

# Buyse Code

Buyse Code II

**CORPORATE GOVERNANCE**

Recommendations for non-listed enterprises

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### **Committee on corporate governance for non-listed enterprises**

## FOREWORD

*In September 2005 we published a Corporate Governance Code for non-listed enterprises.*

*This was unique in the world.*

*Since then various countries have followed our example.*

*More importantly, however, thousands of companies in Belgium have used this Code in order to defuse certain problems in their business management.*

*In volatile and difficult economic times, Corporate Governance will certainly provide a cornerstone for the creation of sustainable, profitable growth.*

*The Members of the Committee, whom I would like to thank most sincerely for their efforts, have spent the last few months updating this Code.*

*Indeed, it is fascinating to see that in just a few years our economic community has been subjected to further new currents and impulses which may have far-reaching effects on the finality of our companies.*

*This Code, therefore, takes into account the new dynamics with which our companies will have to contend in the future.*

*The aim of the Code, as such, is to provide an important aid for doing business in an untroubled and efficient way. It is intended to offer our business leaders a practical manual that they can use to bring about profitable, sustainable growth.*

*My thanks to UNIZO, the Flemish Union of Independent Entrepreneurs, and its Walloon counterpart, UCM, for their coordinated and much valued contribution, and to Jozef Lievens LLM for his dynamic and professional guidance.*

*We are proud to be able to provide some guidelines and suggestions for our entrepreneurs which they can develop further in their businesses and which will definitely help prevent major checks and even conflicts.*

*We all hope that this revised Code will contribute, as such, to the creation of prosperity, job satisfaction and happiness.*

*I wish you all great success and passion in these interesting times.*

*Baron Buysse,  
June 2009*

# 1. Introduction and general principles

- 1.1 This Code is intended for all enterprises registered by Belgian law that are not classed as “listed companies” as defined by the Belgian Companies Code<sup>1</sup>.
- 1.2 This Code includes recommendations on how enterprises are governed and monitored. The interaction between shareholders, the board of directors and the management of an enterprise are central to this.
- 1.3 Corporate governance is important for all companies.

Corporate governance:

- gives a company a professional image in the eyes of all parties concerned, especially banks and financiers;
- is an advantage in the recruitment market;
- plays an important role in guaranteeing the continuity of a company, especially family businesses;
- can contribute to increasing the profitability of a company.

The most important objective of corporate governance is long-term value creation.

- 1.4 In order to achieve optimum interaction between the shareholder(s), the enterprise, its employees and other stakeholders, it is advisable to clearly establish the vision and mission of an enterprise. The values that have to be taken into consideration should also be stipulated. This mission statement provides stakeholders with a frame of reference and markers for their decision-making and actions, and forms a basis for the long-term strategy.
- 1.5 Non-listed enterprises are very diverse, which is why it is important to take into consideration the characteristics of each individual firm when developing its corporate governance. Particular attention should be paid to the nature, size and growth phase of the enterprise.
- 1.6 Corporate governance evolves as an enterprise grows. This evolution usually falls into four phases:

## Phase 1: Sound entrepreneurship

This is the phase in which entrepreneurs have not yet legally structured their business as a firm. For them, as for that matter for all enterprises throughout their existence, sound entrepreneurship, as described in part 2 of this Code, is important.

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<sup>1 1</sup> Article 4 of the Companies Code defines listed companies as follows: ‘Listed companies are companies whose securities are admitted for trading on a regulated market as understood in article 2, 3° of the Act of 2 August 2002 on the supervision of the financial sector and financial services.’

### Phase 2: The advisory council

In this phase an entrepreneur uses an advisory council for support, which gives him a sounding council regarding his management style.

### Phase 3: The active board of directors

In this phase the board of directors is activated by frequent meetings and dealing with important and strategic matters. The functioning of the board of directors is optimised when non-executive, or outside, directors are added to it. The task of the board of directors is described in article 5.2 of this Code.

### Phase 4: The continued expansion of the instruments of governance

Larger or faster-growing enterprises will need to continue to develop their corporate governance with special attention to committees.

- 1.7 One clear difference with corporate governance for listed enterprises is the ownership structure of non-listed enterprises. With non-listed enterprises ownership is usually concentrated in the hands of one or more shareholders, who often belong to the same family. In contrast to listed companies, which rely on the open capital market, non-listed enterprises can decide themselves the extent to which they follow these recommendations and how much transparency they provide.
- 1.8 Corporate governance should definitely not degenerate into a mass of formal rules. The spirit of recommendations for corporate governance should take priority over the form. Moreover the best way to use these recommendations is to integrate them as far as possible into existing business procedures, in a spirit of proportionality and avoiding additional bureaucracy (and costs).

