

**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 1: EFFECTIVENESS OF THE CODE <sup>4</sup>

### 1.1 Does the Code support BETTER BOARD PERFORMANCE and LONG TERM VALUE CREATION? <sup>5</sup>

When reflecting upon this question please consider the following topics: composition of the board, board diversity, board tasks, board committees, organization of the board, board evaluation and the development of charters.

#### Comments:

At the time the Code was published back in 2004 Barco already met to a very large extent the Code's standards with respect to most of the above topics. For Barco, the Code was the driver to have a closer look at and fine tune certain issues and to organize a system of Board evaluation, but most importantly, the Code did stimulate to document and formalize in writing Barco's policies and procedures in the area of corporate governance by e.g. the developments of its Corporate Governance Charter.

The Code will indeed have a long term value creation in that Barco's adherence to Code's standards and Barco's ongoing commitment to comply is now well documented and verifiable. Also the Code has been instrumental in putting in place an ongoing process of continuous improvement and refining of the documents.

### 1.2 Please indicate on the scale below your overall view on the effectiveness of the Code:

Ineffective										Very effective
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 checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

<sup>4</sup> Explanation of issue 1: Cf Code, Preamble, clause 1 and 2

*The Code's main objective is to support long-term value creation by means of promoting good governance practices which can stand the test with international standards.*

<sup>5</sup> *A vital role in corporate governance is attributed to the board of directors. A company should benefit from an active and effective board. In particular, the extent to which the board is able to realize its objectives and executes its tasks successfully should ultimately create value.*

*Furthermore, corporate governance should provide incentives for the board and management to pursue objectives that are in the interest of the company, its shareholders and other stakeholders. This may not only be reflected in increased short term financial results but should also entail sustainable long-term wealth creation.*

**2.1 To what extent do you feel that the principles, provisions and guidelines are sufficiently clear?<sup>7</sup>**

Comments:

Barco advocates that the Code be refined with respect to the topics listed below:

1. The remuneration of the CEO.

The Code should provide for a uniform reporting scheme as to how the remuneration of the CEO should be shown. One of the issues still is whether one should consider only the actual remuneration or also the deferred compensations and whether all costs for the company are included or not.

The current provision is very general and leaves room for a lot of interpretation in the compliance. As a result thereof e.g. comparisons of the remuneration of the CEO's of different enterprises made in the press are inaccurate and misleading for the shareholders.

2. The number of directorships one director can hold in a group of companies.

The questions which regularly pops up with this topic are

(i) whether or not the combination of a directorship held in the parent company of a listed company and directorships in one or more subsidiaries of the same listed company should be counted as one directorship

(ii) whether or not the combination of a directorship held in the parent company of a listed company and in one or more subsidiaries of another listed company should be counted as one directorship

3. The term of a directorship

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<sup>6</sup> *Explanation of issue 2: Cf Code, Preamble clause 4 and 8*

***Structure:** A key feature of the Code is a division between 9 principles and their respective provisions and guidelines. The 9 principles reflect the pillars on which good corporate governance should rest while the provisions and guidelines provide more detailed description how to interpret and implement the principles.*

***Scope:** The Code encompasses (detailed) provisions on highly relevant topics regarding the three main actors in the corporate governance tripod: board of directors, management and shareholders. These provisions are directive and are supposed to be mainly complementary to legal dispositions.*

*<sup>7</sup> Provisions (some of which are further substantiated in the Code's Appendices) are recommendations describing how to apply the principles. Companies are expected to comply with these provisions or explain why, taking into account their specific situation, they do not comply.*

*The provisions are supplemented with guidelines, which provide guidance as to how the company should implement or interpret the provisions laid down in the Code. Most guidelines are qualitative and do not lend themselves to assessment in terms of compliance. The obligation to comply or explain does not therefore apply to those guidelines.*

*Because of their detailed and practical description, provisions and guidelines should guide companies on how to implement the Code taking into account their specificities and on how to adhere to the Code's governance philosophy. To obtain these objectives, provisions and guidelines should be clearly formulated, sufficiently substantiated and regularly updated.*

The Code limits the term of the directorships to four (4) years, whereas article 518 of the Code of Companies provides a maximum of six (6) years. From questions raised by our foreign investors it appears that this requirement is confusing. Barco advocates that the Code should not create ambiguity and confusing by adopting definitions which are different from the unequivocal definitions contained in the the Code of Companies. This kind of provisions have little or no added value other than only complicating and confusing things.

4. The definition of "independent director".

Another comment along the same line applies to the Code's definition of "independent director". It differs from the legal definition set forth in article 524 of the Code of Companies, which is confusing. As a result In each corporate (governance) document one as to clearly specify each time which of both definitions is being used.

## **2.2 To what extent does the Code reach the aim to be complementary to the relevant legal dispositions? <sup>8</sup>**

When reflecting upon this question please consider any possible overlap or conflict between the Code and the national or international legal provisions.

