



**Corporate
Governance**
COMMITTEE

PUBLIC CONSULTATION

Proposed Revisions to the Belgian Code on Corporate Governance

Appendix A – Revised Belgian Code on Corporate Governance

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ADDENDUM

PRINCIPLE 1. THE COMPANY SHALL MAKE AN EXPLICIT CHOICE REGARDING ITS GOVERNANCE STRUCTURE AND CLEARLY COMMUNICATE ITS CHOICE

- 1.1** Each company shall make an explicit choice of one of the possible governance structures as foreseen by law.

The *one-tier* governance structure consists of one governance body, the board of directors, responsible for the accomplishment of all acts that foster the realisation of the company's purpose, except for those exclusively reserved to the general shareholders' meeting.

The *two-tier* governance structure consists of two separate governance bodies, the supervisory board and the management board. The supervisory board is responsible for the general policy and strategy of the company, as well as for all the acts specifically reserved by the Code on Companies to the board of directors. In addition, it is responsible for the supervision of the management board. The management board exercises all management powers not reserved by law to the supervisory board or the general shareholders' meeting.

At least once every five years, the board should review whether the chosen governance structure is still the most appropriate model, and if not, it should propose a change of structure to the general shareholders' meeting.

- 1.2** The board should ensure that this governance structure is correctly translated in practice and that all the main aspects of the company's corporate governance are clearly described in the company's CG Charter. The company's CG Charter should be updated as often as needed to reflect the company's current corporate governance regime at any time and should be disclosed on the company's website (explicitly specifying the date of the most recent update).
- 1.3** The company should include a CG Statement in its annual report describing all relevant information on the corporate governance events that occurred within the company during the year under review, including any amendments made to the company's CG Charter.

PRINCIPLE 2. THE BOARD AND THE EXECUTIVE MANAGEMENT SHALL REMAIN WITHIN THEIR RESPECTIVE REMIT AND INTERACT CONSTRUCTIVELY

BOARD

- 2.1** The board should pursue sustainable value creation by the company, by setting the company's strategy, putting in place effective and responsible leadership, and monitoring the company's performance.
- 2.2** In order to effectively pursue such sustainable value creation, the board should develop, an inclusive approach that balances the legitimate interests and expectations of shareholders and other stakeholders.
- 2.3** The board should support the executive management in the fulfilment of their duties and should be prepared to constructively challenge the executive management where and when appropriate.
- 2.4** The board members should be available for advice, also outside of board meetings.

Strategy

- 2.5** The board of directors should decide on and regularly review the company's medium and long-term strategy based on proposals from the executive management.
The supervisory board should approve and regularly review the company's medium and long-term strategy based on proposals from the management board.
- 2.6** The board of directors should ensure it approves the operational plans and main policies developed by the executive management to give effect to the approved company strategy.
The supervisory board should monitor the operational plans and main policies developed by the management board to give effect to the approved company strategy.
- 2.7** The board should ensure that the company's culture is supportive of the realisation of its strategy.
- 2.8** The board of directors should determine the risk appetite of the company in order to achieve the strategic company objectives.
The supervisory board should approve the risk appetite of the company determined by the management board in order to achieve the strategic company objectives.

Leadership

- 2.9** The board should appoint and dismiss the CEO. The board should also appoint and dismiss the other members of the executive management, in consultation with the CEO, and taking into account the need for a balanced executive team.
- 2.10** The board should satisfy itself that there is a succession plan in place for the CEO and the other members of the executive management, and review this periodically.
- 2.11** The board should determine the company's remuneration policy for non-executive board members and executives, taking into account the overall remuneration framework of the company.
- 2.12** The board should review the executive management's performance and the realisation of the company's strategy annually against agreed performance measures and targets.

Monitoring

- 2.13** The board should approve the framework of internal control and risk management proposed by the executive management and review the implementation of this framework.
- 2.14** The board should 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 in accordance with applicable law.
- 2.15** The board should ensure that there is a process in place for monitoring the company's compliance with laws and other regulations, as well as for the application of internal guidelines relating thereto.

EXECUTIVE MANAGEMENT

- 2.16** The board should determine the powers and duties entrusted to the executive management and develop a clear delegation policy, in close consultation with the CEO. The 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, based on the framework approved by the board;
 - present to the board 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;
 - prepare the company's required 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 timely with all information necessary for the board to carry out its duties; and
 - be responsible and accountable to the board for the discharge of its responsibilities.

The responsibilities of the management board are provided for in the Code on Companies.

INTERACTION BETWEEN THE BOARD AND THE EXECUTIVE MANAGEMENT

- 2.17** The executive management should formulate proposals to the board for the company's strategy and its implementation.
- 2.18** The executive management should have sufficient latitude to implement the approved strategy within the company's risk appetite.
- 2.19** Clear and actionable procedures should exist for the executive management as regards its decision-making powers, the reporting of key decisions to the board and the evaluation of the CEO and the other members of the executive management.
- 2.20** The board and the executive management should agree on whether the executives may accept memberships of other corporate boards outside of the company. Time constraints and potential conflicts of interest should be considered and balanced against the opportunity for professional development.
- 2.21** Interaction between board members and executives should take place in a transparent way, whereby the Chair should be informed.