Corporate governance recommendations should certainly not stifle the entrepreneurial dynamic and should therefore leave enough room for flexible interpretation.

- 1.9 This Code contains recommendations to which enterprises should adhere on a voluntary basis. With these recommendations the Code appeals to the individual responsibility of each entrepreneur in the conviction that a responsible entrepreneur gives priority not to his own personal interests but to the interests of the enterprise and the continuity of the enterprise, within a broad social framework.
- 1.10 This Code is complementary to Belgian legislation. None of the provisions of this Code should be interpreted in any way that diverges from Belgian law.



## 2. Sound entrepreneurship

It is recommended that enterprises design their strategy so as to sustainably increase their attractiveness to all stakeholders, both internal and external, thereby safeguarding the continuity of the enterprise.

- 2.1 An enterprise is built not only with financial capital but also with human capital. Good relations with the *personnel* are therefore just as important for the continuity and growth of an enterprise as its relations with its banker, suppliers or clients. They must be founded on mutual respect. Indeed professionally-based personnel policies lead to solid business results.

Which is why it is advisable to:

- devote the necessary attention to motivating employees;
- stimulate the positive and constructive involvement of employees in the policy of the enterprise.

- 2.3 A lasting relationship with *bankers* and parties involved in the financial policy is important for every entrepreneur.

To this end it is important that the entrepreneur:

- ensures fast, comprehensive and correct transmission of information to bankers and financiers;
- uses the enterprise's accounting as a strategic instrument in management;
- regularly updates the financial plan that the enterprise has to draw up when it is set up as a firm;
- makes a clear difference between the resources of the enterprise and his private means;
- makes a capital and investment forecast as part of the regular strategic exercise.

- 2.4 In order to develop a lasting relationship with *suppliers* it is advisable for the entrepreneur to:

- ensure that competences within the firm and the authority to bind the firm by contract are regulated without ambiguity;
- agree clear payment terms and conditions;
- ensure correct financial information that increases the credibility and the attractiveness of the enterprise;
- notify a supplier in writing of what he expects and the concrete requirements which the supplier must fulfil;
- pursue the highest ethical norms

2.5 The *client* is central to every enterprise. In order to build up an optimal relationship with customers, it is advisable that the entrepreneur:

- devote the necessary attention to drawing up the general terms and conditions of the enterprise;
- takes care to ensure clear and uniform communication with the clients;
- respects agreements made.

Economic dependence on too limited a number of clients should be avoided. The entrepreneur should also regularly check clients' creditworthiness.

2.6 The enterprise should keep its *competitors* in mind. In certain cases strategic co-operation can be useful or even necessary, in compliance with the appropriate regulations on competition, of course.

2.7 *External advisors* can play an important role in terms of providing the necessary objectivity in decision-making within the enterprise. So the entrepreneur has every interest in organising himself in such a way that he can call on (a network of) expert advisors who can provide him with the necessary support to lead the enterprise and make well-founded and carefully considered decisions completely independently. This allows a sounding board or framework of reflection to develop.

In order to maintain good relations with external advisors it is recommended that an entrepreneur:

- ensure that external advisors have access to up-to-date and complete information about the enterprise;
- agree on regular, fixed meetings with advisors.

The external advisor should in turn guarantee expertise and qualitatively ethical service.

2.8 Good relations with the *various government bodies* (from the tax authorities to the environmental administration) are of great importance for the continuity and growth of an enterprise. The government can also be an important partner in terms of subsidies or incentives.

It is therefore advisable for an enterprise to ensure that it always maintains a correct and pro-active attitude towards government bodies.

2.9 It is important for the enterprise to maintain constructive relations with professional organisations, the trade unions, interest groups (such as, for example, organisations that champion consumer or environmental interests), universities and research centres.

