

EERSTE ONTWERP INTEGOR REACTIE

Please send in your comments by post or e-mail to:

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Comments must be submitted by 22 September 2008.

A. Socially responsible business: Corporate Social Responsibility and diversity

Corporate Social Responsibility (CSR) and diversity/the position of women are some of the topics that have gained prominence over the last couple of years.

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.

This guideline requests that boards also pay attention to corporate social responsibility and diversity when translating the company's values and strategy into company-specific key policies.

Additional guideline for Provision 1.2:

1.2 The board should decide on the company's values and strategy, its risk appetite and key policies.

Guideline In translating values and strategies into key policies, the board should pay attention to corporate social responsibility and diversity, including gender diversity.

Regarding the composition of the board itself, the Code already required the necessary diversity. In addition, it is proposed that gender diversity be given an explicit mention in Provision 2.1.

Amendment to 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 the necessary diversity, including gender diversity, and complementary skills, experience and knowledge. A list of the members of the board should be disclosed in the Corporate Governance Chapter of the annual report (hereinafter "CG Chapter").

Comments with respect to point A:

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“Corporate Social Responsibility” verdient toch meer dan alleen maar een passage in een guideline?

“Gender diversity” is belangrijk maar er moet ook iets concreets rond gebeuren. Met een eenvoudige aanbeveling als “In de raad van bestuur zijn beide geslachten vertegenwoordigd” zouden de ondernemingen met 100% mannelijke raden van bestuur dan toch minstens al de verplichting hebben om uit te leggen waarom er geen vrouwelijke bestuurders zijn. Ook wetgever en publieke opinie zijn zeer gevoelig voor dit thema!

Anderzijds weze benadrukt dat ‘diversity’ vooral moet slaan op inhoudelijke competenties; de publicatie van een ‘ledenlijst’ van de raad van bestuur volstaat niet om diversiteit aan te tonen.

De Commissie zou verder ook kunnen doen nagaan of er voldoende dynamiek heerst in de roulatie van de samenstelling. En wat met de publicatie van de gemiddelde leeftijd van de raad?

Amendement voor een betere formulering van de eerste twee zinnen van 2.1.:

The board's composition should be determined on the basis of the necessary diversity, including gender diversity, and complementary skills, experience and knowledge.

Voorstel tot toevoeging: *De bereikte diversiteit in de samenstelling van de raad moet jaarlijks concreet aangetoond (of toegelicht) worden op de Algemene Vergadering.*

Voorstel tot schrappen: *“A list of the members of the board should be disclosed in the Corporate Governance Chapter of the annual report (hereinafter “CG Chapter”).”* Deze bepaling hoort hier niet thuis, maar wel in het deel over disclosure. Daar is een duidelijke opsomming van de noodzakelijke ‘ingrediënten’ wel op zijn plaats. Ook elders in de bepalingen wordt deze vormfout gemaakt.

B. Balance within the leadership of a company

Good governance requires effective and efficient management, led by the CEO, and a commensurate ‘check and balance’, by the board under the leadership of its chairman. This is why the Code currently stipulates a clear division of responsibilities between the chairman of the board and the CEO.

In line with provisions in the codes of other European countries (see e.g. the provision A.2.2 of the UK Combined Code: “*A chief executive should not go on to be chairman of the same company*”), a new proposed Provision recommends that the CEO should not go on to become chairman of the board for a period of two years. This two-year period is in line with the cooling period applicable before a statutory auditor may become a director of an entity he previously audited.

New Provision:

- 1.7. The CEO should not go on to become chairman of the board. There should be at least a 2 years period before a former CEO may become chairman of the board.

Comments with respect to point B:

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Dit is een sterke en duidelijke bepaling! Alleen jammer dat er zo weinig van zijn...
Maar hoort deze bepaling wel hier (1.7) te staan, zo geïsoleerd van bepalingen over lidmaatschap en voorzitterschap?
Ook kan men zich hier enkele bijkomende vragen stellen:
Een gewezen CEO mag dus wel gewoon bestuurder blijven maar mag hij dan onmiddellijk voorzitter van een comité worden? En zo ja, zelfs van het auditcomité?
Moet er iets voorzien worden als een voorzitter CEO wenst te worden (bijv. qua profiel voor zijn opvolger)?

