

Buyse Code
Corporate governance
Recommendations for
non-listed enterprises

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FOREWORD

This Corporate Governance Code with recommendations for non-listed enterprises is a professional collection of guidelines and recommendations which will help you, as an owner or manager, to optimise your future successes.

The Commission had two main purposes when it worked out these recommendations:

- 1. to help managers of enterprises achieve optimal, professional and constant growth.*
- 2. to offer a vitally important ethical standard for dealing with the many professional challenges encountered when managing an enterprise.*

Ethical entrepreneurship isn't a luxury for starry-eyed idealists, but a day-to-day reality.

On the whole, enterprises which subscribe to corporate governance achieve more homogeneous and stable growth.

I am grateful to UNIZO for having taken the initiative of preparing a code for corporate governance. Moreover, we were able to put together a Commission with outstanding expertise, composed of a group of entrepreneurs, lawyers and top representatives from the most important socio-economic entities in our country. They exchanged their knowledge, analysis and experiences during a series of meetings. This Code is unique. It is the first time in history that a Corporate Governance Code is being published for non-listed companies, and the Commission is proud to be able to present it to you. Personally I hope that, thanks to this important instrument, our companies will be able to deal even more professionally with the many challenges they face.

I warmly wish you, the entrepreneur, every success !

*Baron BUYSSE,
September 2005.*

Introduction and general principles

The Code is addressed to all Belgian non-listed enterprises. It covers all companies which do not fall under the definition of 'listed companies' according to the Companies Code ¹.

The corporate governance debate finds its origin in the necessity of protecting investors. For this reason the corporate governance principles would initially appear to have no relevance for non-listed enterprises. However, to the extent that corporate governance includes organising the management structure and the decision-making processes within an enterprise more efficiently, making them more transparent and objective, non-listed enterprises too can benefit, because an efficient management structure:

- gives the enterprise a professional image among all involved parties, especially banks and financiers;
- is an advantage for the recruitment market;
- can play an important role in ensuring the continuity of the enterprise, especially in family businesses;
- can contribute to increasing the profitability of the enterprise.

Nevertheless, corporate governance for non-listed enterprises is different, and not merely because this target group is especially diverse in terms of activity, size and corporate structure.

Thus in elaborating a corporate governance regulation for non-listed enterprises, a number of principles apply which are unlike those that apply to listed enterprises. In particular, when working out a corporate governance regulation account must be taken of:

¹ 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.*'

- *The shareholding structure of non-listed enterprises*

For non-listed companies, the shares are generally concentrated in the hands of one or several shareholders who frequently belong to the same family.

- *The growth phase in which the enterprise finds itself*

The non-listed enterprises include start-ups, growing and mature enterprises. Obviously, governance needs will differ depending on the growth phase in which the enterprise finds itself. For smaller enterprises, it is above all a matter of how they must organise themselves in order to bolster their credibility vis-à-vis bankers and the tax authority, in medium-sized enterprises passive shareholders sometimes already enter the scene, while in large non-listed enterprises the general interest sometimes receives greater attention than in small caps on the stock exchange.

- *The special relationship between the owners, the board of directors and the management*

In non-listed enterprises there generally exists a different relationship between owners, board of directors and management than in listed enterprises. This relationship is characterised by the fact that these three players become more intensely involved with one another in their striving to maximise value creation.

Everything depends on the generational growth phase in which the enterprise finds itself.

In the first generation, the owner or shareholder will also be active in the board of directors and will take charge of the management. This identity promotes simplicity, but the absence of a distinction between capital and function and the lack of balance and (outside) auditing sometimes makes it difficult for third parties to have sufficient confidence. Procuring capital thus frequently becomes a problem, and often compels the entrepreneur to reinvest earned profits.

In the second generation, there will often be several owners, not all of whom have the same interest in the enterprise. The less active owners then sit in the board of directors, or even only in the general meeting, and the active shareholders handle the management. Different views can then develop about what constitutes a fair appropriation of profits, or investment policy and business strategy.

Finally, in the third generation the enterprise frequently attains a dimension which requires a high degree of professionalisation. The consensus, competence or ambition required for this is not

always present within the circle of owners. At that moment, bringing in outside management can save the situation, but only if it can call on external capital as well.

In each phase it will be of fundamental importance for the enterprise to place priority on the proper functioning of its bodies: otherwise it will be impossible to smoothly resolve the specific problems which arise in that phase. If, for example, the passive shareholders are not properly integrated into the functioning of the board of directors, the dividend and investment policy will sooner or later give rise to discord.

- *Ethical and socially responsible entrepreneurship*

An enterprise forms part of the larger society in which it is socially, economically and spatially embedded. In listed enterprises, social pressures are in part exerted via the investors. Even in a non-listed enterprise this relationship with the society is obviously present and outside pressures are felt, in both the positive and negative senses. For a successful corporate strategy over the long term it is of vital importance to always act out of respect for the society, and thus to engage in sustainable entrepreneurship. Therefore, when elaborating principles of corporate governance, one must also take these broader social factors into account and encourage enterprises to reflect on their social responsibilities and how they wish to integrate them into their business strategy.² Closely connected to this are a well-designed personnel policy and special attention for the personal and professional development of employees.