### 3. Corporate social responsibility (CSR)

- 3.1 For non-listed enterprises social responsibility is an integral part of business policy. Not least because of the scale of non-listed enterprises the personal values and responsibility of the head of the company are closely linked to the values and responsibility of the enterprise. CSR policy in a non-listed enterprise is motivated by the fact that it is driven internally by values and is deeply embedded in society. The increasing external pressure on enterprises whereby soft values turn into hard values, both in law and in the market (e.g. environmental awareness, human rights, social rights), increases the need for a systematic CSR policy in non-listed enterprises.
- 3.2 Socially responsible or sustainable enterprise (SRE/SE) is enterprise with an eye for the society in which it is active. This is an ongoing process whereby an enterprise must be open to and respond to the social trends and driving forces issuing from its core activities. Consultation with stakeholders or concerned parties is an important part of this process.
- 3.3 A non-listed enterprise is firmly embedded in and dependent on its local environment. If an enterprise wants to be successful in the long term, it must understand and recognise the needs and expectations of its stakeholders. Stakeholder management assumes, therefore, that an enterprise identifies:
- who its stakeholders are;
  - what their interests, needs and expectations are;
  - what opportunities and challenges the stakeholders offer;
  - the impact of an enterprise's activities on each of the parties concerned and the results of this impact;
  - what strategies and actions the enterprise can develop in response to all of this.
- 3.4 In concrete terms, the social responsibility of an enterprise implies:
- knowing the social, economic and ecological impact of the production or service provision process and improving performance at a social, ecological and economical level in consultation with the parties concerned;
  - involving employees and encouraging them to participate actively in the policy of the enterprise. CSR will benefit if every employee takes his/her own responsibility in accordance with the values of the company;
  - taking clients' needs and expectations into consideration;
  - being able to respond to the authorities and other enterprises that introduce sustainability criteria into their procurement policies;
  - building up mutual communication and a relationship of trust with business contacts in the area;
  - responding to social trends and driving forces and translating them into opportunities.

## 4. The advisory council

4.1 Management may take the initiative of setting up an advisory council to advise it on running the business. No decisions are taken in an advisory council, at most recommendations are made.

4.2 Setting up an advisory council has the following advantages:

- the entrepreneur has a sounding council;
- more systematic attention is given to the long-term vision and strategy of the enterprise;
- the transparency and continuity of the decision-making is improved;
- the balance between the interests of the enterprise and the interests of the entrepreneur, the family and other shareholders is monitored.

4.3 An enterprise should ensure that there is a balance between internal and external members of the advisory council. There must also be adequate complementarity between the members of an advisory council, because the diversity of experience will improve the quality of the advice.

4.3.1 At the internal level it is advisable to involve the principle shareholders in the fixed core of the advisory council as well as the head of the company. When specific topics are dealt with, the employee responsible can be invited to clarify the point for the advisory council. Likewise, in family businesses it may be interesting to invite possible successors from the family to one or more meetings of the advisory council.

4.3.2 The external members of the advisory council are advisors who belong neither to the management nor to the controlling shareholder. It is advisable to include at least two external advisors in the advisory council.

External advisors should have the following competences:

- s/he is prepared to share his/her experience and insight;
- s/he is capable of evaluating a policy and providing guidance;
- s/he always puts the interests of the enterprise first;
- s/he is able to rise above his/her own professional background;
- s/he empathises with the management.

An external advisor is independent and will not, in principle, accept any external jobs from the enterprise. S/he should have no interest in a competitor either. In the event of a conflict of interest the external advisor has an obligation to report it to the advisory council.

- 4.4 More than anything else the advisory council is a think tank, where the most important challenges facing the enterprise are discussed. It concentrates primarily on discussing strategy.
- 4.5 The advisory council must be convened sufficiently regularly to guarantee both the continuity and the involvement of the advisors. It is to be recommended that the advisory council meet at least four times a year. The head of the company will draw up a schedule with the members of the advisory council and will also decide on the agenda.
- 4.6 It is important that the enterprise should provide the members of the advisory council with relevant and correct information about the topics to be dealt with in the agenda.
- 4.7 The preparatory consultations, the information exchanged and the advice are confidential.
- 4.8 It is to be recommended that advisors are compensated correctly. Concrete agreements should be made on this point from the start.
- 4.9 The advisory council should preferably be set up for a period of two years.
- 4.10 It is recommended that the advisory council carry out an annual self-evaluation regarding its functioning and composition.

## 5. An active board of directors

5.1 The following recommendations are in principle applicable to enterprises that have assumed the legal form of a public limited company (naamloze vennootschap/société anonyme). However they may still apply mutatis mutandis to enterprises that have taken another legal form.

### The board of directors' tasks

5.2 The board of directors' tasks consists of:

- taking decisions regarding important and strategic issues, such as approving the strategy;
- ensuring that the management and shareholders take the initiatives that fall within their competence;
- the appointment of the managing director, the executive committee<sup>2</sup> and the management;
- advising the managing director, the executive committee and the management;
- financial and operational control, including introducing and monitoring an internal control system;
- outlining the dividend policy which will then be put forward for approval by the general meeting;
- preparing for and organising the succession of the managing director, the executive committee and the management;
- safeguarding the interests of the firm in the event of crisis and conflict.

