

# CORPORATE GOVERNANCE COMMITTEE

## **Draft Belgian Corporate Governance Code**

On the 18<sup>th</sup> of June 2004, the Corporate Governance Committee has published this Draft Belgian Corporate Governance Code.

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Developing an efficient, high quality corporate governance model is critical if companies are to be able to seize the opportunities offered to them while controlling the accompanying risks. Recent corporate collapses have further underlined the need for companies to adhere to a good corporate governance model. In such a context, it comes as no surprise that a whole array of initiatives has been taken over the past years at national, EU and international level to draw up new legislation and recommendations on corporate governance.

In Belgium, the BFIC (Banking, Finance and Insurance Commission), Euronext Brussels and the FEB (Federation of Enterprises in Belgium) took a joint initiative in January 2004 to appoint a Corporate Governance Committee (referred to as "the Committee") entrusted with the drafting of a single code of best practice on Corporate governance for all listed companies. At this moment, Belgium has three documents setting out recommendations on governance for listed companies (drawn up in 1998 by the Belgian Banking and Finance Commission, the Brussels Exchange and the FEB respectively). As these documents do not form a single code and had to be updated in the light of recent economic developments and growing expectations in terms of corporate governance, the task of the Committee has been to draw up a Corporate Governance Code (referred to as "the Code") which replaces the three Codes in force since 1998.

In drawing up the Code, the Committee had to align its proposal with international standards. The OECD recommendations, the European Commission's Action Plan on modernising Company Law and Corporate Governance and its consecutive proposals and consultation documents, together with different national codes on corporate governance, all provided useful guidance.

However, attention had also to be paid to the relevant provisions of Belgian Company law as well as to some Belgian specificities, which have led the Committee to favour tailor-made solutions where more appropriate.

On 18<sup>th</sup> of June 2004, the Committee makes public on its website a draft proposal for a Code on Corporate Governance and invites interested parties to comment on its content before 15<sup>th</sup> of September 2004.

Taking into account the comments received, the Committee intends to publish a final text on 9<sup>th</sup> of December 2004.

## **A. PREAMBLE**

### **I. Underlying Philosophy and Main Objective of the Code**

The Code's main objective is to facilitate long-term value creation and sustainable growth. In order to reach that goal, a good corporate governance model should foster a balance between performance-driven direction and conformance to robust risk management systems and controls. While conformance must be achieved through accountability, integrity and transparency, performance needs entrepreneurial direction. Emphasizing only one of these two elements is endangering long-term value creation.

#### **I.1. A Corporate Governance That Facilitates Long-Term Value Creation**

Presence or absence of corporate governance may have important economic and societal effects.

Good corporate governance practices, accountability and transparency can reinforce the confidence of investors and the public. As such, it is the gateway to external funding at a lower cost. Furthermore, investors are willing to pay more for a well-governed company. Corporate governance should help determine in a structured way the company's objectives, the means through which those objectives are attained and how performance has to be evaluated. In this sense, corporate governance should provide proper incentives for the board and management to pursue objectives that are in the interest of the company and shareholders. In addition, it should facilitate effective monitoring, thereby encouraging companies to use resources more efficiently. Finally, it becomes straightforward that good corporate governance may also bring along important macro-economic advantages, such as improving economic efficiency and growth as well as protecting private investments.

On the contrary, absence of effective corporate governance may lead to important welfare losses that transcend the loss of shareholder capital. The

recent business scandals have shown the far-reaching negative consequences of failing governance systems.

Based on these observations, corporate governance must be approached from two different angles. On the one hand, companies need governance processes and structures in order to create value. As such, governance can become a mechanism for 'direction' and change leadership. On the other hand, companies also need sufficient monitoring and management of potential risks. Here the emphasis is on monitoring that robust control systems are effectively in operation, that potential conflicts of interest are managed and that sufficient checks are in place to prevent abuse of power, leading to private benefits prevailing over corporate benefits. Such potential conflicts of interest will be different from one corporate governance model to another. Therefore, flexibility, adaptability and tailoring will be of utmost importance in order to develop an efficient governance approach.

