pay attention to skills, experience and knowledge when composing their board. However, next to these aspects, gender diversity is also an essential factor that should be taken into account. The Committee has decided to make explicit reference to gender diversity. The Committee believes that a diverse board composition can improve the quality of a balanced board.

Independent Directors

→ → →
Amended
provision
2.3 and 2.4

2.3 At least one half of the board should comprise non-executive directors and at least three of them should be independent according to the criteria set out in Appendix A. ~~To be considered independent, a director should be free from any business, close family or other relationship with the company, its controlling shareholders or the management of either that creates a conflict of interest such as to affect that director's independent judgement.~~

~~In assessing independence, the criteria set out in appendix A should be taken into account.~~

~~The company should disclose which directors it considers to be independent. If one or more of the criteria in appendix A are not met, the company should disclose its reasons for nevertheless considering this director to be independent.~~

Guideline A non-executive director is any member of the board who has no executive responsibilities in the company.

~~Guideline — A controlling shareholder is a shareholder who solely or in concert, directly or indirectly controls a company in the meaning of Article 5 of the Code on Companies.~~

2.4 The list of the members of the board, disclosed in its CG Statement, should indicate which directors are independent.

An independent director who ceases to satisfy the requirements of independence should immediately inform the board.

→ → →
Guideline
under 2.3
deleted

Many respondents of the first consultation made the observation that the definition of independent directors was not in line with article 524 §4 of the Code on Companies. The Code's definition was inspired – to a large extent – by the European Recommendation on independent directors (2005/162/EC).

Since the law on the Audit Committee (BS 29-12-2008) has entered into force, the criteria have changed. This law provides for more stringent criteria for independent directors in article 526ter of the Code on Companies and is also based on the European Recommendation.

The Committee has aligned the Code's definition set out in Appendix A with the Code on Companies. All independent directors appointed in application of the Code on Companies shall respect the criteria of article 526ter of the Code on Companies. Notwithstanding, independent directors appointed according to article 524, §4 of the Code on Companies, before the entry into force of article 526ter of the Code on Companies (8 January 2009), shall remain independent until reappointed or at the latest until 1 July 2011. All other independent directors within the meaning of the Code should respect the criteria of the Code which are identical to article 526ter of the Code on Companies.

Moreover, several respondents requested a percentage instead of an absolute number of independent directors. They substantiated their remark by mentioning that, for small boards, three independent directors may seem too many. The Committee has decided not to modify this, because a minimum number of independent directors seems essential to reach a sufficient independence within the board.

Board meetings

→ → →
Guideline becomes provision 2.8 and new guideline

2.8	<u>The board should meet sufficiently regularly to discharge its duties effectively.</u> The number of board and board committee meetings and the individual attendance record of directors should be disclosed in the CG Statement.
<u>Guideline</u>	<u>The company should consider organising - where necessary - board and committee meetings using video, telephone or internet-based means.</u>

The board should meet sufficiently regularly to discharge its duties effectively. Previously being a guideline, the Committee selected this guideline to be upgraded to a provision.

Under this provision, a new guideline has been added in answer to observations made in the first consultation. Board and board committees' meetings should be made possible through video, telephone and internet-based means where necessary. The goal is to allow all board members to contribute as much as possible to the meeting.

Role of the Company Secretary

→ → →
Amended provision 2.9

2.9	<u>The board should appoint a company secretary to advise the board on all governance matters.</u> Where necessary, the company secretary should be
-----	---

assisted by the company lawyer. Individual directors should have access to the company secretary.

→ → →
New
guideline
under
provision
2.9

Guideline The role of the company secretary should include ensuring, under the direction of the chairman, good information flow within the board and its committees and between the executive management and non-executive directors, as well as facilitating induction and assisting with professional development as required. The company secretary should regularly report to the board, under the direction of the chairman, on how board procedures, rules and regulations are being followed and complied with. The terms of reference of the board should describe the role and tasks of the company secretary.

The company secretary plays an important role in the governance matters of the board. Its role was an issue which was, according to the first consultation, considered to be insufficiently treated in the 2004 Code.