5.3 The task of the board of directors should be distinguished from that of:

- the general meeting, which is competent to change the capital structure, to appoint and reject directors, to approve the annual accounts, decide on the dividend and so on<sup>3</sup>;
- the management, which is tasked with carrying out the operational management of the enterprise and implementation of the strategy;
- the executive committee, to which the board of directors can to a large extent, transfer its own powers.

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<sup>2</sup> Since the Corporate Governance Act (Act of 2 August 2002 amending the Companies Code), the term 'directiecomité / comité de direction' (executive committee) is legally recognised and reserved for limited liability companies which have explicitly included the possibility of setting up an executive committee in their articles of association. The Corporate Governance Act therefore integrated articles 425bis and 524ter into the Companies Code.

<sup>3</sup> It is also recommended that the general meeting ratify the appointment of the managing director.

## **Composition of the board of directors**

- 5.4 In forming the board of directors consideration should be given to the necessary complementarity in terms of skills, experience, knowledge and diversity.
- 5.5 Even in non-listed enterprises it is advisable to include outside directors in the board.

For the purposes of this Code outside directors will be understood to be directors who are neither part of the management nor of the controlling shareholder. Directors who fit this description can in the majority of cases be considered to be independent. It is possible, however, that their relationship with the management or shareholders might call this into doubt. Although it is to be recommended that outside directors should be independent, it must be stressed that, certainly in small and medium-sized enterprises, their competence is more important than their independence, in the strictest sense of the word. What is crucial is the neutral authority that they exert in the interest of the firm because of their competence and their familiarity with the management of the enterprise.

Outside directors are, of course, fully-fledged directors who fulfil the tasks entrusted to the board of directors with the other directors in a spirit of collegiality. This collegiality means that – with the exception of the committees – meetings at which not all of the directors are present should be avoided.

### 5.6 Outside directors:

- ensure an objective view of the enterprise;
- give impartial advice
- are a sounding board for the entrepreneur;
- help increase discipline and a sense of responsibility regarding reporting;
- can play an important role in crisis situations;
- ensure the succession of the managing director;
- share their networks and relations with the enterprise;
- ensure the transfer of experience and knowledge.

Outside directors should, like all directors, have an objective view of the enterprise. However, this assumes that the enterprise will provide them with the necessary training, information and resources to fulfil their task properly.

On the other hand, directors are also responsible for evaluating their own objectivity at regular intervals.

The collegial nature of the board of directors should be stressed. A split within the board between outside directors and the rest must be avoided, although it should be possible for the outside directors to meet separately when the need occurs.

The decisions of the board of directors should be reached after consultation and there should be a constant endeavour to achieve consensus. The added value of an active board of directors is precisely the interaction between outside directors and the others. The chairman should make sure that all the directors are given a chance to express their individual and independent opinions.

- 5.7. Ideally, every enterprise should include several outside directors in the board of directors. However, the size, structure and growth phase of the enterprise should always be taken into consideration.

### **Functioning of the board of directors**

- 5.8. In order for the board of directors to do its job properly regular meetings are needed. At least four meetings should be held annually.

Moreover, during these meetings the board of directors should be able to take a certain distance from the everyday business management, so as to be able to assess the business strategy and fine tune it – where necessary – with a view to the longer term.

At least once a year an extraordinary meeting should be called, at which only long-term thinking is on the agenda. A management chart with an overview of all the relevant parameters can be useful for this.

### **Appointment of directors**

- 5.9. Directors are appointed by the general meeting, on the recommendation of the board of directors. When the occasion arises the enterprise can set up an appointments committee as foreseen in article 5.20.5 of this Code.

### **Directors' rights and obligations**

- 5.10.1. Directors are expected to have an ethical attitude at all times. In their actions they should at all times put the interests of the firm first.
- 5.10.2. Before accepting a mandate as a director, the candidate director should consider whether s/he is sufficiently competent and has sufficient time to fulfil this mandate properly.



- 5.10.3. A director is expected to participate actively in meetings of the board of directors. This means that s/he prepares well for the meetings of the board of directors, is present at the meetings and participates actively in the discussion and the decision making.
- 5.10.4. If a director has a conflict of interest with the firm, the appropriate legislation<sup>4</sup> must be adhered to. In any case the director should afford the board of directors perfect transparency with regard to the activities regarding which his/her interests conflict with those of the firm.
- 5.10.5. Both during and after the conclusion of their mandate directors are bound to confidentiality concerning information they have gained by virtue of their mandate as directors.
- 5.10.6. Directors should participate expertly in the discussions and the decision making. To make this possible the directors have a right to information. This right belongs to each individual director. The request for information should be addressed to the board of directors, preferably to the chairman of the board of directors.