- *The need for flexibility*

Corporate governance recommendations may under no circumstances choke off the entrepreneurial dynamism which is characteristic for the Belgian SME, and must therefore leave enough room for flexible interpretation.

² The guide 'Socially Responsible Entrepreneurship', published by UNIZO and whose objective is to encourage SMEs to engage concretely in socially responsible business practices, can serve as a useful manual here.

- *A minimum of formalism*

Corporate governance must not degenerate into a set of formal playing rules. The Commission places the priority on the spirit of the corporate governance policy, not its form. Moreover, it is appropriate that the recommendations and the internal auditing procedures can be integrated as much as possible into the existing business processes in a spirit of proportionality and to avoid adding any further bureaucratic burdens (and costs).

- *Making the individual entrepreneur more responsible*

With its recommendations, the Code calls upon the individual responsibility of each entrepreneur, in the belief that a responsible entrepreneur focuses not on his personal interest but on the interest and the continuity of the enterprise.

The demand to differentiate the recommendations for non-listed enterprises in accordance with their size and scope is a difficult one to satisfy, given the wide variation found in the field. The fact that the shareholding situation of each enterprise is quite specific makes generalisations very difficult.

The Commission believes that the recommendations made hereafter under Chapter I can be useful for every non-listed enterprise, so long as it is understood that:

- for small enterprises, as defined hereafter, special recommendations concerning corporate governance were worked out because the general recommendations do not offer an adequate answer to the specific questions and problems with which this group is confronted;
- large non-listed enterprises³ can benefit from respecting a number of recommendations which were specifically tailored for them and included in the Lippens Code. This can help them in a further internationalisation or a possible initial public offering. In so doing, it will be primarily the recommendations relating to the functioning and composition of the board of directors which will be useful, while those relating to investor's interests will at most prove their utility in the event of an upcoming introduction on the stock exchange.

³ By this is intended the enterprises which exceed two of the three consolidation thresholds set forth in art. 16 of the Companies Code: 29.2 million euros in annual turnover, excl. VAT; 14.6 million balance sheet total; 250 employees.

With regard to groups of companies, the Code honours the principle that corporate governance must make itself felt at all levels. Thus the audit committee of the parent enterprise will also have to include the subsidiaries in the scope of its examination. Moreover, one must make sure that directors who are active in both the parent enterprise and the subsidiary take adequate account of specific interest of the company which they are directing at a given moment. After all, essentially it is the parent enterprise which audits the subsidiary. In the event of a complete identity of directors in both parent enterprise and subsidiary, this would amount to self-auditing, which obviously is never a good thing.

Naturally, family enterprises deserve special attention because of the specific shareholding situation and the succession problematic which they create. A number of special recommendations are formulated for them in chapter II.

For small enterprises, finally, the Code formulates in chapter III a number of special recommendations concerning corporate governance, because a good balance-sheet ratio management and an adequate capitalisation can facilitate the enterprise's contacts with bankers and the tax authority, and with major suppliers and customers.

By 'small enterprises' are intended the very small and small enterprises as defined in the European recommendation of 6 May 2003⁴, which beyond this are characterised by an identity of ownership, control and management. This particularly concerns enterprises which are in the first-generation phase.⁵ The thresholds as set forth in the European recommendation are obviously indicative and must be employed with the necessary flexibility, taking the nature and the structure of the enterprise into consideration.

⁴ According to Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises, a 'very small enterprise' or 'microenterprise' is an enterprise which employs fewer than 10 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 2 million. A 'small enterprise' is an enterprise which employs between 10 and 49 persons whose annual turnover and/or annual balance sheet total does not exceed EUR 10 million. In addition the Recommendation employs a financial autonomy criterion based on the value of the participating interest of other enterprises in the capital of the enterprise.

⁵ Also see above concerning the special relationship between the owners, the board of directors and the management.

I. Recommendations for all non-listed enterprises

1. GENERAL

Corporate governance in a non-listed enterprise means above all that the enterprise:

- is based on a vision and a mission which are explicitly articulated;
- judiciously calls upon outsiders;
- sets up structures in timely fashion, particularly an active board of directors;
- has a high-performance (senior) management;
- can rely on involved shareholders;
- can count on smooth cooperation and interaction between the board of directors, the management and the shareholders.

2. EXPLICIT ARTICULATION OF THE VISION AND THE MISSION

The objective of the enterprise is value creation over the long term, which cannot be simply equated with profit maximisation.

To arrive at an optimal interaction between the owner(s), the company, its employees and other stakeholders, the Code recommends clearly establishing the vision and the mission of the enterprise. In so doing, one must also define the values which must be taken into consideration. The mission statement forms a frame of reference and a beacon for the decisions and actions of those involved in the enterprise and it forms the basis for the long-term strategy.