PRINCIPLE 3. THE COMPANY SHALL HAVE AN EFFECTIVE AND BALANCED BOARD

COMPOSITION

- 3.1** The board should have a composition appropriate to the company's purpose, its operations, phase of development, structure of ownership and other specifics.
- 3.2** The board should be small enough for efficient decision-making. It should also be large enough for its members to contribute experience and knowledge from different fields and for changes to the board's composition to be managed without undue disruption.
- 3.3** The composition of the board should be determined so as to gather sufficient expertise in the areas of activity of the company as well as sufficient diversity of skills, background, age and gender.
- 3.4** The board of directors should comprise a majority of non-executive directors. The board should include an adequate number of independent directors. At least three directors should qualify as independent directors as defined by the Code.

The supervisory board, which is solely composed of non-executive board members, should include an adequate number of independent board members. At least three board members should qualify as independent directors as defined by the Code.

- 3.5** All board members, who are appointed as independent board members, should meet the following criteria:
- 1) Not be an executive, or exercising a function as a person entrusted with the daily management of the company or a related company or person, and not have been in such a position for the previous five years before their nomination.
 - 2) Not have served for more than three terms as a non-executive board member or for a total term of more than twelve years.
 - 3) Not be an employee of the senior management (as defined in article 19,2° of the law of 20 September 1948 regarding the organisation of the business industry) of the company or a related company or person, and not have been in such a position for the previous three years before their nomination;
 - 4) Not be receiving, or having received during their mandate or for a period of three years prior to their appointment, any significant remuneration or any other significant advantage of a patrimonial nature from the company or a related company or person, apart from any bonus or fee they receive or have received as a non-executive board member;
 - 5)
 - (a) Not hold shares, either directly or indirectly, through a company controlled by them, representing globally one tenth or more of the company's capital;
 - (b) Even if they meet the conditions under (a), not hold any share whose acts of disposal or the exercise of related rights are subject to contractual stipulations or unilateral undertakings given by them;
 - (c) Not having been nominated, in any circumstances, by a shareholder fulfilling the conditions covered under (a) and (b).

6) Not have, or having had within the financial reported year, a significant business relationship with the company or a related company or person, either directly or as partner, shareholder, board member, member of the senior management (as defined in article 19,2° of the law of 20 September 1948 regarding the organisation of the business industry) of a company or person who maintains such a relationship;

7) Not be or have been within the last three years, a partner or employee of the current or former external auditor of the company or a related company or person;

8) Not be an executive of another company in which an executive of the company is a non-executive board member, and not have other significant links with executives of the company through involvement in other companies or bodies.

9) Not be, in the company or a related company or person, a spouse, legal partner or close family member to the second degree of a board member or executive or person entrusted with the daily management or employee of the senior management (as defined in article 19,2° of the law of 20 September 1948 regarding the organisation of the business industry), or falling in one of the other cases referred to in 1) to 8) above, and as far as point 2) is concerned, up to three years after the date on which the relevant relative has terminated their last term.

3.6 An independent board member who ceases to satisfy the requirements of independence as defined by the Code should immediately inform the board through the intermediary of the Chair.

FUNCTIONING

3.7 The board should function as a collegial body. No individual or group of board members should dominate the board's decision-making.

3.8 The minutes of the meeting should summarize the discussions, specify the decision taken and detail potential diverging views expressed by board members.

3.9 The board should meet sufficiently regularly to discharge its duties effectively. The company may organise – where necessary and appropriate – board meetings using video, telephone or internet-based means.

3.10 The board should lay down procedures through which board members have access to independent professional advice at the company's expense.

3.11 Non-executive board members should meet at least once a year in the absence of the CEO and the other executives.

CHAIR OF THE BOARD

3.12 In a one-tier governance structure, there should be a clear division of responsibilities between the person presiding over the board (the Chair) and the executive responsibility for running the company's business (the CEO). The Chair and the CEO should not be the same individual.

3.13 The Chair should lead the board. The Chair should stimulate a climate of trust, allowing for open discussions and constructive challenge. The Chair should ensure that there is sufficient time for consideration and discussion before decision-making. Once decisions are taken, all board members should be supportive of their execution.