### **Evaluation**

- 5.11. It is advisable for the board of directors to evaluate its own performance periodically, as well as, before their possible reappointment, the performance of the individual directors. In this the board of directors should always keep in mind the objectives of the enterprise. The chairman will initiate this evaluation and give the members of the board of directors the necessary feedback afterwards.
- 5.12. If it appears from this evaluation that the composition and/or functioning of the board of directors, as well as the contributions of the individual directors, are no longer adequate to achieve the objectives of the enterprise in the most efficient manner, it is the responsibility of the chairman of the board of directors to take the necessary measures to rectify this. The general meeting will be informed and invited to take the appropriate decisions.

### **Compensation of directors**

- 5.13. Directors' fees must be sufficiently high to attract, keep and motivate directors who match the profile determined by the board of directors.

Obviously the general meeting should always have the last word on directors' fees.

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<sup>4</sup> Article 523 of the Companies Code.

In large, non-listed enterprises which are obliged to publish an annual report, the decision to make public the fees of the individual directors is left to the discretion of the board of directors, provided that the regulations regarding the annual accounts always count as the minimum publicity requirements.

It is advisable for the outside directors to receive only a fee which, except for special assignments, is fixed and linked to their presence in the board of directors' meetings. Systems of share options and other forms of variable compensation or long-term incentives (e.g. fringe benefits such as pensions) are not recommended for these directors.

### **Role of the chairman**

5.14. In non-listed enterprises, too, the importance of a competent chairman cannot be underestimated.

The chairman:

- presides over the board of directors;
- takes the measures necessary to create a climate of trust within the board of directors, which contributes to open discussion, constructive criticism and support for the decisions of the board;
- is the guardian of the processes that govern the functioning of the board of directors;
- gives wise counsel, to the shareholder(s) as well as to the management;
- has the profile of a mediator and an arbitrator;
- leads and guides the process of appointing the top management and the members of the board of directors;
- ensures that new directors are properly informed about the enterprise and familiarised with it.

5.15. The chairman sets the agenda for the meetings and sees to it that the procedure is followed concerning the preparation, discussion, approval and implementation of decisions.

5.16. The chairman sees to it that the directors receive accurate, timely and reliable information before the meetings and, if necessary, between the meetings. All directors receive the same information.

5.17. It is strongly recommended that the function of chairman of the board of directors should not be combined with that of the managing director. However this, too, depends on the type, size and growth phase of the enterprise.

### **Internal rules**

- 5.18. The rules concerning the functioning of the board of directors are set down in the internal rules of the board of directors.

### **Minutes**

- 5.19. The minutes of the meetings of the board of directors give a summary of the discussions, contain the decisions and mention any reservations certain directors may have.

### **Committees**

- 5.20.1. Advisory committees, such as an audit and financial committee, an appointments committee, a remuneration committee and a strategic committee, which assist the board of directors in decision making, can be useful. It is up to the board of directors to judge the necessity of setting up such committees, bearing in mind the challenges with which it is faced and the size and complexity of the enterprise.

It goes without saying that setting up committees should not detract from the collegiality of the board of directors. These committees operate within the board of directors and have only an advisory capacity.

- 5.20.2. The chairman of the board of directors takes the initiative to set up the committees and makes proposals to the board of directors regarding the chairmanship of them.
- 5.20.3. The board of directors decides on the composition of the committees, bearing in mind the size and complexity of the firm and the specific needs with regard to, amongst other things, the competencies required of the members for the respective committees to function credibly and efficiently. In larger companies it is recommended that the majority of the members of each of the committees should consist of outside directors.

The board of directors oversees the activities of the committees and periodically evaluates the activities and the composition of these committees. It is important that the committees meet sufficiently often to fulfil the tasks assigned them properly.

- 5.20.4. The role of the audit and financial committee can include monitoring the integrity of the financial information the firm provides, the examination and evaluation of the systems for internal control and risk management within the firm, monitoring the efficiency of the internal auditing procedures, and monitoring the financial policy and the independence of the statutory auditor. The audit and financial committee can function as a point of contact for the internal auditor and the statutory auditor

The members of the audit and financial committee should possess sufficient relevant expertise, namely in matters of finance, accounting and audit.

- 5.20.5. The appointments committee's tasks can include monitoring that the process of appointing and reappointing directors and senior management is carried out objectively and professionally.