3. JUDICIOUS USE OF OUTSIDE ADVISORS

Especially when all of the shares of an enterprise are concentrated in the hands of a single person, the Code recommends that this entrepreneur make judicious use of outside advisors.

In building towards an active board of directors, it may be advisable to set up a consultative committee which serves as a sounding board for the entrepreneur.

In a more mature phase it may be advisable to use external management.

4. AN ACTIVE BOARD OF DIRECTORS

The following recommendations are in principle applicable to enterprises which have assumed the legal form of a limited liability company. Nevertheless, they can also apply mutatis mutandis to enterprises which have taken a different legal form.

4.1. ROLE AND COMPOSITION OF THE BOARD OF DIRECTORS

4.1.1. The task of the board of directors

The task of the board of directors consists of:

- taking decisions concerning important and strategic matters, such as approval of the strategy;
- monitoring that the management and the shareholders take the initiatives which fall within their authority;
- appointing the managing director, the executive committee⁶ and the management;
- giving advice to the managing director, the executive committee and the management;
- the financial and operational control, including the introduction and supervision of an internal control system;
- delineating the dividend policy which afterwards is submitted for approval to the general meeting;
- preparing and organising the succession of the managing director, the executive committee and the management;
- protecting the interests of the company in the event of crisis and conflict.

⁶ Since the Corporate Governance Act (Act of 2 August 2002 amending the Companies Code), the term 'directiecomité/comité de direction' is legally recognised and reserved for limited-liability companies which have explicitly included the possibility of formation of an executive committee in the articles of association. The Corporate Governance Act integrated articles 524bis and 524ter into the Companies Code for this.

The task of the board of directors must be distinguished from those of:

- the general meeting, which is competent for changing the capital structure, appointing and dismissing the directors, approving the annual accounts, setting the dividend and so on⁷;
- the management, which is entrusted with the operational running of the enterprise and the implementation of the strategy;
- the executive committee, to whom the board of directors can largely transfer its powers.

4.1.2. Balanced and independent composition

Even in non-listed enterprises the Code recommends including non-executive or outside directors on the board of directors.

Outside directors are of course full-fledged directors who fulfil the tasks which are entrusted to the board of directors collegially with the other directors. This collegiality entails that – with the exception of the committees – one must avoid meetings at which not all directors are present.

Outside directors:

- help provide an objective view of the enterprise;
- give impartial advice;
- are a sounding board for the entrepreneur;
- increase discipline and the sense of responsibility with regard to reporting;
- can play a major role in crisis situations;
- watch over the succession of the managing director;
- share with the enterprise their networks and relationships;
- provide for experience and knowledge transfer.

Ideally, every enterprise should include several outside directors on its board of directors. However, the size, structure and growth phase of the enterprise must always be taken into account.

⁷ This Code also recommends that the general meeting confirm the appointment of the managing director.

Outside directors are directors who belong neither to the management nor to the controlling shareholder. In general they can be regarded as independent, unless their relationship with the management or the shareholders should be of such a nature as to cast doubt on this. Nevertheless, certainly in small and medium-sized enterprises their competence is more important than their independence in the strict sense. What is crucial is the authority that they can exercise, on the basis of their competence and their familiarity with the corporate leadership, in the interest of the company.

Each year the board of directors evaluates its functioning, including its composition, and in particular the presence and independent attitude of outside directors.

4.2. FUNCTIONING OF THE BOARD OF DIRECTORS

Concerning the functioning of the board of directors, the Code wishes in particular to draw attention to the following principles :

4.2.1. Active board of directors

For the board of directors to be able to properly do its job, it must meet on a regular basis. The Code argues that at least four meetings should be held per year.

Moreover, at these meetings the board of directors must also be able to remove itself from the day-to-day management in order to assess the implementation of the corporate strategy and to adjust it - where necessary - from the perspective of a long-term vision.

The Code recommends convening a special meeting at least once a year where the only item on the agenda is long-term thinking. A management chart with an overview of all relevant parameters can serve as a guideline for such reflection.

Minutes of the board of directors' meetings must be prepared in timely fashion.

4.2.2. Role of the outside directors

Like all directors, outside directors must have an objective view of the enterprise. This presumes however that the enterprise provides them with the necessary training, information and resources to properly do their job. Secondly, they are responsible for assessing their own objectivity at regular intervals.

The Code wishes to expressly emphasise the collegial character of the board of directors. One must prevent a dichotomy from developing within the board of directors between executive and non-executive directors, although it must be possible for the latter to meet separately when this becomes necessary.

Decisions of the board of directors must be reached after consultation and with a constant effort to reach consensus. The added value of an active board of directors lies precisely in the interaction between operational directors and outside directors. The chairman must make sure that all directors express their individual and independent opinions.

4.2.3. Appointment

Depending on the size of the enterprise and the board of directors, a separate committee can be set up for appointments. If, considering the nature and the scope of the enterprise, no appointments committee is established, the task of this committee is fulfilled by the board of directors itself.