- 3.14** In a one-tier governance structure, the Chair of the board of directors should set the agenda of the board meetings, in consultation with the CEO and the company secretary. In a two-tier governance structure, the Chair of the supervisory board and the CEO should set the agenda of their respective board meetings, in consultation with the company secretary. The Chair or, as the case may be, the Chair and the CEO should ensure that procedures relating to preparatory work, deliberations, the passing of resolutions and the implementation of decisions are properly followed. The agenda should specify which topics are for information, for deliberation or for decision-making purposes.
- 3.15** The Chair of the board, assisted by the company secretary, should ensure that board members are provided with accurate, concise, timely and clear information before the meetings and, where necessary, between meetings so that they can make a knowledgeable and informed contribution to board discussions. All board members should receive the same board information.
- 3.16** The Chair of the board should establish a close relationship with the CEO, providing support and advice, while fully respecting the executive responsibilities of the CEO. The Chair should ensure effective interaction between the board and the executive management.
- 3.17** The Chair of the board should ensure effective communication with shareholders.
- 3.18** The Chair of the board should ensure that the board members develop and maintain an understanding of the views of the shareholders and other significant stakeholders.
- 3.19** The board should draw up a procedure on how to choose a replacement Chair for board meetings in the absence of the Chair and for chairing discussions and decision-making by the board on matters where the Chair has a conflict of interest.

COMPANY SECRETARY

- 3.20** The board should appoint and dismiss the company secretary. The board should oversee that the person appointed as company secretary has the necessary skills, knowledge and experience. The company secretary should have the capabilities and authority to negotiate, listen and influence.
- 3.21** The role of the company secretary should include:
- advising the board and its committees on all governance matters;
 - regularly reporting to the board on how procedures, rules and regulations are being followed and complied with;
 - ensuring good information flow within the board and its committees and between the executive management and non-executive board members;
 - ensuring that discussions and decisions at board meetings are accurately captured in the minutes; and
 - facilitating induction and assisting with professional development as required.
- 3.22** Individual board members should have access to the company secretary.
- 3.23** *The provisions under Principle 3 are mutatis mutandis applicable to the management board in a two-tier board system, except for the provisions exclusively applicable to the supervisory board or to the one-tier governance system.*

PRINCIPLE 4. SPECIALISED COMMITTEES SHALL ASSIST THE BOARD IN THE EXECUTION OF ITS RESPONSIBILITIES

GENERAL PROVISIONS

- 4.1** The board should set up specialised committees to analyse specific matters in order to advise the board in respect of decisions to be taken, to give comfort to the board that certain issues have been adequately addressed and, if necessary, to bring specific issues to the attention of the board. The decision-making should remain the collegial responsibility of the board.
- 4.2** The audit committee, the remuneration committee and the nomination committee should be composed of at least three members. The board should ensure that each committee, as a whole, has a balanced composition and has the necessary independence, skills, knowledge, experience and capacity to execute its duties effectively.
- 4.3** The board should ensure that a chair is appointed for each committee.
- 4.4** Each committee should meet sufficiently regularly to execute its duties effectively. The company may organise – where necessary and appropriate – committee meetings using video, telephone or internet-based means.
- 4.5** Members of the executive and senior management may be invited to attend committee meetings to provide relevant information and insights into their areas of responsibility.
- 4.6** Each committee should be entitled to meet with any relevant person without any executive manager being present.
- 4.7** The board should lay down procedures through which board committees have access to independent professional advice at the company's expense.
- 4.8** After each committee meeting, the board should receive from each committee a written report on its findings and recommendations (“minutes”) and oral feedback at the next board meeting.

AUDIT COMMITTEE

- 4.9** The board must set up an audit committee in accordance with applicable law. Given its role in risk matters, the committee may also be called “audit and risk committee” unless the board opts for a separate risk committee.
- 4.10** The audit committee should assist the board in fulfilling its monitoring responsibilities in respect of control in the broadest sense, including risks. It should therefore perform the duties specified by law.
- 4.11** In particular, the audit committee should monitor management's responsiveness to the findings of the internal audit function and to the recommendations made in the external auditor's management letter.
- 4.12** In addition, the audit committee should review the specific arrangements for raising concerns – in confidence – about possible improprieties in financial reporting or other matters. If deemed necessary, arrangements should be made for the proportionate and independent investigation of such matters, for the appropriate follow-up actions and arrangements whereby staff can inform the chair of the audit committee directly.

- 4.13** An independent internal audit function should be established, with resources and skills adapted to the company's nature, size and complexity. If the company does not have an internal audit function, the need for such function should be reviewed at least annually.
- 4.14** The external auditor and the head of the internal audit function should have direct and unrestricted access to the chair of the audit committee and the Chair of the board.
- 4.15** Matters relating to the audit plan and any issues arising from the audit process should be placed on the agenda of every audit committee meeting and should be discussed specifically with the external and internal auditors at least once a year.

REMUNERATION COMMITTEE

- 4.16** The board must set up a remuneration committee in accordance with applicable law.
- 4.17** The remuneration committee should perform their duties specified by law. In particular, the remuneration committee should make proposals to the board on the remuneration policy for non-executive board members and executives, on the annual review of the executive management's performance and on the realisation of the company's strategy against agreed performance measures and targets.

