

**CORPORATE GOVERNANCE COMMITTEE  
PRIVATE FOUNDATION**

**BELGIAN CORPORATE GOVERNANCE CODE**

**PUBLIC CONSULTATION**

Your contribution will be highly appreciated.

Please send your responses to the address below before November 30, 2007:

To the attention of the Corporate Governance Committee

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## Introduction

The Corporate Governance Committee (hereafter referred to as the 'Committee') is seeking views from listed companies, directors, investors and other stakeholders on their experience with implementing the Belgian Corporate Governance Code (hereafter referred to as the 'Code'). Comments are requested before November 30, 2007.

## Context

The current text of the Code was published on December 9, 2004<sup>1</sup>. Since January 1, 2005 listed companies are requested to follow the Code's provisions and to publish a Corporate Governance Charter by January 1, 2006 in which their governance structure and policy are described.

Several studies made by the Belgian Governance Institute (BGI) and the Federation of Enterprises in Belgium (FEB-VBO)<sup>2</sup>, as well as the Banking, Finance and Insurance Commission (CBFA)<sup>3</sup> have demonstrated that the Code is recognized by Belgian listed companies as the code of reference: they undertake to comply with the provisions, or where applicable, explain why they deviate from it, taking into account their specific features.

## Purpose

The main purpose of this public consultation is to determine to what extent the Code contributes to the development of corporate governance practices encouraging entrepreneurship and risk management.

Based on this consultation, as well as an analysis of the observed and expected developments of corporate governance, the Committee intends to draft:

- Possible changes (additions/deletions) to the current text of the Code; and,
- Explanations that can stimulate/simplify a more efficient implementation of the Code's provisions.

## Method

Comments are welcome on any aspect of the Code, but the Committee would particularly welcome views and suggestions on the following issues:

- the effectiveness of the Code
- the structure and scope of the Code
- the "comply or explain" approach
- the disclosures on the implementation of the Code

For each of these issues, specific questions are raised. In order to have a clear understanding, all questions contain a detailed explanation. Respondents are invited to reflect on the questions raised, but are free to comment on any other question or matter they would consider important.

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<sup>1</sup> The current text of the Code can be found at

[http://www.corporategovernancecommittee.be/en/corporate\\_governance\\_code/final\\_code/default.aspx](http://www.corporategovernancecommittee.be/en/corporate_governance_code/final_code/default.aspx).

<sup>2</sup> BGI-VBO/FEB, *Naleving van de Belgische Corporate Governance Code: een stand van zaken*, april 2006, 28 pp./BGI-FEB/VBO, *Respect du Code belge de gouvernance d'entreprise: un état de la question*, avril 2006, 28pp. This report can be found at <http://www.corporategovernancecommittee.be/en/home/>.

<sup>3</sup> CBFA, *Vergelijkende studie van de informatie inzake "corporate governance" die door de genoteerde vennootschappen wordt gepubliceerd in het "Corporate Governance Charter"*, December 2006, 28pp./CBFA, *Etude comparative sur les informations en matière de "gouvernance d'entreprise" publiés par les entreprises cotées dans la "Charte de Gouvernance d'Entreprise"*, décembre 2006, 28 pp.









**ISSUE 3: THE 'COMPLY OR EXPLAIN' APPROACH <sup>11</sup>**

**3.1 Does the 'comply or explain' option offer sufficient flexibility for the corporate governance of listed companies? <sup>12</sup>**

Comments:

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**3.2 What could or should be added to the Code's recommendations to better mitigate the risk of box-ticking? <sup>13</sup>**

Comments:

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<sup>11</sup> *Explanation of issue 3: Cf Code, Preamble clause 4*

*The Committee has opted for a flexible approach based on a 'comply or explain' system. This implies that companies can either comply with a Code's provision or deviate from it but explain why they do not follow the specific provision.*

<sup>12</sup> *The 'comply or explain' system should allow the taking into account of companies' specificities, such as size, shareholding structure, activities, exposure to risks and management structure. The final objective is to tailor governance structures and processes to the specific needs of companies. In this respect, a strict and rigid application of a detailed set of rules would violate this objective.*

<sup>13</sup> *The risk of the 'comply or explain' system is that companies and investors give priority to formal compliance with the provisions over a substantial adherence or assessment of the governance principles laid down in the Code. This phenomenon is referred to as 'box ticking'.*



**ISSUE 4: DISCLOSURES ON THE IMPLEMENTATION OF THE CODE <sup>15</sup>**

**4.1 To what extent is the relationship between the corporate governance charter and corporate governance chapter (annual report) adequate?**

Comments:

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**4.2 Is the cost of complying with the disclosure recommendations proportionate to the benefits of such disclosure? <sup>16</sup>**

Comments:

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**4.3 Please indicate on the scale below your overall view on the structure and content of the disclosures required by the Code:**

Inadequate Very adequate

1	2	3	4	5	6	7	8	9	10
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

<sup>15</sup> Explanation of issue 4: Cf Code, Preamble clause 5 and Principle 9 and Appendix F

Disclosure, leading to transparency, is an essential ingredient of the Code. Disclosure is crucial to allow outside monitoring by different market parties. The information disclosed should be relevant to shareholders and other stakeholders. Hence the Codes' provisions aim at putting in place a high level of transparency concerning companies' corporate governance.

<sup>16</sup> Transparency is obtained through disclosure in two different documents; the Corporate Governance Charter, posted on a company's website, and the Corporate Governance Chapter in the annual report. Developing these documents as well as the regularly update imply a cost. However, companies should benefit from enhanced transparency by attracting capital at lower cost and by building sustainable relationships with their stakeholders.



Information in relation to the identity of the respondent:

<b>NAME:</b>		
<b>PROFILE/FUNCTION:</b> (CEO, director, investor...)		
<b>ORGANISATION:</b>		
<b>OTHER INFORMATION:</b>		

“Unless otherwise stated, responses will be regarded as being on the public record. Respondents should indicate specifically whether their responses should be treated as confidential (standard disclaimers in responses received by e-mail will be disregarded for this purpose)”

Thank you for your cooperation!