Concerning the appointment of the directors, this Code emphasises that the general meeting naturally must always have the last word on this. The formation of an appointments committee, depending on the possible articulation of its powers in the articles of association, can have as a consequence that the nominations which are made by shareholders must first be submitted for the opinion of the appointments committee.

4.2.4. Evaluation

The Code subscribes to the general principle that the board of directors periodically evaluates its own performance, as well as the performance of the individual director before his possible reappointment. In so doing, the board of directors must always keep the objectives of the enterprise in mind. The chairman initiates this evaluation and afterwards gives the necessary feedback to the members of the board of directors.

If this evaluation should reveal that the composition and/or functioning of the board of directors, as well as the individual contribution, are no longer sufficient to achieve the objectives of the enterprise in the most efficient manner, it is responsibility of the chairman of the board of directors to take the necessary steps to change this. The general meeting is informed of the situation and invited to make the appropriate decisions.

4.2.5. Remuneration

The Code subscribes to the general principle that the remuneration must be high enough to attract, retain and motivate directors who satisfy the profile defined by the board of directors.

The Code also emphasises that the general meeting must of course always have the last word on the compensation of directors.

The Code proceeds on the assumption that for large non-listed enterprises which are obliged to publish an annual report, the decision to publish the individual compensations of directors is left to the discretion of the board of directors, with it being understood that the legal requirements concerning annual reports always apply as minimal publication requirements.

The Code recommends that outside directors receive only a compensation which, except for special assignments, is fixed and linked to their attendance at the board of directors' meetings. Systems of share options and other forms of variable compensation or long-term incentives (e.g. pensions) are not advisable for these directors.

4.2.6. Role of the chairman

The importance of a good chairman also in non-listed enterprises cannot be underestimated.

The chairman:

- is the guardian of the processes which control the functioning of the board of directors;
- gives wise counsel to both the shareholder(s) and the management;
- has the profile of a mediator and an arbitrator;
- directs and guides the process of appointment of the top management and the members of the board of directors.

The Code strongly recommends that the position of chairman of the board of directors not be combined with that of managing director. This too, however, depends on the nature, size and growth phase of the enterprise.

4.3. COMMITTEES

The Code acknowledges the usefulness of advisory committees such as an audit committee, an appointments committee, a remuneration committee and a strategic committee which can assist the board of directors in making decisions. It is up to the board of directors, taking into account the challenges it is confronted with and the size of the enterprise, to assess the necessity of forming such committees. These committees function within the board of directors of the enterprise and have only advisory competence.

Obviously, setting up committees may in no way impair the collegiality of the board of directors. The chairman of the board of directors takes the initiative of organising the committees and makes a proposal to the board of directors with regard to the committee chairmanship.

5. A HIGH-PERFORMANCE (SENIOR) MANAGEMENT

5.1. DEFINITION

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

The Code emphasises the importance of the managing director in non-listed enterprises, and notes that in a number of enterprises, considering their size, the senior management will coincide with the managing director (CEO), whether or not assisted by one or several executive directors or management members.

The description of the mission, the appointment procedure, the evaluation and the compensation policy must all take account of the specific position occupied by the managing director. To the extent that a certain principle or recommendation applies to all persons responsible for the operational management of the company, the term senior management is adopted hereafter. Where necessary, however, within the senior management a distinction is made between the managing director and the management, the latter being all other persons responsible for (some aspect of) the operational management of the enterprise.

5.2. MISSION

The senior management executes the corporate strategy as it was decided by the board of directors and expressed in the mission statement. The senior management informs the board of directors about all aspects of the operational management, and especially about the evolution in the financial results, in order to permit the board of directors to evaluate the implementation of the strategy and makes proposals to adjust the strategy where necessary. The senior management is responsible for correctly and regularly updating the reporting which serves the board of directors as a guide.

The managing director is responsible vis-à-vis both the board of directors and the shareholders for the proper functioning of the management. The managing director has a duty to provide full information to the board of directors.

5.3. APPOINTMENT

The board of directors can only properly fulfil its sounding board function if it can take sufficient distance from the senior management. For this reason the Code recommends that not the board of directors but rather the general meeting confirm the appointment of the managing director, albeit at the board of directors' proposal. The management itself is appointed by the board of directors, after hearing the opinion of the managing director and, as appropriate, the appointments committee.

5.4. EVALUATION

The Code recommends providing a procedure for the annual evaluation of the senior management. Clear agreements must be reached concerning the parameters and assessment criteria to be used in such a procedure.

The managing director furnishes the board of directors with the necessary information concerning the evaluation of the management. When evaluating the managing director, the board of directors takes account of the specific missions of the managing director.

In these evaluation tasks, the board of directors can have itself assisted, as appropriate, by the appointments or remuneration committee, as well as by outside experts.

5.5. REMUNERATION

The Code subscribes to the principle that the board of directors defines the compensation policy for the senior management, whether or not at the proposal of the remuneration committee.