NOMINATION COMMITTEE

- 4.18** The board should set up a nomination committee with the majority of its members comprising independent non-executive board members. The Chair of the board or another non-executive board member should chair the committee. The Chair of the board should not chair the nomination committee when dealing with the appointment of their successor.
- 4.19** The nomination committee and the remuneration committee may be combined.
- 4.20** The nomination committee should make recommendations to the board with regard to the appointment of board members and executives.
- 4.21** The nomination committee should ensure that a succession plan is in place for board members and executives. The nomination committee should lead the re-appointment process of board members.

PRINCIPLE 5. THE COMPANY SHALL HAVE A RIGOROUS AND TRANSPARENT PROCEDURE FOR THE APPOINTMENT OF BOARD MEMBERS

NOMINATION AND APPOINTMENT OF BOARD MEMBERS

- 5.1** There should be a rigorous and transparent procedure for the appointment and re-appointment of members of the board of directors or, as the case may be, of the supervisory board and the management board. The board of directors or the supervisory board, should draw up nomination procedures and objective selection criteria for executive and non-executive directors or for the members of the supervisory board and of the management board.
- 5.2** The nomination committee should lead the nomination process and recommend suitable candidates to the board of directors or to the supervisory board. The board of directors or the supervisory board should then make appointment proposals or re-appointment proposals to the general shareholders' meeting and, as the case may be, decide upon the appointment or re-appointment of management board members.
- 5.3** For any appointment to the board of directors or, as the case may be, to the supervisory board or the management board, the skills, knowledge and experience already present or required on the board should be evaluated and, in light of that evaluation, a description of the role and skills, knowledge and experience required should be prepared (also referred to as a "profile").
- 5.4** When dealing with a new appointment, the Chair of the board and the chair of the nomination committee should ensure that, before considering the candidate, the board has received sufficient information such as the candidate's curriculum vitae, an assessment of the candidate based on the candidate's initial interview(s), a list of the positions currently held by the candidate and, if applicable, any necessary information about the candidate's independence.
- 5.5** Non-executive board members should be made aware of the extent of their duties at the time of their application, in particular as to the time commitment involved in carrying out those duties, also taking into account the number and importance of their other commitments. Non-executive board members should not take on more than five board memberships in listed companies. Changes to their other relevant commitments and their new commitments outside the company should be reported to the Chair of the board as they arise.
- 5.6** The appointment proposal put to the general shareholders' meeting should include a recommendation from the board. This provision also applies to proposals for appointments originating from shareholders. Any proposal should specify the proposed term of the mandate, which should not exceed four years. It should include relevant information on the candidate's professional qualifications together with a list of the positions the candidate already holds. The board will indicate which candidates satisfy the independence criteria as set out in the Code.
- 5.7** The board should propose that the general shareholders' meeting votes on each proposed appointment separately.

- 5.8** The board should ensure that, when considering nominating the former CEO as a board member, the necessary safeguards are in place so that the new Chair of the executive management has the required autonomy. If the board envisages appointing a former CEO as Chair, it should carefully consider the positive and negative implications of such a decision and disclose in the CG Statement why such appointment will not hamper the required autonomy of the CEO.

NOMINATION AND APPOINTMENT OF THE CHAIR

- 5.9** The Chair of the board should be a person trusted for his or her professionalism, communication skills, integration and ability to mediate, coaching capabilities and independence of mind.

PROFESSIONAL DEVELOPMENT

- 5.10** Newly appointed members of the board of directors or, as the case may be, of the supervisory board and the management board should receive an appropriate induction, geared to their role, including an update of the legal and regulatory environment, to ensure their capacity to swiftly contribute to the board and, as the case may be, the management board.
- 5.11** Members of the board of directors or, as the case may be, of the supervisory board and the management board should update their skills and improve their knowledge of the company to fulfil their role both on the board and on the board committees they serve on. The company should for that purpose make the necessary resources available.

BOARD'S SUCCESSION PLANNING

- 5.12** The board should satisfy itself that plans are in place for the orderly succession of appointments to the board of directors or, as the case may be, to the supervisory board and the management board. It should satisfy itself that any appointment and re-appointment will allow an appropriate balance of skills, knowledge, experience and diversity to be maintained on the board of directors and its committees or, as the case may be, on the supervisory board, its committees and the management board.