The Committee proposed to insert a guideline, explaining its function, in those areas relating to corporate governance. To answer an observation made by several respondents, it has been clarified that the role of the company secretary will be exercised 'under' and not 'through' the direction of the chairman. The differences of this role within the organisation of companies, has led to the insertion of a guideline stating that the terms of reference of the board should describe the role and tasks of the company secretary. It is up to the board to decide whether this function should be exercised by a company lawyer.

Principle 3: All directors shall demonstrate integrity and commitment

Belgian rules on market abuse

→ → →
Amended
provision
3.7

3.7	The board shall take all necessary and useful measures <u>for effective and efficient execution of the Belgian rules on market abuse</u> . In this respect it should at least adhere to the provisions and guidelines laid down in Appendix B.
-----	--

Provision 3.7 and Appendix B referred to the European Directive 2003/6/EC on insider trade and market manipulation. Both recommendations have been adapted given its implementation into Belgian law. The changes here mainly relate to terminology.

Principle 4: The company shall have a rigorous and transparent procedure for the appointment and evaluation of the board and its members

Balance within the leadership of the company

→ → →
Amended
provision
4.7

4.7	The board should appoint its chairman <u>on the basis of his knowledge, skills, experience and mediation strength. If the board envisages appointing a former CEO as chairman, it should carefully consider the positive and negative aspects in favour of such a decision and disclose in the CG Statement why such appointment is in the best interest of the company.</u>
-----	--

Some respondents to the first consultation argued that the CEO should not go on to become chairman of the board. The idea was to avoid that he would have an overly influence on the nomination of the new CEO and the functioning of the executive management.

The Committee proposed to insert a provision installing a two years interval between both functions. This two years intermission was not welcomed by a majority of respondents; amongst others, listed family businesses considered that the structure and character of family business often requires a former CEO to become chairman of the board.

The Committee has finally considered it more appropriate to leave the choice to the companies but to increase the transparency. When the board appoints a former CEO as chairman, it should reveal why such a decision is in the best interest of the company.

Evaluation of the board and its committees and disclosure

→ → →
Amended
provision
4.11

4.11	Under the lead of its chairman, the board should regularly (e.g. at least every two to three years) assess its size, composition, <u>performance and those of its committees</u> , as well as its interaction with the executive management.
Guideline	Regular evaluation by the board of its own effectiveness should promote continuous improvement in the governance of the company.
Guideline	The evaluation process should have four objectives: <ul style="list-style-type: none">- assessing how the board <u>or the relevant committee</u> operates;- checking that the important issues are suitably prepared and discussed;- evaluating the actual contribution of each director's work, the director's presence at board and committee meetings and his constructive involvement in discussions and decision-making; and- checking the board's <u>or committee's</u> current composition against the board's <u>or committee's</u> desired composition.

→ → →
New
provision
4.15

4.15 <u>Information on the main features of the evaluation process of the board, its committees and its individual directors should be disclosed in the CG Statement.</u>

Considering the growing importance of the board committees, the Committee has extended the board evaluation to the size, composition and performance of the board committees (see also Principle 5).

Additionally, disclosure with regards to the main features of the evaluation process of the board, its committees and its individual directors is being asked for in the Corporate Governance Statement.

Principle 5: The board shall set up specialised committees

Audit Committee

→ → →
Amended
provision
5.2

5.2 The board shall set up an audit committee in accordance with the Code on Companies. It should assist the board in fulfilling its monitoring responsibilities in respect of control in the broadest sense and follow the provisions set out in Appendix C.

Since the law on Audit Committees has entered into force, the set up of an audit committee in listed companies is a legal obligation. According to the legislation, the audit committee has to be composed of non-executive members and at least one of them must be independent and have the necessary expertise in the field of accounting and auditing. However, the Code's provisions go beyond this and ask for a majority of independent directors.

The legislation is a consequence of the implementation of the Audit Directive (2006/43/EC). This Directive seeks to enhance confidence in the financial statements and annual reports published by companies.

Since the law has only recently entered into force, and the topic is essential to corporate governance, the Committee decided to take over the text of the legal provisions and insert them in Appendix C. This is done for user-friendly purposes so to give an overview of the requirements regarding audit committees in its entirety. The legal provisions are written in italics.