It can draw up the appointment procedures, look for candidates for vacant mandates, give advice on nominations for appointment, and so on. Depending on how the competences of the appointments committee are expressed in the articles of association, the establishment of an appointments committee may mean that speeches made by shareholders must first be submitted to the appointments committee for its advice.

The appointments committee can also play a role in evaluating the senior management.

- 5.20.6. The remuneration committee can be tasked with, amongst other things, making proposals regarding the remuneration policy for the senior management and concerning the individual remuneration of the members of the senior management, including variable payments and fringe benefits. In family companies it can be useful for the remuneration committee to be given the authority to make recommendations regarding all the family members employed in the family business, including those outside the board and the management.

If the members of the remuneration committee are not sufficiently competent themselves, they can call in a specialist to assist them.

## **6. High-performance (senior) management**

### **Definition**

- 6.1. In this Code, the senior management is defined as the group of all the executive directors, the members of the executive committee (or management committee) and of the top management, in which one strives for optimal collegiality.

### **The managing director**

- 6.2. The importance of the managing director in non-listed enterprises is fundamental. In some enterprises, depending on their size, the senior management will correspond to the managing director (CEO), assisted or not by one or more executive directors, board members or management.
- 6.3. The specific position that the managing director holds must be taken into consideration in the job description, the appointment procedure, the evaluation and the remuneration policy.
- 6.4. The managing director maintains close ties with the chairman of the board of directors, who gives him support and advice, while respecting the executive responsibilities of the managing director.

### **Job**

- 6.5. The senior management implements the strategy of the enterprise as decided by the board of directors using the mission statement as a basis. The senior management keeps the board of directors informed about all aspects of the operational leadership and particularly the evolution of the financial results. The senior management is responsible for ensuring that the reporting, which serves as a guide for the board of directors, is correct and updated regularly.
- 6.6. Vis-à-vis both the board of directors and the shareholders the managing director is responsible for making sure the management functions well. The managing director has an obligation to keep the board of directors fully informed.

### **Appointment**

- 6.7. The board of directors can only properly fulfil its function as a sounding board if it can take sufficient distance from the senior management. For this reason it is recommended that the general meeting ratify the appointment of the managing director, even if s/he has been proposed by the board of directors. The management itself is appointed by the board of directors on the advice of the managing director and, as the occasion arises, the appointments committee.

### **Evaluation**

- 6.8. It is advisable to foresee a procedure for annual evaluation of the senior management. Clear agreements must be made on this point regarding the parameters to be used and the evaluation criteria.
- 6.9. The managing director provides the board of directors with the necessary information for the evaluation of the senior management. When evaluating the managing director the board of directors will take into consideration the specificities of the managing director's job.

For these evaluations the board of directors may, as the occasion arises, call on the assistance of the appointments or remuneration committee and external experts.

### **Remuneration**

- 6.10. The senior management may claim appropriate remuneration, linked to the performance of the company and his/her individual performance.

The board of directors decides on the remuneration policy concerning the senior management, preferably at the proposal of the remuneration committee.

Salaries and variable compensation must conform to the market and form the basis for attracting the best professionals.

Variable compensation can ensure extra motivation, but must constitute recompense for performance that has genuinely added value in terms of stimulating the sustainable and profitable growth of the enterprise. The compensation system should not, in any case, entail unnecessary or overly high risks for the company. Compensation should also be approved by the enterprise's competent bodies.

## **7. Involved shareholders**

### **Principle**

7.1. In order to achieve the long-term strategy the enterprise needs to be able to count on shareholders who:

- are prepared to enter into a businesslike yet long-term engagement;
- have a consistent view of the enterprise;
- are prepared to leave the management and supervision to qualified bodies.

### **Role of the shareholders**

7.2. In non-listed enterprises the role of the shareholders consists of:

- defining the values and monitoring that they are respected;
- defining the vision of the enterprise;
- establishing the financial objectives with regard to growth, risk, profitability and liquidity of the share;
- appointing the board of directors;
- establishing the rules of engagement either in the form of a shareholders' agreement or otherwise.

### **Promoting shareholder involvement**

7.3. The board of directors should take direct action, with respect for everyone's role and job description, to promote shareholder involvement in the enterprise. In so doing attention will also be given to the position of the minority shareholders. Periodic and timely information and communication will be essential, including outside the ordinary annual general meeting. An effort must be made to provide all shareholders with identical information.

7.4. It is essential that shareholders:

- respect the competences of, respectively, the shareholders, the board of directors and the management.
- are clear about their long-term intentions;
- respect agreements, such as, for example, shareholders' agreements and family charters;
- train the next generation of shareholders in a timely and professional manner.