PRINCIPLE 6. ALL BOARD MEMBERS SHALL DEMONSTRATE INDEPENDENCE OF MIND AND SHALL ALWAYS ACT IN WHAT THEY CONSIDER THE BEST INTEREST OF THE COMPANY

INTEGRITY AND INDEPENDENCE OF MIND

- 6.1** Board members should engage actively in their duties and should be able to make their own sound, objective and independent judgements when discharging their responsibilities. Acting with independence of mind includes developing a personal conviction and having the courage to act accordingly by assessing and challenging the views of other board members, by interrogating the executives when appropriate in the light of the issues and risks involved, and by being able to resist group pressure.
- 6.2** Board members should make sure they receive detailed and accurate information and should spend sufficient time to study it carefully so as to acquire and maintain a clear understanding of the key issues relevant to the company's business. Board members should seek clarification whenever they deem it necessary.
- 6.3** Board members should not use the information obtained in their capacity as board member for purposes other than for the exercise of their mandate. Board members should handle the confidential information received in their capacity as board member with utmost care.
- 6.4** Board members should communicate to the board any information in their possession that could be relevant to the board's decision-making. In the case of sensitive or confidential information, board members should consult the Chair.
- 6.5** To the extent relevant, these provisions are *mutatis mutandis* applicable to the executives.

CONFLICT OF INTERESTS

- 6.6** Each board member should place the company's interest above their own. The board members have the duty to look after the interests of all shareholders on an equivalent basis. Each board member should act at all times according to the principles of reasonableness and fairness.
- 6.7** Each board member should inform the board of any conflict of interest that could in their opinion affect their capacity of judgement. In particular, at the beginning of each board or committee meeting, board members should declare whether they have any conflict of interests regarding the items on the agenda.
- 6.8** Each board member should, in particular, be attentive to potential conflicts of interests that may arise between the company, its board members, its controlling shareholder(s) and other shareholders. The board members who are proposed by the controlling shareholder(s) should ensure that the interests and intentions of the controlling shareholder(s) are sufficiently clear and communicated to the board in a timely manner.
- 6.9** The board should act in such a manner that any conflict of interests, or the appearance of such a conflict, is avoided. In any possible case of conflict of interests, the board should, under the lead of its Chair, decide which procedure it will follow to protect the interests of the company and all its shareholders. In the next annual report, the board should explain why they chose this procedure. However, where there is a substantial conflict of interests, the company should carefully consider communicating as soon as possible about the procedure followed, the most important considerations and the conclusions.

- 6.10** No board member should pursue personal interests in their decisions or use business opportunities intended for the company for themselves.
- 6.11** To the extent relevant, these provisions are *mutatis mutandis* applicable to the executives.

PRINCIPLE 7. THE COMPANY SHALL REMUNERATE BOARD MEMBERS AND EXECUTIVES FAIRLY AND RESPONSIBLY

GENERAL PROVISIONS

- 7.1** The board should adopt, upon the advice of the remuneration committee, a remuneration policy which should be designed to achieve the following objectives:
- to attract, reward and retain the necessary talent;
 - to promote the achievement of strategic objectives within the company's risk appetite; and
 - to promote long-term value creation.
- 7.2** The board should make sure that the remuneration policy is consistent with the overall remuneration framework of the company.
- 7.3** The board should submit the policy to the general shareholders' meeting. When a significant proportion of the votes have been cast against the remuneration policy, the company should take the necessary steps to adapt its remuneration policy.

NON-EXECUTIVE BOARD MEMBERS' REMUNERATION

- 7.4** For non-executive board members, the remuneration policy should take into account their role as board members, and specific roles such as Chair of the board, or chair or member of board committees, as well as their resulting responsibilities and commitment in time.
- 7.5** Non-executive board members should not receive any performance-related remuneration, which is directly related to the results of the company.
- 7.6** A non-executive board member should receive part of their remuneration in the form of shares in the company. These shares should be held until at least one year after the non-executive board member leaves the board and at least three years after the moment of award. However, no stock options should be granted to non-executive board members.

EXECUTIVES' REMUNERATION

- 7.7** For executives, the remuneration policy should describe the different components of and determine an appropriate balance between fixed and variable remuneration, and cash and deferred, remuneration.
- 7.8** The variable part of the executive remuneration package should be structured so as to link reward to overall corporate and individual performance, and to align the interests of the executives with the sustainable value-creation objectives of the company.
- 7.9** The board should set a minimum threshold of shares to be held by the executives.
- 7.10** When the company awards short-term variable remuneration to the executive management, this remuneration should be subject to a cap.
- 7.11** Stock options should not vest and be exercisable within less than [five] years. Executives should not enter into derivative contracts related to such stock options or to hedge the risks attached, as this is not consistent with the purpose of this incentive mechanism.

7.12 The board should approve the main terms and conditions of the contracts for the appointment of the CEO and other executives further to the advice of the remuneration committee. The board should include provisions that would enable the company to recover variable remuneration paid, or withhold the payment of variable remuneration, and specify the circumstances in which it would be appropriate to do so, insofar as enforceable by law. The contracts should contain specific provisions relating to early termination.