Audit Committee meetings and evaluation

→ → →
Amended
Appendix C
5.2./28

5.2./28 The audit committee should meet at least four times a year. It should regularly (and at least every two to three years) review its terms of reference and its own effectiveness and recommend any necessary changes to the board.

Several respondents find four meetings annually too much for an audit committee. However, for listed companies, the new article 526bis, §4, al.3 of the Code on Companies describes its role as follows: *The audit committee shall report regularly to the board on the exercise of its duties, and at least when the board sets up the annual accounts, the consolidated accounts, and where applicable the condensed financial statements intended for publication.*

Furthermore, in order to comply with the Code on Companies and the Royal Decree of 14 November 2007 on the obligations of issuers of financial instruments admitted to trading on a regulated market, a company has to issue a yearly and half yearly financial report, as well as either quarterly reports or interim statements during the first and second semester. Taking this into account, as well as the requirements the audit committee has regarding risk management and internal control, the Committee has found it reasonable to hold at least four meetings a year.

Nomination and Remuneration Committee

→ → →
Amended
Appendix D
5.3./6

5.3./6 The nomination committee should meet at least twice a year and whenever it deems it necessary in order to carry out its duties. It should regularly (at least every two to three years) review its terms of reference and its own effectiveness and recommend any necessary changes to the board.

→ → →
Amended
Appendix E
5.4./8

5.4./8 The remuneration committee should regularly (at least every two to three years) review its terms of reference and its own effectiveness and recommend any necessary changes to the board.

The recommendation to regularly review the terms of reference and the effectiveness of the nomination and remuneration committees has been added in order to align it with the text concerning the audit committee.

Remuneration Committee

→ → →
Amended
Appendix D
5.4./4

5.4./4 The remuneration committee should submit a remuneration report to the board.

For the reasons of the changes to the tasks of the remuneration committee, see Principle 7.

Principle 6: The company shall define a clear executive management structure

Responsibilities of the Executive Management

→ → →
Amended
provision
6.5

6.5	<p>The executive management should at least:</p> <ul style="list-style-type: none">- be entrusted with the running of the company;- put internal controls in place (i.e. systems to identify, assess, manage and monitor financial and other risks) without prejudice to the board's monitoring role, <u>based on the framework approved by the board</u>;- <u>present to the board</u> a complete, timely, reliable and accurate preparation of the company's financial statements, in accordance with the applicable accounting standards and policies of the company;- <u>prepare the company's required disclosure of the financial statements and other material financial and non-financial information</u>;- present the board with a balanced and understandable assessment of the company's financial situation;- provide the board in due time with all information necessary for the board to carry out its duties;- <u>be responsible</u> and accountable to the board for the discharge of its responsibilities.
-----	---

As for the board, the responsibilities of the executive management have been clarified and emphasized. The executive management is responsible and accountable for the complete preparation and adequate disclosure of financial statements and other information. It is the role of the executive management to prepare and present the necessary information to the board, so that the board can adequately inform the shareholders.

Evaluation of the Executive Management

→ → →
Amended
provision
6.6

6.6	<p>Clear procedures should exist for:</p> <ul style="list-style-type: none">- proposals from the executive management for decisions to be taken by the board;- the decision-making by the executive management;- the reporting to the board of key decisions taken by the executive management;- <u>the evaluation of the CEO and other members of the executive management.</u>
-----	---

Clear procedures should exist for the evaluation of the CEO and the other members of the executive management as there are clear procedures for board members set out in Principle 4 in the Code.

Principle 7: The company shall remunerate directors and executive managers fairly and responsibly

Remuneration Policy, Remuneration Levels and Remuneration Report

→ → →
New
provision
7.2

7.2 The company should set up a remuneration report. This remuneration report should form a well defined part of the CG Statement.

→ → →
Amended
provision
7.3

7.3 The company should disclose in its remuneration report: a description of its internal procedure for developing (i) a remuneration policy for non-executive directors and executive managers and (ii) for setting the level of remuneration for non-executive directors and executive managers.

→ → →
New
provision
7.4

7.4 The company should also disclose in its remuneration report, a statement of the adopted remuneration policy for the executive managers. Any significant changes to this remuneration policy occurred since the end of the financial reported year should be explicitly emphasized in the remuneration report.