6. INVOLVED SHAREHOLDERS

6.1. PRINCIPLE

In order to achieve the long-term strategy, the enterprise must be able to rely on shareholders who:

- are prepared to make a professionally justified, but long-term personal commitment;
- adopt a coherent vision of the enterprise;
- are prepared to turn over the direction and supervision to qualified bodies.

6.2. ROLE OF THE SHAREHOLDERS

In the non-listed enterprise, 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 concerning growth, risk, profitability and liquidity of the share;
- appointing the board of directors;
- establishing the playing rules for their mutual interactions, whether or not in the form of a shareholders' agreement.

6.3. PROMOTING SHAREHOLDER INVOLVEMENT

The board of directors must take action, with respect for everyone's role and job description, directed at promoting the involvement of the shareholders in the enterprise. In so doing attention will also be devoted to the position of the minority shareholders. Periodical and timely information

and communication will be essential, also outside of the ordinary annual general meeting. Identical information must be given to all shareholders.

7. EXTERNAL AUDIT

Along with the development of a sound internal control system by the management, adapted to the size of the enterprise, an important role with respect to control is reserved for the statutory auditor. The statutory auditor's independence must be beyond question. The Code attaches a great deal of importance to the interaction between the board of directors and the statutory auditor. The board of directors must make sure that the annual accounts are established in timely fashion so that they can be submitted to the statutory auditor within the legally-required period of one month before the general meeting.

8. THE SHAREHOLDERS' AGREEMENT

In so far as they are not stipulated in the articles of association, the Code recommends establishing the most important rights and duties in a shareholders' agreement which the shareholders enter into vis-à-vis one another, as well as provisions which would properly regulate an eventual separation of the parties.

At a minimum one should consider agreements about:

- the cases in which the transfer of shares is subject to absolutely no limitation;
- the limitations which are imposed on the transferability of shares, such as approval and pre-emption clauses;
- the price which, in the event of exercise of the pre-emptive right, will have to be paid for the shares, or the mechanism and the formula for determining the price;
- the other modalities under which the pre-emptive right can be exercised.

It is also advisable to include in a shareholders' agreement provisions concerning the composition of the board of directors.

9. PUBLICATION OF THE CORPORATE GOVERNANCE RULES

Depending on the size and growth phase of the enterprise and the nature of the shareholding structure, the Code recommends establishing the roles which the board of directors, management and shareholders take for their own account in a corporate governance statement. In it one can also articulate how the various players will communicate and consult with one another.

This statement can be included in the annual report of the enterprise if it is obliged to prepare and publish one. It is also recommended that the report set forth the most important events of each year in the area of corporate governance.

II. Specific recommendations for family enterprises

Family governance

1. THE FAMILY FORUM

The Code recommends creating a family forum in certain family businesses. Among others this will be the case if:

- the shares are held by several family members or several branches of the family;
- within a single branch, several generations are involved in various roles in the company (whether or not active in the enterprise, whether or not shareholder).

The family forum serves as a platform for communication, information and as appropriate consultation in connection with the family business.

It is advisable to reach clear agreements and to establish:

- who is authorised to form part of the family forum;
- how the chairman is designated;
- what subjects are discussed there and
- what power the body has with regard to weighty decisions.

When setting up the family forum, one should also consider using an outside mediator.

2. THE FAMILY CHARTER

The Code recommends that the family establish in a family charter a number of playing rules to which the family members can refer. For example, it is recommended to establish rules with regard to:

- the family values and vision;
- the ownership of the family business;
- the financial objectives of the family;
- the careers in the family business;
- the compensations attributable to family members active in the family business;
- the governance of the family business;

- the family governance;
- the management of the family business;
- the role of non-family members in the family business;
- communication;
- conflict resolution arrangements;
- the training of family members;
- philanthropy, sponsoring, etc.;

It is highly recommended that the charter have a legally binding character.

3. CONSULTATION WITH THE SHAREHOLDERS

The professionally-managed family business benefits from clarity about just how much freedom of action exists for developing and implementing corporate strategy. This requires from the family and shareholders a long-term vision about the direction in which the enterprise should develop, the desired culture of the family business, their willingness to take risks and their involvement in the enterprise.

The board of directors and the management must take well-targeted steps to promote the involvement of all shareholders in the enterprise. This can be done for example by holding a consultation among the shareholders, the board of directors and the management at least twice a year. The Code recommends doing this in any event if important developments appear likely to occur in the near future, for example a strategic reorientation, a major takeover, sale of parts of the business or company transfer.

4. SUCCESSION

The timely organisation, proper preparation and careful accompaniment of a succession is one of the most crucial processes in the family business. This process must be addressed in a professional manner, with the best interests of the family business serving as the decisive frame of reference. A thorough, step-by-step succession plan is therefore essential. The Code recommends putting control of the process in the hands of the board of directors, and in particular its chairman. It is wise to give the board of directors a significant advisory role in assessing succession candidates. Great care must be devoted to ensuring that there is a solid basis of support for the successor within the wider family circle. The appointment of the successor will preferably have the assent of the shareholders.

