

**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, 2004¹. 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)², as well as the Banking, Finance and Insurance Commission (CBFA)³ 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

¹ The current text of the Code can be found at

http://www.corporategovernancecommittee.be/en/corporate_governance_code/linea_code/default.aspx

² 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/>.

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

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.

ISSUE: EFFECTIVENESS OF THE CODE

1.1 Does the Code support BETTER BOARD PERFORMANCE and LONG TERM VALUE CREATION? ⁵

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:

We believe the Code recommends the right governance framework and processes such as the setting up of specialized committees, clear Terms of Reference for the Board and its Committees, clear rules on the composition of the Board and its Committees, and the regular evaluation of the Board and its Committees. This process supports the Board's performance and enables the Board to create and sustain long-term value.

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

⁴ 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.

⁵ 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.

ISSUE 2: STRUCTURE AND SCOPE OF THE CODE⁶

2.1 To what extent do you feel that the principles, provisions and guidelines are sufficiently clear?⁷

Comments:

The principles, provisions and guidelines are generally clear, the combination of these three elements give a practical and clear pattern of rules.

2.2 To what extent does the Code reach the aim to be complementary to the relevant legal dispositions?⁸

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

Comments:

We think the Code is a good and practical complement to the applicable laws and regulations. The rules of the Code are generally more detailed and provide more specific guidance than some of the general principles stated in the applicable laws. We do not think the Code conflicts with national or international legal provisions.

⁶ 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.

⁷ 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.

⁸ 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? ⁹

a. Topics not sufficiently treated?

None

b. Topics that are missing?

None

c. Topics that need additional provisions or guidelines?

None

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

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 think that the Code gives sufficient attention to these matters through emphasis on regular and up-to-date shareholders' information and company disclosure.

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

⁹ 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.

¹⁰ 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.

ISSUE 3: THE 'COMPLY OR EXPLAIN' APPROACH

3.1 Does the 'comply or explain' option offer sufficient flexibility for the corporate governance of listed companies?¹²

Comments:

We are in favor of the 'comply or explain' approach because it provides the flexibility for our company to derogate from a provision of the Code in specific circumstances while providing transparent information to our stakeholders.

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

Comments:

We think that the risk of 'box-ticking' goes beyond the 'comply or explain' approach and lies with corporate governance in general. We do not see what could be added to mitigate this risk since the Code provides useful tools and guidance to implement good governance.

3.3 Is the compliance with and the deviation from the Code sufficiently monitored?¹⁴

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.

¹¹ 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.

¹² 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.

¹³ 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'.

¹⁴ 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.

Comments:

We think that the compliance with the Code is sufficiently monitored by investors, shareholders and other bodies like the Belgian Corporate Governance Committee (through regular surveys and questions).

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

ISSUE 4: DISCLOSURES ON THE IMPLEMENTATION OF THE CODE¹⁵

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

Comments:

We think that the distinction made in the Code between the Corporate Governance Charter and the Corporate Governance Chapter of the annual report is appropriate.

The relationship between the Charter (main aspects of our corporate governance rules and policies) and the Chapter (factual information) is generally adequate, even though the Charter must also contain some factual information (like shareholdings in the company) while this information must also be available on our web site (see our suggestion in this respect under section 5.1).

4.2 Is the cost of complying with the disclosure recommendations proportionate to the benefits of such disclosure?¹⁶

Comments:

Yes, we think it is.

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

¹⁵ 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.

¹⁶ 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:

Referring to our answer to question 4.1, we suggest amending the provision 8.4 of the Code to allow companies to refer to their web site instead of updating the Corporate Governance Charter each time the shareholding structure changes (for instance following receipt of a shareholding's notification).

Information in relation to the identity of the respondent:

NAME:	MICHAEL WALLER
PROFILE/FUNCTION: (CEO, Director, Investor...)	Executive Vice-President, General Counsel and Secretary
ORGANISATION:	Delhoize Group
OTHER INFORMATION:	

"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!