→ → →
New
provision
7.5

7.5 An individual should not decide his own remuneration.

→ → →
New
provision
7.6

7.6 The remuneration of non-executive directors should take into account their role as ordinary board members, and specific roles, as chairman of the board, chairman or member of board committees, as well as their resulting responsibilities and commitment in time.

→ → →
Amended
provision
7.8

7.8 The amount of the remuneration and other benefits granted directly or indirectly to non-executive directors, by the company or its subsidiaries should be disclosed, on an individual basis, in the remuneration report.

→ → →
Earlier
guideline
becomes
provision 7.9

7.9 The level and structure of the remuneration of executive managers should be such that qualified and expert professionals can be recruited, retained and motivated, taking into account the nature and scope of their individual responsibilities.

→ → →
New
provision
7.12

7.12 Where executive managers are eligible for incentives based on the performance of the company or its subsidiaries, the criteria for the evaluation of performance achieved against targets as well as the term of evaluation should be disclosed in the remuneration report. This information should be provided in such a way that it does not disclose any confidential information regarding the company's strategy.

→ → →
Amended
provision
7.14

7.14 The amount of the remuneration and other benefits granted directly or indirectly to the CEO, by the company or its subsidiaries should be disclosed in the remuneration report. This information should be disclosed, providing a split between:

- (a) basic remuneration;
- (b) variable remuneration: for all incentives indicating the form in which this variable remuneration is paid;

→ → →
Amended
provision
7.15

- (c) pension: the amounts paid during the financial reported year with an explanation of the applicable pension schemes; and
- (d) other components of the remuneration, such as the cost or monetary value of insurance coverage and fringe benefits, with an explanation of the details of the main components.

If the company has materially deviated from its remuneration policy during the financial reported year, it should be explained in the remuneration report.

7.15 The amount of the remuneration and other benefits granted directly or indirectly to other members of the executive management, by the company or its subsidiaries should be disclosed on a global basis, in the remuneration report. This information should be disclosed, providing a split between:

- (a) basic remuneration;
- (b) variable remuneration: for all incentives indicating the form in which this variable remuneration is paid;
- (c) pension: the amounts paid during the financial reported year with an explanation of the applicable pension schemes; and
- (d) other components of the remuneration, such as the cost or monetary value of insurance coverage and fringe benefits, with an explanation of the details of the main components.

If the company has materially deviated from its remuneration policy during the financial reported year, it should be explained in the remuneration report.

Context

The Committee has proposed to align most provisions and disclosure requirements regarding remuneration with the European Recommendation (2004/913/EC) on directors' remuneration. A majority of the respondents to the second consultation was opposed to these amendments. However, taking into consideration the financial crisis and the pending legal proposals – events that occurred after the second consultation – the Committee has decided to maintain the new approach. There is a clear trend towards more and better disclosure in the field of executive remuneration throughout Europe.

Remuneration policy, levels and remuneration report

Each listed company should disclose a remuneration policy for non-executive directors and executive managers. A statement of this remuneration policy should mainly focus on the company's policy on executive managers' remuneration providing the principles on which remuneration is based and the various components of remuneration.

In addition to the remuneration policy, companies should disclose the internal procedure for setting the level of remuneration for non-executive directors and executive managers.

It is important that companies give appropriate transparency on remuneration to give the shareholders a clear and comprehensive view on the remuneration of the company. The Code gives a very complete overview on information that should be enclosed in the remuneration report. Companies are asked to draw up a remuneration

report which provides the shareholders with the most relevant information on the remuneration policy, the composition of the remuneration packages and the remuneration levels. If the company materially deviates from its remuneration policy applicable for the financial reported year, this should be explained in the remuneration report.

The Committee is also working on a guidance note on remuneration to clarify the provisions laid down in the Code. This guidance note will include a remuneration grid to facilitate the transparency requirements for companies.

Role Remuneration Committee

The remuneration committee plays an important role in the remuneration process. It is committed to make proposals to the board on the remuneration policy as well as on the remuneration of the directors and executive managers. These proposals should be described in the remuneration report.