5. RESOLVING CONFLICTS

Conflicts between family members must not be covered over, but instead openly discussed. There must be a mechanism for effectively resolving long, drawn-out conflicts. An authoritative leader within the family can sometimes engineer a solution.

An outside chairman of the board of directors who has authority and the confidence of all parties can also be helpful. If necessary, one can call on a professional mediator. The Code recommends first identifying potential sources of conflict and then taking contractual or by-law steps which make a rapid resolution possible.

III. Basic recommendations for sound entrepreneurship

As indicated earlier, *the* 'non-listed enterprise' doesn't exist. An enterprise requires an adapted interpretation of corporate governance depending on its size and the growth phase it finds itself in. Although the principles which are formulated in Chapter I contain valuable elements for every enterprise, they may not be sufficiently recognisable from the reality of an autonomously-financed enterprise in which ownership, control and management coincide with one another.

In the following the Code wishes, from a broader 'stakeholder approach', to formulate recommendations which should allow these enterprises to develop their corporate strategy in such a way as to increase their attractiveness to external involved parties and thus protect the continuity of the enterprise.

Without striving for completeness, the Code hereby makes a distinction between different categories of stakeholders and attempts for each category to indicate how the enterprise can optimise its relationship with them. The instruments which are available for achieving this can be very diverse in nature, either legal, financial, logistical or organisational.

Moreover, the Code points out that these recommendations must be custom-applied to each enterprise and that every enterprise, taking into account its own characteristics, can select those which it finds relevant. The recommendations should be understood as good practice guidelines which by their very nature do not have a compulsory character and which only should be applied when they entail a particular added value for the functioning of the enterprise. The Code expressly wishes to respect the entrepreneur's creativity in giving these recommendations a personal interpretation in dialogue with his stakeholders. Finally, it is obvious that most of the recommendations are useful for the relationship with several stakeholders.

The Code distinguishes the following stakeholders:

- the bank and any other financiers
- the suppliers
- the customers
- the personnel
- the outside advisor(s)
- the government

The Code subscribes to the principle that each entrepreneur, in the interest of the continuity of his enterprise, must develop a vision about his relationship with these stakeholders.

1. THE RELATIONSHIP WITH THE BANK AND FINANCIERS: MUTUAL TRUST

Every enterprise needs enough capital to sustainably develop its activities. In contrast to larger non-listed enterprises, which often can already rely on outside capital providers, an entrepreneur is generally dependent for this on extension of credit by his banker or (if necessary) family members or friends. A lasting relationship with his financier/banker, based on mutual trust, is thus of vital importance.

To achieve this, the Code recommends the following ⁸:

- **Ensure that information is shared quickly, fully and correctly with the banker.**

Both for a new credit application and for following up the already outstanding credits, the enterprise has every interest in ensuring that its banker/financier receives the correct information in timely fashion. Although the enterprise obviously does not have an automatic right to a credit, the banker/financier's confidence will undoubtedly increase if the decision can be taken on the basis of full and accurate data. Also, if certain changes in the corporate situation arise or are expected which could have an impact on the relationship with the banker/financier, it is highly recommended to inform the credit institution about this as quickly as possible.

- **Use the accounting of your enterprise as a strategic instrument for managing the business.**

The accounting of an enterprise is an important management instrument. It is highly recommended that the enterprise allow itself to be assisted by experts for preparing and interpreting the financial data.

⁸ A number of the following principles have been borrowed from the Code of Conduct which was concluded on 14 September 2004 between the Belgian Banking Association and the employers' organisations Agoria, UCM, UNIZO and the Federation of Enterprises in Belgium. This Code of Conduct is intended to promote the relationship between credit institutions and SMEs. To do so, one of the things the Code provides for is the establishment of a Contact point for handling complaints.

- **Regularly update the financial plan that the enterprise had to prepare when the company was formed.**

A financial plan is a document in which the enterprise justifies its financial structure when it is formed. It gives an overview of the income and expenditures to be expected for the first two financial years, with the intention of obtaining insight into the resources which the enterprise will need in order to develop its activity in an economically responsible manner. Actually it contains two projected profit and loss accounts which should indicate the viability of the enterprise. The intention is obviously to compel the partners to reflect on the feasibility of the proposed activity, and above all on the size of the share capital that they have to bring together for this. The drafting of a financial plan is an important requirement during the formation process, with potential consequences concerning founder's liability. It is highly recommended to regularly repeat this intellectual exercise, and if necessary to adapt the company's share capital to the new needs. The frequency with which such updating can take place obviously depends on the size, the sector and the needs of each enterprise. An update of the financial plan is primarily relevant when the enterprise must make a decision which requires additional financial resources or when a certain external reality develops that could have an impact on the financial structure (such as the loss of a major customer).

- **Make a clear distinction between the resources of the enterprise and the private capital of the entrepreneur.**

Even in a small enterprise the interest of the enterprise must be distinguished from the private (family) interest. The corporate interest is a totality of factors which can best be summarised under the denominator 'continuity of the company'. All decisions which the entrepreneur takes, including the financial decisions, must always fit within this constant concern for the continuity of the enterprise. Subject to respect for the rights of the shareholders, the resources of the enterprise may therefore only be used in the interest of the enterprise.