C. Company secretary

The role of the company secretary has evolved into a post entailing proactive responsibility for the company's corporate governance due to the development of corporate governance requirements.

It is therefore proposed that the first sentence of Provision 2.8. be changed and that an additional guideline be included in Provision 2.8, explaining the function of the company secretary to the board, under direction of the chairman.

Amendment to Provision 2.8 and additional Guideline:

2.8. The board should appoint a company secretary advising the board through the chairman on all governance matters. Where necessary the company secretary should be assisted by the company lawyer. Individual directors should have access to the company secretary.

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

Comments with respect to point C:

Deze nieuwe bepaling vereist wellicht dat andere bepalingen in de code en vooral onder principe 2 over de werking van de RvB enigszins herschreven worden. De tweede zin van 2.8. lijkt ons overbodig wegens te evident en te operationeel. De derde zin van 2.8. zou best geherformuleerd worden in een afzonderlijke bepaling want dat gaat over iets anders.

In sommige bedrijven wordt de functie van secretaris gecumuleerd met andere functies die al dan niet aan de CEO rapporteren. (CFO, legal, administration, compliance, HR...) Aan wie rapporteert de company secretary dan in de eerste plaats: aan de CEO of aan de voorzitter? Wat in geval van "conflictsituaties" tussen beiden?

Bijkomende suggesties:

De rol en verantwoordelijkheden van de secretaris mogen ook best in het intern charter toegelicht worden. Heeft hij ook een taak naar de Algemene Vergadering? Kunnen individuele aandeelhouders zich tot hem richten? Is hij d'office secretaris van alle comités?

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D. Evaluation of the board

Due to the growing complexity of matters dealt with by the board and to the evolution of corporate governance, the role of the board's committees has become significantly more important.

The Committee proposes extending the focus of the evaluation to the overall performance of the board (as well as its size and composition) and to the performance of these committees. The committees are asked to regularly review their effectiveness and propose any necessary changes to the board. The Corporate Governance Chapter should set out the main elements of this evaluation process.

Amendments to 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, performance and those of its committees, as well as its interaction with executive management.

Guideline The evaluation process should have four objectives:

- assessing how the board or the relevant committee 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;
- checking the board's or committee's current composition against the board's or committee's desired composition.

Amendments to Appendixes C, D, E (Respectively Provisions 5.2/19, 5.3/6, 5.4/5):

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

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

5.4./5. The remuneration committee should meet at least twice a year and every time it deems necessary to carry out its duties. It should review regularly (at least every two to three years) its terms of reference and its own effectiveness and recommend any necessary changes to the board.

Comments with respect to point D:

Amendement: (at least every two to three years: een te vrijblijvende bepaling als evaluatie zo belangrijk is. (Ook moeilijker te controleren in verband met comply or explain) Waarom niet jaarlijks zoals voorgeschreven door de Europese Richtlijn?

Regelmatige evaluaties zijn zeer belangrijk en nuttig als ze serieus uitgevoerd worden. Anderzijds kan er volgens Integor moeilijk voorgeschreven worden hoe en over wat er moet geëvalueerd worden. Er moet daar zeker niet al te veel over gecommuniceerd worden want dat is een gevoelige informatie (concurrentie).

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E. Respective roles of the board and of the executive management with regard to disclosure

Listed companies have serious disclosure obligations of both a financial and non-financial nature. The board and the executive management have respective roles with regard to this disclosure process. By amending Provisions 1.3 and 6.5, the Committee underlines their respective responsibilities.

The board should take all necessary measures to ensure the integrity and timely disclosure of financial statements and any other information that needs to be disclosed (in compliance with legal provisions). The executive management, on the other hand, is responsible and accountable to the board for preparing the company's adequate disclosure of financial statements and other information.

Amendments to Provision 1.3:

1.3. With respect to its monitoring responsibilities, the board should, at least:

- maintain a sound system of internal control, including adequate identification and management of risks (including those relating to compliance with existing legislation and regulations);
- 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 that needs to be disclosed to the shareholders and investors;
- review executive management performance;
- supervise the performance of the external auditor and supervise the internal audit function.