PRINCIPLE 8. THE COMPANY SHALL TREAT ALL SHAREHOLDERS EQUALLY AND RESPECT THEIR RIGHTS

COMMUNICATION WITH SHAREHOLDERS AND POTENTIAL SHAREHOLDERS

- 8.1** The board should ensure an effective dialogue with shareholders and potential shareholders through appropriate investor relation programmes, in order to achieve a better understanding of their objectives and concerns. Feedback of such dialogue should be given to the board, on at least an annual basis.
- 8.2** The board should ensure that the strategy pursued and the shareholder structure are aligned.

GENERAL SHAREHOLDERS' MEETING

- 8.3** The company should ensure that all necessary facilities and information is available to enable shareholders to exercise their rights.
- 8.4** The company should encourage the shareholders to participate in the general shareholders' meeting and provide for communication technology in this respect, to the extent necessary.
- 8.5** The Chair of the board should conduct the general shareholders' meeting and should take the necessary measures to ensure that any relevant questions from shareholders are adequately answered.

COMPANIES WITH ONE OR MORE CONTROLLING SHAREHOLDER(S)

- 8.6** For companies with one or more controlling shareholder(s), the board should encourage the controlling shareholder(s) to clearly express their strategic objectives, to make a considered use of their position, to take special care to prevent conflicts of interests and to respect the rights and interests of minority shareholders.
- 8.7** Consideration should be given as to the set-up of relationship agreements, allowing the company to operate autonomously.

INSTITUTIONAL INVESTORS

- 8.8** The company should discuss the implementation of their policy on the exercise of institutional investors' voting rights with institutional investors in the relevant financial year and ask institutional shareholders and their voting agencies for explanations on their voting behaviour.
- 8.9** The board should encourage shareholders, and in particular institutional investors, to communicate their evaluation of the company's corporate governance prior to the general shareholders' meetings and at least through participation in the general shareholders' meeting.

PRINCIPLE 9. THE COMPANY SHALL HAVE A RIGOROUS AND TRANSPARENT PROCEDURE FOR THE EVALUATION OF THE COMPANY'S CORPORATE GOVERNANCE

- 9.1** The board should assess at least every three years the company's corporate governance. The evaluation should be carried out through a formal process, whether or not externally facilitated, in accordance with a methodology approved by the board.
- 9.2** The evaluation should cover all the principles embodied in this Code.
- 9.3** At the end of each board member's term, the nomination committee should evaluate this member's presence at the board or committee meetings, their commitment and their constructive involvement in discussions and decision-making, in accordance with a pre-established and transparent procedure. The nomination committee should also assess whether the contribution of each board member is adapting to changing circumstances.
- 9.4** The board should act on the results of the performance evaluation. Where appropriate, this will involve proposing new board members for appointment, proposing not to re-appoint existing board members or taking any measure deemed appropriate for the effective operation of the board.

PRINCIPLE 10. THE COMPANY SHALL PUBLICLY REPORT ON THE APPLICATION OF THE CODE

- 10.1** Each company should apply the provisions of the Code. If a company does not comply with one or more provisions, it must indicate which provision of the Code it is not complying with and give justified reasons for this deviation.
- 10.2** A description of these deviations should be submitted to the board at least once a year at the initiative of the company secretary to verify the quality of each explanation.
- 10.3** The board should approve the reasons given and endorse their content. Accordingly, for each deviation from a provision, the company should:
- (a) explain in what manner the company has deviated from a provision;
 - (b) describe the reasons for the deviation;
 - (c) where the deviation is limited in time, explain when the company envisages complying with a particular provision; and
 - (d) where applicable, describe the measure taken instead of compliance and explain how that measure achieves the underlying objective of the specific provision or of the Code as a whole, or clarify how it contributes to good corporate governance of the company.
- 10.4** Explanations must be submitted to the general shareholders' meeting when the CG Statement is presented. The board should endeavour to ensure that shareholders carefully consider the explanations given for deviating from the Code and encourage them to make reasoned judgements in each case. The board should engage in a dialogue with shareholders if those shareholders do not accept the company's position, bearing in mind in particular the company's size and complexity and the nature of the risks and challenges it faces.

ADDENDUM

1- WHAT IS CORPORATE GOVERNANCE?

Corporate governance is a set of principles, rules and behaviours, which determine how companies are managed and controlled. A good corporate governance model will achieve its goal by setting a proper balance between, on the one hand, strategy and effective and responsible leadership, and, on the other hand, control and conformity with this set of principles, rules and behaviours.

Good governance must be embedded within the whole company. It provides mechanisms to ensure leadership, integrity and transparency in the decision-making process. It should help determine a company's objectives, the strategy and means through which these objectives are achieved and how performance is to be evaluated. These objectives should be in the interest of the company, its shareholders and other stakeholders.

Corporate governance also requires control, i.e. effective evaluation of performance, careful management of potential risks, and proper supervision of conformity through agreed procedures and processes. The emphasis lies on monitoring the effective operation of control systems, managing potential conflicts of interests and implementing sufficient checks to prevent any abuse of power.