### **The shareholders' agreement**

- 7.5. In as far as it is not laid down in the articles of association, it is advisable to establish in a shareholders' agreement the most important rights and obligations that shareholders enter into vis-à-vis one another, as well as provisions to properly regulate a separation of the parties should the situation arise.
- 7.6. At the very least a shareholders' agreement should cover:
- cases where the transfer of shares is subjected to no limitations whatsoever;
  - limitations imposed on the transferability of shares, such as approval and pre-emption clauses;
  - the price to be paid for shares if the pre-emptive right is exercised, or the mechanism and the formula for determining the price;
  - the other conditions under which the pre-emptive right can be exercised.
- 7.7. It is also advisable to include stipulations concerning the composition of the board of directors in a shareholders' agreement.



## **8. Control and risk management**

If an enterprise wants to be competitive, it will not be able to achieve profitability without taking certain risks.

Since the continuity of an enterprise occupies a crucial place in governance correct estimations of risk – from identifying a risk up to and including controlling it – is essential.

### **8.1. Risk management policy**

It is the task of the board of directors to determine an enterprise's risk management policy.

As the basis for this the board of directors uses the identification and analysis of risk carried out by the management. Risk management is entrusted to the management.

The board of directors will ensure that bodies and procedures for controlling risk are established. These bodies should report to the board of directors regularly.

### **8.2. Internal control, risk management and internal audit**

It is advisable for the enterprise to have well developed procedures.

The board of directors should see to it that the management develops a thorough system of internal controls, appropriate for the size and the complexity of the firm. It is advisable to evaluate the system of internal controls and risk management periodically. It is of great importance that the main risks, including risks related to compliance with existing legislation and regulations, are properly identified, managed and brought to the attention of the board of directors.

Depending on the size and complexity of the firm it may be advisable to set up an internal audit function. This function should be equipped with the resources and the knowhow that are appropriate for the nature, the size and the complexity of the firm. It is advisable to evaluate this type of internal audit function periodically.

### 8.3. **External audit process**

In addition to internal control there is also an important role for the statutory auditor. The independence of the statutory auditor should be beyond question. The interaction between the board of directors and the statutory auditor is very important, too. The board of directors should ensure that the annual accounts are completed on time so that they can be submitted to the statutory auditor within the legal time limit.

## **9. Specific recommendations for family enterprises – Family governance**

### **The family forum**

- 9.1. In certain family companies it is advisable to organise a family forum. This will be the case if, amongst other things:
- the shareholding is in the hands of a number of family members or a number of branches of the family;
  - within one branch several generations are involved in the company in various roles (whether or not they are employed in the enterprise or are shareholders).
- 9.2. The family forum serves as a platform for communication, information and, as the case arises, consultation regarding the family business.
- 9.3. It is advisable to make good agreements and establish:
- who is entitled to participate in the family forum;
  - the manner in which the chairman is appointed
  - which issues will be discussed and
  - what authority the forum will have regarding important decisions.
- 9.4. At the start of the family forum it is worth considering whether to use an external mediator.

### **The family charter**

- 9.5. It is advisable for the family to lay down some rules in a family charter by which the family members can abide. It is to be recommended, for example, that rules are established concerning:
- family values and vision;
  - property of the family business;
  - the family's financial objectives;
  - careers in the family business;
  - compensation due to family members employed in the family business;
  - governance of the family business;
  - family governance;
  - leadership of the family business;
  - the role of non-family members in the family business;
  - communication;

- conflict resolution;
- training family members;
- philanthropy, sponsoring etc.

It is advisable for the charter to have a legally binding character.

### **Consultations with the shareholders**

- 9.6. Professionally run family firms benefit from clarity about the room available for developing and realising a strategy for the enterprise. That requires long-term vision by family and shareholders on the direction in which the enterprise is to develop, the desired culture of the family firm, their readiness to take risks and their involvement in the enterprise.
- 9.7. The board of directors and the management must undertake direct action to promote the involvement of all the shareholders in the enterprise. This can be done by, amongst other things, holding consultations between shareholders, the board of directors and the management at least twice a year. It is certainly advisable to do this if important developments are looming within the near future, for example, a strategic re-orientation, a large takeover, the sale of parts of the business or transfer of the business.