Appointment contracts

→ → →
New
provision
7.17

7.17 <u>The board should approve the contracts for the appointment of the CEO and other executive managers further to the advice of the remuneration committee. The contracts made on or after 1 July 2009 should refer to the criteria to be taken into account when determining variable remuneration. The contract should contain specific provisions relating to early termination.</u>

Concern about short-term variable remuneration and about excessive severance pay has grown. New provision 7.17 recalls that the board has to approve the contracts for the appointment of the CEO and other executive managers further to the advice of the remuneration committee. There are also new recommendations concerning variable remuneration and early termination.

If the remuneration policy of the company allows for variable remuneration, any appointment contract made on or after 1 July 2009 should specifically refer to the criteria to be taken into account when determining such variable remuneration. Reference is necessary to make sure that the executive manager is entitled to variable remuneration. Further information about the criteria and the use of those for determining variable remuneration is provided for in provision 7.12.

The appointment contract should also contain specific provisions relating to early termination so that both parties know from the start what would happen in such a case.

Severance pay

→ → →
New
provision
7.18

7.18 <u>Any contractual arrangement made with the company or its subsidiaries on or after 1 July 2009 concerning the remuneration of the CEO or any other executive manager should specify that severance pay awarded in the event of early termination should not exceed 12 months' basic and variable remuneration.</u>

The board may consider higher severance pay further to a recommendation

by the remuneration committee. Such higher severance pay should be limited to a maximum of 18 months' basic and variable remuneration. The contract should specify when such higher severance pay may be paid. The board should justify this higher severance pay in the remuneration report.

Guideline: Basic remuneration component should be based on the monthly remuneration paid the last month before termination. Variable remuneration component should be contractually determined. It should be based on variable compensation effectively paid during the contract. It could, for instance, refer to the previous year's variable remuneration or to the mean value of the variable remuneration paid over a specific number of previous years.

Guideline: Examples of when a higher severance pay could be paid include: departure because of a merger, a change of control or a change of strategy; existing termination rights within the company; the candidate's years of service in his previous position; necessary condition for obtaining the candidate's agreement.

The contract should specify that the severance package should neither take account of variable remuneration nor exceed 12 months' basic remuneration if the departing CEO or executive manager did not meet the performance criteria referred to in the contract.

The Committee is aware of the public debate about excessive severance pay. While acknowledging that legal attempts to restrict severance pay for executive managers of Belgian listed companies could raise serious legal questions, the Committee has nevertheless deemed necessary to encourage companies and executive managers to voluntarily restrict themselves.

The draft 2009 Code stated that severance pay should not exceed 18 months' basic and variable remuneration. Many respondents opposed this provision; most of these respondents wanted no explicit limitation of the severance pay. However, taking into consideration the financial crisis and the growing public debate about the matter, the Committee has decided to go beyond its initial proposal.

It is public knowledge that the draft law attempting to restrict severance pay of executive managers of listed companies, has been criticised by the Council of State because of its discriminatory character. The Committee thinks that a voluntary approach would not stumble on the same problem. While convinced that it would be discriminatory to impose by law a limitation of the severance pay of executive managers of listed companies, the Committee believes however that executive managers may voluntarily restrict their rights in case of early termination, at the time of their appointment.

For this reason, new provision 7.18, §1 recommends that for any contract entered into on or after 1 July 2009, severance pay should not exceed 12 months' basic and variable remuneration.

As in some other countries, new provision 7.18, §2 allows companies to differentiate severance pay in specific cases. The Committee deems it necessary to allow companies and candidate managers to specify in the appointment contract when higher severance pay could be awarded. This could be the case, for instance, if both parties want to protect the candidate manager from the risk of being dismissed after a change of control or a merger. It is also important to be able to take into consideration the experience or the years of service of a candidate. Examples are set out in a guideline under provision 7.18.

No appointment contract should contain provisions regarding severance pay exceeding 18 months' basic and variable remuneration. If the board agrees to provide for more than 12 months' basic and variable remuneration, it should justify this decision in the remuneration report concerning the year of the appointment. In that case, the company complies with provision 7.18 of the Code. However, if the company chooses to exceed 18 months, it must state that it does not comply with provision 7.18, and give an explanation for its reasons of non-compliance (see Appendix F, 9.3./1).

Moreover, there is explicit attention for further limiting severance pay in case of insufficient performance. Indeed, new provision 7.18, §3 imposes to fix the maximum amount to 12 months' basic remuneration only (without variable remuneration), if the departing CEO or executive manager did not meet the performance criteria referred to in the contract. This provision is in line with national and international concerns to prevent paying for non-performance.