### Comments:

We refer to our comments sub 2.1 above. As a general comment Barco advocates that the Code would alter legal definitions and provisions. The correct way of doing this is by amending the law by the normal legislative process. Company law in recent years has evolved to a very complicated and highly technical area of law.

"To be complementary" should not mean "amending or narrowing the legal provisions".

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<sup>8</sup> *Legislation and regulations set a standard reference framework for companies. For some governance matters, legal provisions are rather limited and/or formulated in a general way. The (detailed) provisions of the Code serve as a complement and provide a practical guidance for the implementation of good governance.*

## 2.3 To what extent do you consider the Code to be complete? <sup>9</sup>

- a. Topics not sufficiently treated?

We refer to our comments sub 2.1 & 2.2above.

- b. Topics that are missing?

(a) We refer to our comments sub 2.1 & 2.2above.

(b) That Corporate Governance should in the first place apply to the company and its organs (board of directors, specialized committees, executive management) and that a company shall respect the rights of all shareholders and encourage their participation (principle 8) is selfexplanatory.

Shareholders have rights, they also have duties. In the global world which is ours individual shareholders, in particular foreign shareholders, are frequently participating in investment funds and as a result thereof they are being represented at the general meetings by these investment funds. In many cases the current practice is that investment funds issue a global power of attorney covering a multitude of shareholders without specifying their identity and the number of shares each one of them owns. From a legal point of view (Transparency Law) such behaviour is not acceptable. In addition to specific provisions in the Company's articles of association, the Code, which has high visibility, could be in Barco's opinion the appropriate vehicle to reverse this practice by introducing a chapter on "Shareholders' duties" and providing clear guidance to shareholders with respect to a number of issues (including the use of globalized powers of attorney).

- c. Topics that need additional provisions or guidelines?

We refer to our comments sub 2.1 & 2.2above.

## 2.4 Does the Code give sufficient attention to the role of the shareholder and the function(ing) of the shareholders' meeting? <sup>10</sup>

When reflecting upon this question please pay attention to the role of the shareholder as well as the role of the shareholders' meeting and whether they are sufficiently documented.

### Comments:

We refer to our comments sub 2.3 (b) above.

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<sup>9</sup> In line with international practices, the Code covers a broad set of governance topics which are considered to be of utmost importance. Nevertheless, some topics might need further clarification or have been overlooked.

<sup>10</sup> Cf Code, Principle 8

Shareholder structures are one of the most discriminating and determining factors in corporate governance. Belgium, as some other European countries, is characterised by concentrated ownership. Therefore, special attention in the Code is given to a company's relationship with his shareholders.

**2.5 Please indicate on the scale below your overall view on the structure and the scope of the Code:**

Incomplete

Very complete

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 checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

## 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:

In Barco's opinion the "comply or explain" mechanism is indeed the appropriate mechanism to stimulate the continuous improvement process.

### 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:

Although the risk of box-ticking is always there, a company cannot in good faith maintain that its practices do not match its paperwork. A company's culture and awareness will drive and support sustained compliance and continuous improvement. Education and training will steer the company's culture in the right direction.

### 3.3 Is the compliance with and the deviation from the Code sufficiently monitored? <sup>14</sup>

When reflecting upon this question please consider the monitoring role of the shareholders and/or the role of the Corporate Governance Committee or other monitoring systems.

#### Comments:

There is no need for a formalized monitoring by the shareholder. The posting of many corporate documents on the company's website allows shareholders, shareholders' associations, investors and any other interested party to get familiar with the company's position in respect to corporate governance issues. The general meeting of shareholders is the right forum to question and challenge the board of directors, which is ultimately responsible and accountable

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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'.*

<sup>14</sup> *The 'comply or explain' system offers great flexibility to companies but entails monitoring by external parties. Different parties can be authorized to monitor the information yielded by the "comply or explain" system.*

**3.4 Please indicate on the scale below your overall view on the 'comply or explain' approach:**

Ineffective Very effective

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 checked="" type="checkbox"/>	<input type="checkbox"/>

**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:

The relationship is adequate as the corporate governance chapter (annual report) discloses the implementation of the charter and the corporate governance activities during a given financial year.

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

Comments:

As to Barco the reply is "yes" since Barco was already quite advanced in the area of corporate governance when the Code was published.

**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 checked="" 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.*

**ADDITIONAL COMMENTS AND SUGGESTIONS**

**5.1 Do you have any other comment or suggestion on the Code you would like to make to the Committee?**

Comments:

None

Information in relation to the identity of the respondent:

<b>NAME:</b>	<b>JP</b>	<b>TANGHE</b>
<b>PROFILE/FUNCTION: (CEO, Director, investor...)</b>	<b>President Corporate Communication &amp; Investor Relations Vice President Barco</b>	
<b>ORGANISATION:</b>	<b>Barco</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!