Amendments to Provision 6.5:

6.5 Executive management should:

- 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;
- be responsible and accountable vis-à-vis the board for the complete, timely, reliable and accurate preparation of the company's financial statements, in accordance with the accounting standards and policies of the company;
- be responsible and accountable vis-à-vis the board for the preparation of the company's adequate disclosure of the financial statements and other material financial and non-financial information;
- 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;
- be accountable to the board for the discharge of its responsibilities.

Comments with respect to point E:

Wij vragen ons af of de CEO en de CFO inzake financiële rapportering en governance in het algemeen niet nog meer wettelijke rechten en plichten hebben dan de andere leden van het managementteam. Zij hebben niet enkel een prominente rol in de leiding, maar ook in het bestuur. Een executive committee wijst toch ook intern de verantwoordelijkheden toe aan bepaalde personen? Toch is er daar zeer weinig aandacht voor in de code.

F. Fair and responsible remuneration

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The issue of the remuneration of directors and executive managers is especially important, not only in terms of good governance practices, but also from the point of view of social debates at both the national and European levels. The Committee intends to participate in these debates, bearing in mind that the overall objective of good governance is to ensure the competitive positioning of companies listed in Belgium. When drawing up the final version of the 2009 Code, the Committee will take into account the developments observed over the coming months as regards various aspects of remuneration, e.g. questions on limiting compensation and managing conflicts of interest in the event of the early termination of executive managers' mandates.

The recommendations set out in the 2004 Code emphasised the importance of the board's establishment of a remuneration policy for directors and executive managers and the disclosure of directors and executive managers' remuneration, in particular the remuneration of the CEO. These recommendations were taken on board by the companies in question, and disclosure of the details of such remunerations is now a practice being applied by growing numbers of companies.

The main changes contained in the proposed amendments relates to:

- The requirement that the board should draw up a Remuneration Report (Provision 7.3. and Appendix F 9.3/2) for inclusion in the annual report. This change necessitated redrafting various Provisions of Principle 7.
- The indemnity that a CEO could receive in case of early departure.

The Remuneration Report should describe the procedures applied for developing the company's remuneration policy and fixing individual remuneration. It should also describe that remuneration policy, provide actual data on remuneration and explain any discrepancies between the policy as outlined in the report and its application in practice. The main contractual terms applied when hiring executive managers should also be outlined in the report, including any commitments that such terms would entail in the event of the early termination.

Such contractual terms agreed between a company and its CEO often include a provision governing the indemnity that the CEO would receive in case of early termination of his/her contract. After careful examination of current best practices in other countries and of the specifics of the Belgian legal environment, the Committee proposes a new Provision (7.17) which should be applied for contractual commitments agreed as from 1 January 2009. This new Provision states that such indemnities paid to the CEO should be capped to a maximum of 18 months of basic remuneration and variable remuneration. The new Provision is supplemented by a Guideline stating that the variable remuneration should not be automatically taken into account when determining the indemnity, in particular in case of poor performance of the CEO.

The Committee intends to publish a document entitled 'Guidance Note on Remuneration' by the end of 2008 to provide remuneration committees and boards with guidelines for implementing the Code's recommendations on remuneration effectively.

Amendments to Principle 7:

New Provision 7.3:

- 7.3. The board should prepare a Remuneration Report containing at least, the information listed in 9.3./2. The Remuneration Report should form a specific part of the CG Chapter.

New Provision 7.3 and additional Guideline:

- 7.17 The contractual commitments in case of early termination agreed, as from 1 January 2009, between the company or any other undertaking belonging to the same group and its

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CEO, should not include an indemnity exceeding 18 month's basic remuneration and variable remuneration.

Guideline: When determining the indemnity, the variable remuneration should not be taken into account automatically, especially in case of poor performance.

Amendments to Appendix F:

9.3./2. The Remuneration Report should include at least:

- a description of the procedure adopted for developing a policy on non-executive directors and executive managers' remuneration and for fixing the remuneration of individual non-executive directors and executive-managers as well as a statement of the company's remuneration policy for the following and subsequent financial years, with an explanation on the main changes to the remuneration policy applicable for the financial reported year [7.2];

- on an individual basis, the amount of the remuneration and other benefits granted directly or indirectly to non-executive directors, by the company or any other undertaking belonging to the same group [7.6.];

- if some members of executive management are also board members, full and detailed information on the amount of the remuneration they receive in such capacity [7.8.];

- in case executive managers are eligible for incentives, performance conditions and evaluation of performance achieved against targets [7.10.]