### **The succession**

- 9.8. Raising the matter of succession early enough, preparing it well and guiding it carefully is one of the most crucial processes in a family firm. The process must be dealt with professionally, with the interests of the family business as the decisive frame of reference. A thorough step-by step succession plan is essential. It is advisable to give the responsibility for directing the process to the board of directors and, in particular, the chairman. It is wise to give the board of directors an important advisory role in assessing candidates for the succession. A lot of care must be given to ensuring that the successor enjoys strong support in the wider family circle. The appointment of the successor should preferably have the approval of the shareholders.

### **Conflict resolution**

- 9.9. Conflicts between family members should not be covered up, but talked about openly. For chronic conflicts a solution must be found with all due speed. An authoritative leader within the family can sometimes bring about a solution.

An external chairman of the board of directors who has authority and the trust of the two parties can also be helpful. If necessary a professional mediator can be called in. It is advisable to map out potential sources of conflict in advance and to make contractual or statutory provision for them to be sorted out quickly.

## **10. Publication of the corporate governance rules**

- 10.1. Depending on the size and growth phase of the enterprise and the nature of the shareholder structure it is advisable to establish the roles to be assumed by the board of directors, the management and the shareholders in a corporate governance statement. How the various players will communicate and consult can also be spelled out in it.
- 10.2. If the enterprise has to publish an annual report it can include the corporate governance statement. It is also advisable to mention the most important events in terms of corporate governance in the annual report.

## **Committee on corporate governance for non-listed enterprises**

### Composition

#### **Chairman**

##### Baron Paul Buysse

- *Chairman Board of Directors NV Bekaert SA*
- *Chairman Immobel NV/SA*
- *Chairman of the College of Censors of the National Bank of Belgium*
- *Chairman of the Board of Trustees of Guberna (L'institut des Administrateurs/Het Instituut voor Bestuurders)*
- *Member of the Board of Directors of the VEV (Vlaams Economisch Verbond)*
- *Member of the Management Committee of the Federation of Enterprises in Belgium (FEB)*
- *Chairman of the Family Business Network Belgium*

#### **Members – in alphabetical order**

##### Pierre Berger

- *Chairman, IRE/IBR (Belgian Institute of Statutory Auditors)*

##### André Bert

- *Chairman, IEC/IRE (Belgian Institute of Accountants and Tax Consultants)*

##### Luc Coene

- *Vice Governor, National Bank of Belgium*
- *Minister of State*

##### Herman Daems

- *Chairman, GIMV*
- *Chairman Barco*

##### Herwig Dejonghe

- *CEO, PinguinLutosa NV*

##### Bernard De Potter

- *Administrator General, Agentschap Ondernemen*

##### Liesbeth De Ridder

- *Secretary General, GUBERNA (L'Institut des Administrateurs/ Het Instituut voor Bestuurders)*

##### Marc Deschamps

- *CEO, Exego*
- *Visiting professor, HEC-ULG and SBS-ULB*

**Flor Joosen**

- CEO, Joosen-Luyckx NV
- National Chairman, UNIZO

**Koen Geens**

- Professor, KUL
- Lawyer, Eubelius

**Cindy Laureys**

- Legal advisor UNIZO studiedienst (internal affairs department)

**Philippe Ledent**

- Vice-President UCM Luxembourg

**Jozef Lievens**

- Lawyer, Eubelius
- Professor governance Hogeschool-Universiteit Brussels
- CEO FBNet Belgium and Instituut voor het Familiebedrijf

**Frédéric Mignolet**

- Legal advisor, UCM

**Peter Pelgrims**

- Chairman, Somati NV

**Jean-Paul Servais**

- Chairman, Committee of European Securities Regulators
- Chairman, Institute of Chartered Accountants and Tax Experts (CSPE/HREB)
- Lecturer ULB

**Robert Tollet**

- Chairman, CCE/CRB
- Chairman, Board of Directors FPIM/SFPI

**Karel Van Eetvelt**

- Director General UNIZO

**Dirk Van Haesebrouck**

- Notary, representative Fédération Royale du Notariat Belge / Koninklijke Federatie van het Belgisch Notariaat

**Mieke Vandromme**

- Managing Director, Gamma Solutions bvba

**Jan Vanhevel**

- Member of the Board of Directors, Febelfin

**Jan Verhoeve**

- Accountant
- Chairman, CNC/CBN
- Lecturer Hogeschool Gent
- Visiting Professor UG

**Karl Verlinden**

- CEO, Qualiphar NV

**Christophe Wambersie**

- Secretary General, Belgian National Federation of Small Firms and Traders (Fédération Nationale UCM)



**Secretary**

**Stijn Rommens**

- *Advisor Corporate  
Governance, UNIZO SME  
Contact*