2. THE RELATIONSHIP WITH SUPPLIERS: LONG-TERM COOPERATION

A good provision of services to the customers and an efficient business management presuppose that the enterprise can rely on a network of suppliers who can guarantee quality. However, suppliers are also creditors of the enterprise who in turn demand the necessary guarantees for a proper collaboration. Clear contractual terms and a correct payment obviously form part of this and are an absolutely necessary condition for arriving at a long-term cooperation which is to the benefit of both parties. Here again, transparency is the key word.

To achieve this, the Code recommends the following:

- **Make sure that the powers within the company and the power to contractually bind the company are clearly and unambiguously established.**

Although, on the basis of company law, in principle only the management body or the director is competent to bind the company to third parties such as customers and other business partners, it is important that within the enterprise clear agreements are made on who can negotiate or promise what on behalf of the company. It is recommended, if necessary, to draw up guidelines for the employees on this subject. It can also be useful to communicate this to the business partners.

- **Agree on clear payment conditions and periods.**

The failure to respect payment conditions undermines the confidence of suppliers in the enterprise. To prevent misunderstandings, it is highly recommended to make unambiguous and preferably written agreements for each transaction.

- **Correct financial information increases the credibility and attractiveness of the enterprise.**

Just like a banker, a supplier too sometimes requests specific guarantees that his debt claim will be paid. Even if the enterprise, given its size, is not obliged to prepare an annual report, it can nevertheless benefit from making a concise financial analysis of the enterprise available to its business partners.

- **Draft a document in which the enterprise makes clear what it expects from a supplier and what concrete requirements a supplier must fulfil.**

Along with obvious criteria concerning the price/quality ratio, the enterprise can also include here elements which relate to possessing certificates, having a quality assurance system, working with qualified personnel, the ability to provide references, the handling of complaints, ... In brief, all possible criteria which are essential in order to guarantee that the supplier satisfies the profile that the enterprise has in mind. Such a document is useful for both internal and external purposes.

3. THE RELATIONSHIP WITH CUSTOMERS

Every enterprise stands or falls with the satisfaction of its customers. Good corporate management thus requires that one regularly examine the customer policy.

For this the Code recommends the following:

- **Devote the necessary attention to drafting the general conditions of the enterprise.**

Just as in the relationship with suppliers, a clear legal basis is important in order to avoid misunderstandings and unnecessary frustrations. It is also advisable that the enterprise regularly evaluate its general conditions as a function of possibly changed circumstances and adapt them where necessary. Finally, it is highly recommended to inform the established customers quickly and fully about such adaptations to the contractual conditions, and to inform them if appropriate about the reasons for the changes.

- **Pay attention to a clear and uniform communication with the customers.**

While it is important to draft unambiguous and legally sound conditions, it is of course equally important that the enterprise properly inform its customers about them. It is recommended within the enterprise to make clear agreements concerning the content and form of the communications made by all employees to the customers.

- **Keep the agreements which have been made.**

An enterprise can only develop credibility and a professional image if it fulfils all of the agreements which have been reached, including those concerning delivery periods. It is highly recommended to always strive for a correct implementation of all commercial agreements and, if this is impossible, to quickly and clearly communicate the reason why.

- **Diversify the customer base.**

The enterprise which has only a single or a few customers creates a position of economic dependency which in the long run constitutes a threat for its very continuity. It is highly recommended to attract as many customers as possible with different profiles.

- **Regularly examine the creditworthiness of the customers.**

It goes without saying that, if the enterprise wants to determine what it needs do to improve its functioning, organisation and management, it is very important to know the profile of its customers. Out of concern for the continuity of the enterprise it is highly recommended to devote special attention to the financial situation of the customers.

4. THE RELATIONSHIP WITH THE PERSONNEL

An enterprise is built not only with financial capital, but also with human capital. A good relationship with the employees is therefore just as important for the continuity and growth of an enterprise as the relationship with its banker, suppliers or customers. Here, too, mutual trust must form the basis, since satisfied employees produce better operating results.

To achieve this, the Code recommends the following:

- **Devoted the necessary attention to employee satisfaction.**

In a small enterprise, monitoring employee satisfaction is an ongoing process. Moreover, there are several methods for concretely measuring employee satisfaction at regular intervals. Depending on the structure, the organisation, the scale and/or atmosphere in the enterprise, it can opt for personal conversations, a group discussion or a written questionnaire.⁹

Obviously, when applying such satisfaction measurements methods, the enterprise must be sure to create only realistic expectations and to establish a realistic timetable in advance. A measurement can only benefit the manager's credibility if the enterprise promises, taking into account the nature and scope of the enterprise, to take account of the results. Finally, here again good communication is of great importance: it is highly recommended to correctly report the results and any adjustments that will be made the policy.