- key features of incentives granted in shares, options or any other right to acquire shares and approved by, or submitted to the annual shareholders' meeting [7.11.]

- the criteria for the evaluation of the performance of the CEO and the other executive managers [7.12.]

- the amount of the remuneration and other benefits granted directly or indirectly to the CEO, by the company or any other undertaking belonging to the same group. This information should be disclosed with a split between:

- basic remuneration;
- variable remuneration: any incentive relating to, the financial reported year;
- pension: cost of pension, with an explanation of the retirement schemes applicable (defined benefit and/or defined contribution)
- other components of the remuneration, such as cost or monetary value of (other) insurance coverage and other fringe benefits, with an explanation and, if appropriate, details of the main components ;

If any, material deviation from the remuneration policy applicable for the financial reported year. [7.13]

- on an individual or global basis, the amount of the remuneration and other benefits granted directly or indirectly to the other members of executive management, by the company or any other undertaking belonging to the same group. This information should be disclosed with a split between:

- basic remuneration;
- variable remuneration: any incentive relating to the financial reported year;
- pension: cost of pension, with an explanation of the retirement schemes applicable (defined benefit and/or defined contribution)
- other components of the remuneration, such as cost or monetary value of (other)insurance coverage and other fringe benefits, with an explanation and, if appropriate, the details of the main components;

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If any, material deviation from the remuneration policy applicable for the financial reported year. [7.14]

- for the executive managers, on an individual basis, the number and key features of shares, share options or any other right to acquire shares, granted, exercised or lapsed during the financial reported year [7.15.];

- for the executive managers, the main contractual terms of appointment, including compensations that such terms entail in the event of early termination [7.16.];

For all other changes, please see Principle 7 of the document annexed “The Revised Code, draft 2009”

Comments with respect to point F:

Het is positief dat er een apart en duidelijk remuneratierapport moet opgesteld worden. Toch moet deel 9.3./2 over de inhoud ervan nog duidelijker en zelfs meer in detail geformuleerd worden. (Dat is dan meteen ook een hulpmiddel en een ‘template’ voor de ondernemingen!) Er moet immers naar gestreefd worden dat alle ondernemingen op een zo homogeen en herkenbaar mogelijke wijze rapporteren over hun remuneratiebeleid.

Kan de nadruk gelegd worden op “de kost voor de onderneming” en niet op wat de begunstigden – al dan niet netto –ontvangen? Dat maakt het allemaal overzichtelijker voor de aandeelhouders. Objectieve en vergelijkbare kostencijfers zouden misschien ook leiden tot minder giswerk en minder voorbarige conclusies in de pers?

En moet er echt een ingangsdatum vermeld worden in de bepaling 7.17?

G. Dialogue with shareholders and investors

The Committee acknowledges the key importance of the dialogue between the board and the shareholders and investors, which goes far beyond merely respecting the rights of shareholders. It is therefore proposed that the wording of Principle 8 be altered accordingly.

The Committee also proposes that companies should draw up a disclosure and communication policy promoting effective dialogue with the shareholders.

The Committee is aware that Principle 8 of the Code covers some of the same objectives as the European directive on the exercising of shareholders’ rights. As this directive has still not been implemented into Belgian law, these provisions cannot yet be considered redundant.

New Provision 1.8:

1.8. The board should foster - through appropriate measures - an effective dialogue with the shareholders and investors, based on mutual understanding of objectives and concerns.

