

## CHANGES TO THE NORWEGIAN CODE OF PRACTICE FOR CORPORATE GOVERNANCE: AUTUMN 2011

### 1. Introduction

The Norwegian Corporate Governance Board (NCGB) has resolved to make a **change** to **Section 1** of the Code of Practice in order to harmonise the recommendation with the provisions of Section 3-3b of the Accounting Act on the procedure for public disclosure of the report on corporate governance. In addition, NCGB has decided to include a **clarification** in **Section 1** on the scope and content of the explanation of any deviation from the Code of Practice.

In addition, certain **minor adjustments** have been made to the commentary and footnotes to **Section 8** and **Section 9** in response to changes to legislation and regulations that have taken place since the current version of the Code of Practice was issued in 2010.

Since only minor changes and amendments have been made to the Code of Practice for Corporate Governance this year, NCGB has decided that there is no need to issue a new version of the Code in 2011. NCGB considers it adequate to communicate the changes to the current version of the Code of Practice dated 21 October 2010 by means of this document, which will be made available on the NCGB website ([www.nues.no/English/](http://www.nues.no/English/)). This document will also be distributed to all companies that have shares listed on Oslo Børs or Oslo Axess.

The changes come into effect immediately.

### 2. Code of Practice Section 1 "Implementation and reporting on corporate governance"

*Harmonisation of the procedure for public disclosure of the Corporate Governance report, cf. Accounting Act, Section 3-3b*

Section 3-3b of the Accounting Act has introduced a statutory requirement whereby enterprises that are obliged to keep accounts and have Norway as their home state, and that have securities listed on a regulated market, must provide a report on their policies and practice for corporate governance. This requirement comes into force for annual reports and annual accounts issued in respect of annual accounting periods commencing on or after 1 August 2010.

This section of the Accounting Act sets out certain requirements for the content of a company's report on corporate governance. This includes identifying the code of practice and rules for corporate governance to which the company is subject or which it otherwise chooses to apply, and stating where the code of practice and rules in question are publicly available. The company must also provide a justification for any deviation from the code of practice and rules for corporate governance to which it is subject or which it has chosen to apply.

Section 3-3b, first paragraph, of the Accounting Act stipulates that the report on corporate governance must be included in the directors' report section of the annual

report or in a document referred to in the directors' report. The concept of 'document' includes a report provided in electronic format and published on the company's website<sup>1</sup>.

NCGB has decided to harmonise the requirements of the Code of Practice on the publication of the report on the company's corporate governance with the requirements of the Accounting Act. Section 1 of the Code of Practice will following the amendment contain a requirement for the report on corporate governance produced in accordance with the Code of Practice to be included in the directors' report, but with the opportunity to publish the report on the company's website subject to the directors' report including a reference to where the report is available. The requirement in Section 1 of the Code of Practice that the report must cover every section of the Code of Practice will continue unchanged.

#### *Explanation for deviations – clarification*

The introduction to the Code of Practice provides an explanation of the "comply or explain" principle on page 7. This makes it clear that companies must explain how they comply with each of the recommendations that make up the Code of Practice, *or explain why they have chosen an alternative approach*. NCGB has decided to include an equivalent clarification in Section 1 of the Code of Practice in order to make it clear that in order to give a satisfactory report on any deviation from the Code of Practice, the company must provide an explanation of the reason for the deviation and what alternative solution the company has selected.

The wording of Section 1 of the Code of Practice is accordingly now as follows:

The board of directors must ensure that the company implements sound corporate governance.

The board of directors must provide a report on the company's corporate governance in the ~~directors' annual~~ report or in a document that is referred to in the directors' report. The report on the company's corporate governance must cover every section of the Code of Practice. If the company does not fully comply with this Code of Practice, ~~this must be explained in the report~~ the company must provide an explanation of the reason for the deviation and what alternative solution it has selected.

The board of directors should define the company's basic corporate values and formulate ethical guidelines and guidelines for corporate social responsibility in accordance with these values.

Oslo Børs has amended the provisions in the "Continuing obligations of stock exchange listed companies" on the procedure for public disclosure of the corporate governance report to reflect the requirements of the Accounting Act. NCGB has therefore made an equivalent change to the second paragraph of the footnote to Section 1 of the Code of Practice, which refers to the Oslo Børs Issuer Rules in this respect.

The wording of the first sentence of the second paragraph of the footnote to Section 1 of the Code of Practice is accordingly now as follows:

Companies listed on Oslo Børs must publish a comprehensive report on the company's corporate governance in the directors' report or in a document that is referred to in the directors' report, cf. 'Continuing obligations of stock exchange listed companies', Section 7.

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<sup>1</sup> Proposition to the Storting 117 L (2009-2010), page 108.