Principle 8: The company shall enter into a dialogue with shareholders and potential shareholders based on a mutual understanding of objectives and concerns

Dialogue with shareholders and potential shareholders

→ → →
Amended
title of
Principle 8
based on
earlier
guideline

Principle 8. The Company shall enter into a dialogue with shareholders and potential shareholders based on a mutual understanding of objectives and concerns.

The Committee has recognised certain uneasiness in the numerous reactions of the respondents with regard to the relations with shareholders. At European level, the debate on taking EU measures to regulate the activities of hedge funds and private equity, with the aim to improve financial stability and make financial markets work better, has not come to an end yet. With this in mind, and taking into account that the Code is in the first place addressed to the bodies of the companies and not to the shareholders themselves, the Committee has not considered it to be appropriate at this time to insert a specific provision regarding shareholders' obligations.

The Committee is aware of the fact that Principle 8 of the Code states some of the same objectives as the European Directive on the exercise of shareholders' rights. This directive has to be implemented into Belgian law by 3 August 2009. Since the implementation has not occurred yet, these provisions cannot be considered redundant.

→ → →
New
provision
8.2

8.2 The company should design a disclosure and communication policy promoting an effective dialogue with shareholders and potential shareholders.

The extensive comments on the general shareholders' meeting have drawn the attention to the dialogue between the board and the shareholders and potential shareholders. It is recommended to have the company design a disclosure and communication policy promoting an effective dialogue with all shareholders.

→ → →
Amended
provision
8.5

8.5 The company should encourage the shareholders to participate in the general shareholders' meeting. The general shareholders' meeting should be used to communicate with shareholders. Those shareholders who are not present should be able to vote in absentia, such as by proxy voting.

Guideline The company could, in this respect, also take into account how non-resident shareholders can exercise their rights. Given the existing framework, the company should consider whether communication technology could offer solutions to some practical issues and whether an appropriate approach could be developed in this respect.

Guideline The company should discuss with financial intermediaries how to increase participation at the general shareholders' meeting.

Guideline The company should ask institutional shareholders and their voting agencies for explanations on their voting behaviour.

→ → →
Rewording
guideline

→ → →
Amended
provision
8.9

8.9 The chairman conducts the general shareholders' meeting and should take the necessary measures to ensure that any relevant questions from shareholders are answered. At the general shareholders' meeting, the directors should answer questions put to them by the shareholders on their annual report or on the items on the agenda.

Guideline Under the guidance of the chairman of the board, directors should answer such questions, insofar as the answers would not materially prejudice the company, its shareholders or its employees.

The role of the chairman in the general shareholders' meeting has been clarified. He is responsible for conducting the general shareholders' meeting and should therefore take all necessary measures to that effect.

→ → →
Amended
provision
8.11

8.11 For companies with one or more controlling shareholder(s), the board should endeavour to have the controlling shareholder(s) make a considered use of its/their position and respect the rights and interests of minority shareholders. The board should encourage the controlling shareholder(s) to respect this Code.

Since Belgium is a country where shareholder structure is often characterised by reference shareholders, the Committee found necessary to explicitly stimulate the controlling shareholders' engagement in respecting the Code.

Principle 9: The company shall ensure adequate disclosure of its corporate governance

Corporate Governance Statement

According to Directive 2006/46/EC, listed companies are required to have a Corporate Governance Statement in their annual report referring to the corporate governance code they decided to apply. The Code has anticipated the implementation of this Directive into Belgian law and foresees the disclosure of a Corporate Governance Statement. This Corporate Governance Statement replaces the Corporate Governance Chapter.

The 2009 Code mentions that the company must state in its Corporate Governance Statement that it adopts this Code as its reference Code. In case the company does not comply with some of the provisions, it should give its reasons for non-compliance. Other more factual information should also be mentioned in the Corporate Governance Statement: the remuneration report, a description of the main features of internal control and risk management systems and a description of the composition and the operation of the board.

For more information please contact:

Corporate Governance Committee

Christine Darville

Tel. 02/515.08.59

e-mail: secretary@corporategovernancecommittee.be