Amendments to Principle 8:

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PRINCIPLE 8. THE COMPANY SHALL ENTER INTO A DIALOGUE WITH SHAREHOLDERS AND INVESTORS BASED ON MUTUAL UNDERSTANDING OF OBJECTIVES AND CONCERNS

Subtitle: Communication with shareholders and investors

- 8.2. The company should design a disclosure and communication policy promoting effective dialogue with shareholders and investors.
- 8.3. The company should ensure that all necessary facilities and information to enable shareholders to exercise their rights are available. The company should dedicate a specific section of its website to describing the shareholders' rights to participate and vote at the general shareholders' meeting. This section should also contain a timetable on periodic information and shareholders' meetings. The articles of association and the CG Charter should be available at any time.
- 8.9. The chairman conducts the general meeting and should take the necessary measures for relevant questions from shareholders to be answered. At the general meeting, the directors should answer questions put to them by the shareholders on their annual report or on the items on the agenda.
- 8.12. Given the reliance on market monitoring to enforce the flexible 'comply or explain' approach of this Code, the board should take the necessary measures to encourage investors, and in particular institutional investors, to play an important role in carefully evaluating a company's corporate governance. The board should endeavour to have institutional and other investors give weight to all relevant factors drawn to their attention.

Comments with respect to point G:

In het transparantiedebat is het belangrijk om ergens een grenslijn te kunnen trekken tussen wat een (kleine) aandeelhouder behoort te weten en wat hij niet behoort te weten. Een aantal zaken moeten in de bestuurlijke beslotenheid kunnen blijven. Kan de Commissie een concrete aanzet maken in dit debat?

Er blijven o.i. ook vragen over betreffende de impact van de AV op het governancebeleid: Hoe kan een aandeelhoudersvergadering een concreet oordeel vellen over het governancebeleid van een onderneming? Wat als de AV de onafhankelijkheid van een bestuurder wenst aan te vechten? Wat met het remuneratierapport op de AV? Enz.

Any other additional comments or suggestions:

Er zijn volgens Integor nog een aantal verduidelijkingen nodig:

1. Wat is nu precies het 'juridisch statuut' van deze code ten overstaan van de rechtbank en de rechtspraak?
2. Wat is de precieze rol en de bevoegdheid van de CBFA in deze materie?
3. In welke mate is deze code (of de naleving van een deel daarvan) een noteringsvereiste voor Euronext?
4. Waarom is er gekozen voor een private stichting "met leden"? Welk lid vertegenwoordigt wie? Welke leden hebben een mandaat van een achterban, welke leden zijn lid in persoonlijke naam?

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Zowel over samenstelling als over de werking van de stichting is meer informatie gewenst. En heeft een welbepaalde bankinstelling niet een te grote impact?

5. De Commissie zou ook meer concreet op zijn website een aantal “good practices” inzake charter en chapter in de verf kunnen zetten zodat ondernemingen daarop kunnen benchmarken. De Commissie zou ook beter en meer gedetailleerd kunnen opsommen wat er allemaal in Charter resp. Chapter moet vermeld worden, gelet op de zeer uiteenlopende manieren waarop bedrijven rapporteren. Dat zou een nuttig hulpmiddel zijn om niets te vergeten.

6. Gaat er eigenlijk voldoende dynamiek uit van de Commissie? Een evaluatie met een lichte aanpassing om de vier, vijf jaar is in deze tijden van snelle veranderingen nauwelijks te verantwoorden. België staat niet aan de Europese top inzake deugdelijk bestuur. Om een echt levende referentiecode te hebben zou de Commissie moeten kunnen overgaan tot een jaarlijkse rapportering en zou er een permanente dialoog moeten mogelijk zijn met de verschillende stakeholders. Een permanent proces waarbij zwakheden sneller gedetecteerd kunnen worden en aanpassingen grondiger en in overleg kunnen voorbereid worden.

7. De Code en zijn bepalingen zijn qua structuur en formulering nog al eens verward of verwarrend. Ook zijn er te veel overbodige of al te evidente bepalingen. Waarom zou dit initiatief tot aanpassing niet kunnen vergezeld gaan van een algemene redactionele schoonmaakoperatie? Alles op zijn juiste plaats zetten en het overbodige schrappen....

Information to identify the respondent:

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Comments on these main changes and on any other proposed changes are welcome and may be sent in by post or e-mail to:

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Comments must be submitted **by 22 September 2008.**

NB: Unless otherwise stated, responses will be regarded as being on public record. Respondents must indicate specifically whether their responses should be treated as confidential (in this connection standard disclaimers contained in responses received by e-mail will be disregarded).