2- MAIN AIM OF THE CORPORATE GOVERNANCE CODE (THE 'CODE')

The Code's main objective is to foster sustainable value creation by the company. Business successes have shown that good governance can lead to the creation of wealth, not only for shareholders but also for all other stakeholders. Corporate failures, however, may lead to significant losses well beyond the loss of shareholder capital. This is the reason why an adequate mind-set and a responsibility-driven behaviour of all governance actors are necessary.

Good governance, based on accountability and transparency, should reinforce the confidence of investors and financiers in companies and will benefit other stakeholders. Confidence in turn will enable companies to access external funding and to obtain resources at a lower cost. Good governance can also bring macro-economic advantages by improving economic efficiency, stimulating growth, and safeguarding private investments.

3- CONTEXT OF THE CODE

Given the revision of the Belgian Code on companies and associations, the present Code had to be revised as well and aligned to the forthcoming developments in Belgian corporate law. In consequence, the Code is complementary to existing and forthcoming Belgian law.

No provision of the Code may be interpreted as derogating from Belgian law. The Code reproduces Belgian law solely to the extent necessary.

The forthcoming Code has been drawn up with respect to the governance structures as provided for in the forthcoming Code on companies and associations, i.e. one-tier governance structure and two-tier governance structure. Specific governance rules apply to the financial sector like, for example, the legal obligation to set up an executive committee. Consequentially, when such a company complies with specific regulations, no explanation for any deviation is required if this deviation is made in order to comply with the specific governance framework for the financial sector.

The Committee has also considered extensively the European Union initiatives in the field of corporate governance as well as international governance recommendations. These recommendations have led to additional provisions on best practices.

4- NATURE, STRUCTURE AND CONTENT OF THE CODE

Nature of the Code

The Code embraces the *essential* features of corporate governance. In this perspective, the Code adopts a **principle-based approach**, in opposition to a ‘ticking-the-box’ approach: conformity with the Code is to be assessed with respect to both its letter and its spirit, taking into account the specificities of each company subject to the Code.

The Code is based on the **‘comply or explain’ principle**. This principle is recognised by Directive 2006/46/EC, which states that listed companies shall publish a corporate governance statement. It is also the object of a European Commission Recommendation of 9 April 2014 on the quality of corporate governance reporting (‘comply or explain’).

The flexibility provided by the ‘comply or explain’ principle has been preferred to a strict and rigid application because it allows for account to be taken of company’s specificities such as size, shareholding structure, activities, exposure to risks and management structure. Based on the “Practical rules for high-quality explanations”, Principle 10 of the Code comprises a provision on what constitutes a good explanation.

Structure and content of the Code

In general

The Code contains **principles and provisions**; guidelines are no longer provided for. *Ad hoc* ‘explanatory notes’ may however be published by the Committee, according to the needs, as supporting documents to this Code.

The Code is structured under **ten principles** which are the pillars of good governance.

Provisions are recommendations describing how to apply the principle. Companies are expected to comply with these provisions or explain why, taking into account their specific situation, they do not comply with them.

This Code is gender-neutral.

The governance structures

With respect to the **governance structures**, the forthcoming (Belgian) Code on companies and associations provides a listed company with *choice* as to its governance structure. **The one-tier governance structure** consists of one governance body, i.e. the board of directors, in addition to the general shareholders’ meeting. In this case, the board of directors has a dual role to play: to support entrepreneurship and to ensure effective monitoring and control. **The two-tier governance structure** consists of two separate governance bodies, i.e. the supervisory board and the management board, in addition to the general shareholders’ meeting. The supervisory board, composed of non-executive members, ensures effective monitoring and control. The management board, composed of executive members, supports entrepreneurship.¹

5- DISCLOSURE

Disclosure is essential for corporate governance and crucial to allow effective external monitoring. Through disclosure, the Code seeks to achieve a high level of transparency.

Transparency is achieved through disclosure via two different documents: the **Corporate Governance Charter**, posted on the company's website, and the **Corporate Governance Statement**, a specific section of the annual report.

In its Corporate Governance Charter, the company must describe the main aspects of its corporate governance, such as its governance structure, the terms of reference of the board and its committees as well as other important topics. The Corporate Governance Charter should be updated regularly.

The Corporate Governance Statement should state that the company has adopted this Code as its reference code. It should also include more factual information relating to corporate governance: e.g. the provisions it does not comply with and the reasons for non-compliance, the remuneration report, a description of the main features of the internal control and risk management systems and a description of the composition and operation of the board.

6- MONITORING & COMPLIANCE OF THE CODE ON CORPORATE GOVERNANCE

As in many other countries, the Committee has opted for a combined monitoring system that relies on the board, the company's shareholders, the statutory auditor and the Financial Services and Markets Authority (FSMA), as well as other possible mechanisms.

- **The Board**

In both the 'one-tier' and the 'two-tier' governance structures, it is the board's responsibility to ensure compliance with and evaluation against the Code, as well as the accuracy and completeness of the Corporate Governance Charter and the Corporate Governance Statement.