### **3. Changes to the footnote to Code of Practice Section 8 "Corporate assembly and board of directors: composition and independence"**

The footnote to Section 8 of the Code of Practice (Corporate assembly and board of directors: composition and independence) refers to the requirements in respect of the composition of the Board of Directors in the Oslo Børs Listing Rules. Oslo Børs amended its rules in respect of the composition of the Board of Directors in February 2011. The former rules required that the majority of the shareholder-elected members of the board of directors must be independent of the company's executive personnel and material business contacts, and at least two of the members of the board elected by shareholders must be independent of the company's main shareholder(s). The revised Listing Rules now stipulate that at least two of the shareholder-elected members of the board of directors must be independent of the company's executive management, material business contacts and company's larger shareholders. Accordingly, the same change must be made to the footnote in the Code of Practice. Other than this, it should be noted that the requirements of the Code of Practice continue unchanged, and are accordingly stricter than the revised rules applied by Oslo Børs in this respect.

The wording of the second paragraph of the footnote to Section 8 of the Code of Practice is accordingly now as follows:

In accordance with the "Listing Rules for ~~shares—equities on Oslo Børs~~", ~~the majority at least two~~ of the members of the board of directors elected by the shareholders must be independent of the company's executive management, ~~and~~ material business ~~connections~~contacts, and ~~at least two of the members elected by the shareholders must be independent of~~ the company's ~~major—larger~~ shareholders. In addition, the Listing Rules specify that no member of the company's executive management may be a member of the board of directors. Oslo Børs may grant exemptions from these requirements in special circumstances.

### **4. Changes to Code of Practice Section 9 "The work of the board of directors"**

A change made to Section 1 (2) of the Stock Exchange Regulations on 1 July 2010 means that all issuers of transferable securities listed on a regulated market must have an audit committee or equivalent corporate body. Norwegian public companies were subject to this requirement even before the change in the Stock Exchange Regulations, cf. Section 6-41 of the Public Companies Act. The change is therefore principally relevant to foreign companies, and Norwegian companies that are not public companies, which have securities listed on a Norwegian regulated market. The Stock Exchange Regulations include exemptions for smaller companies, equivalent to the exemptions at Section 6-41 (2) of the Public Companies Act.

NCGB has decided to make changes to the commentary and the footnote to Section 9 of the Code of Practice "The work of the Board of Directors" so that the text reflects the introduction in the Stock Exchange Regulations of the duty to establish an audit committee.

Following the change, the third paragraph of the commentary to Section 9 under the heading "Board committees" will read as follows:

~~It is a legal requirement for~~The Public Companies Act and the Stock Exchange Regulations impose requirements for large companies that exceed certain defined thresholds to establish an audit committee. Companies should not make use of the opportunity provided in ~~company—the~~ legislation and regulations for the entire board of directors to operate as the company's audit committee. Smaller companies should also consider establishing an audit committee. The evaluation of

the independence of members of the audit committee can be based on the criteria for independence set out in the section "Independence of the board of directors" at Section 8. In addition to satisfying the ~~legal~~ requirements of legislation and regulations, the majority of the members of the audit committee should be independent of the company. When making recommendations for nominations to the board of directors, the election committee should identify which members of the board of directors satisfy the requirements of independence and expertise in order to be members of the audit committee. Certain companies in the financial sector are subject to separate legal requirements in respect of the audit committee.

Following the change, the eighth paragraph of the footnote to Section 9 will read as follows:

The provisions on the duty of Norwegian public companies to establish an audit committee are set out in Asal. § 6-41 (1). Other companies that have negotiable securities listed on a Norwegian regulated market are subject to equivalent requirements in respect of establishing an audit committee pursuant to Section 1 (2) of the Stock Exchange Regulations (Børsforskriften). Asal. § 6-42 (3) allows companies to stipulate in their articles of association that the entire board of directors shall operate as the audit committee, subject to the board satisfying the requirements set out in paragraph 2 of this provision at all times. Asal. § 6-41 (2) provides an exemption from the duty to establish an audit committee for companies that fall below certain thresholds. In such smaller companies, the board of directors carries out the duties of the audit committee required for larger companies. Where the chairman of the board is an employee of the company, he or she cannot participate in meetings of the board that carry out the duties of the audit committee. The Savings Banks Act (Sparebankloven) § 17c, the Commercial Banks Act (Forretningsbankloven) § 16a, the Financial Institutions Act (Finansieringsvirksomhetsloven) § 3-11a (for finance companies) and the Insurance Act (Forsikringsloven) § 5-10 impose their own requirements for the duty to establish an audit committee, with particular exemptions and rules for the election of members to the committee and its composition.

Following the change, the final paragraph of the footnote to Section 9 will read as follows:

Oslo Børs Circulars 4/2009 and 2/2011 provides a summary of the rules and regulations that relate to audit committees.

**The changes come into effect immediately.**

Oslo, 20 October 2011

**THE NORWEGIAN CORPORATE GOVERNANCE BOARD**