- **Stimulate your employees' involvement in the policy of the enterprise.**

There are various informal methods for involving the employees in the policy of the enterprise. In any event, a good circulation of information and structured internal communications are of great importance.

⁹ The Human Resource Management Coach (HRM-Coach), which was developed by SME Contact, the UNIZO working group for growth SMEs, can serve as a guideline here. The HRM-Coach contains 21 test lists for personnel policy. You can find an online version of this Coach at www.hrmcoach.be.

5. JUDICIOUS USE OF OUTSIDE ADVISORS.

Above all when all of the shares of an enterprise are concentrated in the hands of a single person, it will be advisable that this entrepreneur judiciously call upon outside advisors.

Outside advisors can play a major role in the vital task of keeping the decision-making within the enterprise objective, i.e. striving for a necessary separation between the interest of the enterprise and the private interest. The entrepreneur thus has an interest in organising himself in such a way that he can call on (a network of) expert advisors who give the necessary support in order to run the enterprise in complete independence and to make decisions which are substantiated and well-conceived. Such outside expertise can produce a sounding board or framework for reflection, although the concrete form which such a framework for reflection will take must evolve parallel to the growth of the enterprise.

With a view to a good relationship with the outside advisor, the Code recommends the following:

- **Make sure that the outside advisor has the full and up-to-date data on the enterprise.**

An external advisor can only properly fulfil his task if he receives the correct information in a timely manner. The added value of the advice and thus the efficiency of an advisor's intervention is partly determined by the openness displayed by the enterprise with respect to the relevant company information. The enterprise benefits from good cooperation based on mutual trust.

- **Agree on regular, fixed contact moments.**

If the enterprise calls on a permanent outside advisor, it is highly recommended to regularly discuss the operating results with the advisor in the interim. After all, the entrepreneur is often completely absorbed by the day-to-day management and therefore reserves too little time to reflect on the company's future over the medium and long terms. Fixed contact moments can be a first step towards devoting attention to this on a regular basis. Moreover, through regular contacts the advisor gets an overall picture of the enterprise and the most important developments in the management and is invited to think along with the enterprise. The management can thus make maximum use of the advisor's expertise and, on the basis of interim opinions, adjust the business policy where necessary.

- **An external advisor must guarantee expertise and a high-quality provision of services.**

It is in the interest of the continuity of the enterprise that it can count on the professionalism of the outside advisor(s) and if necessary request a second opinion when making major decisions.

The advisors who are called on must obviously comply with any applicable deontological rules, whose content and enforceability will depend on the professional group from which the persons involved are recruited.

6. THE GOVERNMENT AS PARTNER

Along with banks, customers, suppliers, personnel and advisors, all of whom have a private interest in the enterprise functioning properly, the Code draws attention to the special position of the government which - from the perspective of the public interest – also benefits from well-managed enterprises. Conversely, a good relationship with various government institutions (ranging from the tax authority to the environmental administration) is of great importance for the continuity and growth of the enterprise. Finally, in the context of subsidy or support measures, the government can be an important partner as well.

The Code therefore recommends that the enterprise constantly adopt a correct and pro-active attitude towards government institutions.

Annex: list of concepts

- **Corporate governance:** sound corporate management.
In the Code, the English term is used instead of a Dutch or French phrase because the English term has become widely used both internationally and in Belgium.
The publication *'Corporate governance in the SME. The vision of the notary public, the auditor and the tax consultant'* (2004, a publication of UNIZO, the Institute of Auditors and Tax Consultants and the Royal Federation of the Belgian Notaryship) examines the concept in greater depth. However, the interpretation which the Commission gives to corporate governance in the present Code is broader than in this publication, which is limited to the company-law organisation of the enterprise.
- **Start-ups:** starting enterprises, enterprises in the start-up phase.
- **Mature enterprises:** enterprises which have reached the phase where they no longer strive for continuous growth.
- **Small caps:** shares of small enterprises with a relatively small stock-market capitalisation which amounts to no more than 1 million euros.
- **Balance-sheet ratio management:** the follow-up and management of balance-sheet ratios, which are ratios that are exclusively based on data from the balance sheet of the enterprise. Ratios are relations between 2 important characteristic values.
- **High-performance / performance:** effective, efficient, result-oriented; a management is high-performance when it books results which satisfy the needs and expectations of all stakeholders.
- **Mission statement:** a statement in which an enterprise or organisation clarifies its mission. This statement gives direction and at the same time sets limits. It includes what the enterprise does (what added value it delivers, objective), for whom it is doing this (target group) and, broadly speaking, how it achieves this (values, activities).
- **Management chart:** a document that includes a number of financial, operational and commercial data and which is prepared at regular intervals in order to allow the management to make the right decisions and to better position the enterprise vis-à-vis other enterprises.
- **Remuneration:** the entirety of compensations which one receives in exchange for services performed.
- **Branch:** common descendants of the same ancestor.
- **Charter:** a written statement or agreement in which a number of basic understandings are established; a sort of constitution.
- **Philanthropy:** all forms of charity.