- **Shareholders**

Given the Code's flexible 'comply or explain' approach, shareholders, and in particular institutional shareholders, play an important role in carefully evaluating a company's corporate governance and should weigh up all relevant factors drawn to their attention.

Shareholders should carefully consider explanations given for deviations from the Code and make reasoned judgements in each case. They should be prepared to enter into a dialogue if they do not accept the company's position, bearing in mind, in particular, the size and complexity of the company and the nature of the risks and challenges it faces.

Controlling shareholders can propose representatives to the board. They are therefore in a position to monitor both from the inside and the outside of the company, with the benefits and risks that such a strong position may entail. Controlling shareholders should thus make considered use of their position and respect the rights and interests of minority shareholders.

- **The Statutory Auditor**

Within its statutory audit mission, as laid down in articles 3:65 through 3:67 of the Code on companies and associations, the statutory auditor has to express an opinion on the true and fair view of the company's assets and liabilities, its financial position and the results of its operations in accordance with the financial reporting framework applicable in Belgium. It is also the responsibility of the statutory auditor to comment on the annual report. The statutory auditor has to verify that the annual report includes the information required by articles 3:72 and 3:77 of the Code on companies and associations, and that it is consistent with the financial statements.

Furthermore, article 7:87, §5 of the Code on companies and associations requires the statutory auditor to report to the audit committee on the key matters arising from the statutory audit of the financial statements, and in particular on material weaknesses in internal control in relation to the financial reporting process.

- **FSMA**

Acting within its mission of supervision of the periodic and ongoing information obligations of listed companies, as set out in the law of 2 August 2002 (amended by the law of 2 July 2010), the FSMA contributes to the external monitoring of the Code.

The FSMA verifies the observance of the 'comply or explain' principle and invites companies, when the occasion arises, to live up to it. Moreover, the FSMA publishes, from time to time, general comparative overviews of corporate governance practices in Belgian listed companies.

With respect to mandatory disclosure requirements as imposed under the applicable laws or regulations – whether or not part of the Code – the FSMA's authority, including its powers to impose sanctions, remain unchanged. Its role in the external monitoring of the Code does not alter its legally mandated supervisory responsibility.

7- SCOPE OF APPLICATION AND ENTRY INTO FORCE

The Code applies to companies incorporated in Belgium whose shares are admitted to trading on a regulated market ('listed companies'). However, given its flexibility, the Code could also serve as a reference framework for all other companies.

The forthcoming 2020 Code will be the third edition of the Belgian Code on Corporate Governance. The intention of the Committee is to harmonize the entry into force of the forthcoming 2020 Code with the entry into force of the forthcoming Code on companies and associations. In this perspective, the forthcoming 2020 Code will apply *compulsorily* to reporting years beginning on or after 1 January 2020 ('compulsory application'). However, the company may already *choose* to apply the forthcoming 2020 Code for reporting years beginning on or after 1 January 2018 ('optional application'). In both cases, the forthcoming 2020 Code will supersede and replace the Code issued in 2009.

Specifically, taking into account the entry into force of the forthcoming Code on companies and associations, the company should reflect on its current governance structure and consider whether or not to adapt it.

¹ The forthcoming 2020 Code applies to both types of governance structure. In this perspective, the following terminology is used in the Code:

TERMINOLOGY	ONE-TIER GOVERNANCE STRUCTURE	TWO-TIER GOVERNANCE STRUCTURE
“board”	board of directors	supervisory board
“board member”	member of the board of directors – director	member of the supervisory board
“non-executive board member”	non-executive director	member of the supervisory board
“independent board member”	independent non-executive director	independent member of the supervisory board
“executive management”	executive directors and members of an executive committee	management board
“executive”	executive director or member of an executive committee	member of the management board

The term “CEO” is used throughout the Code as referring to the person leading the executive committee in a one-tier governance structure, and the person leading the management board in a two-tier governance structure.

If a provision / part of a provision applies *exclusively* to the one-tier governance structure, this is specified through the introductory phrase “[in] the one-tier governance structure”. This is the case with respect to the following provision:

- Principle 1:** 1.1
- Principle 3:** 3.12, 3.14

Furthermore, the *distinctive features* of the two-tier governance structure may be specified in a provision / part of a provision in italics or through the introductory phrase “[in] the two-tier governance structure”. This is the case with respect to the following provisions:

- Principle 1:** 1.1
- Principle 2:** 2.5, 2.6, 2.8, 2.16
- Principle 3:** 3.4, 3.14

Finally, if provisions are also applicable to the *executive management* in a one- or two-tier governance structure, this may be detailed in a separate provision with a distinct numbering (and in italics if solely

applicable to the two-tier governance structure). This is the case with respect to the following provisions:

Principle 3: 3.23

Principle 6: 6.5, 6.11