## **I.2. Corporate Governance and Society at large**

Corporate governance affects not only companies but also Society at large and, as such, is of interest to all corporate stakeholders. Because the impact of corporations has grown, society is demanding a higher level of transparency and corporate accountability. Whilst recognising that directors are appointed by shareholders, to whom they are accountable, it is important that directors also take into consideration the impact of the company on Society at large.

## **II. Character of the Code**

Strict corporate governance laws and regulations can never offer a sufficient level of flexibility for a rather heterogeneous set of listed companies, each faced with its specific challenges and risks. However, a sufficient level of trust in the swift and consequent application of the recommendations necessitates complementary guarantees. The Code therefore opts for a comply-or-explain approach, embedded in a set of monitoring mechanisms.

## **II.1. Flexibility and Tailoring to the Corporate Needs: From Best Practice to Best Fit**

Companies can use this Code as a benchmark to develop their own governance model, bearing in mind the challenges posed by their size, their stage of development, their shareholding structure, the complexity of the risks associated with their activities and their management practices. From an entrepreneurial perspective, every phase in the development cycle of a company creates other governance challenges. From a control perspective, different shareholding structures entail different potential conflicts of interest or agency conflicts for which specific governance recommendations will be necessary.

## **II.2. A Principle-Based Code Embedded in a Comply-or-Explain Approach**

The Code is based on principles and provisions. The Principles define the fundamental aspects of good corporate governance. Companies should *apply* these principles, as they are broad enough to fit the various types of existing governance models. The principles are in bold in the text of the Code. Each company has to report in a corporate governance statement on how it applies the principles in the Code. The form and content of this statement are not prescribed, the intention being that companies should have a free hand to explain their governance policies in the light of the principles, including any special circumstances applying to them which have led to a particular approach.

Each principle is interpreted by provisions. The company has either to *comply* with them, or explain its reasons for non-compliance. This 'comply or explain' approach has been in operation in numerous countries for many years and the flexibility it offers has been widely welcomed both by company boards and by investors. This approach is also recommended by the OECD and the European Commission.

While it is expected that listed companies will comply with the Code's provisions most of the time, it is recognised that departure from the provisions of the Code may be justified in particular circumstances. Smaller listed companies, and in particular those new to listing, may judge that some of the provisions are disproportionate or less relevant in their case. Holding companies, on the one hand, and investment companies, on the other hand, may need a typically different board structure, which may affect the relevance of particular provisions. In that case companies may wish to make more extensive use of the 'explain' principle.

### **III. Monitoring the Corporate Governance Practice: In Search for the Right Balance between Inside and Outside Monitoring**

This Code can not only rely on external monitoring and market regulation since Belgian listed companies mostly have one or more major shareholders and are not actively controlled by 'external' shareholders. Hence, this Code opts for a combination of internal monitoring by the board of directors and the major shareholders and external monitoring by the other shareholders and external supervisors, such as BFIC.

#### **III.1. The Role of the Board as an Inside Monitor**

In a one-tier board structure, the board has a dual role to play: to support entrepreneurship and give direction, while at the same time taking care of monitoring and control. Therefore a 'balanced' board has to include executive as well as non-executive directors, with a sufficient diversity of background and experience. Moreover, the board needs to be able to play its role as the safeguard of the corporate interest. Notwithstanding the important role of independent directors, all directors should pursue independent judgement and objectivity in making board decisions.

#### **III.2. The Involvement of Major Shareholders**

Belgian listed companies are often controlled by one or more major shareholders. Since they can nominate representatives in the board, they have an inside as well as an outside monitoring role to play. Although this offers the advantage of a strong control – special attention should be given to the possible downside risks of such a governance system. Major shareholders should make considered use of their position and respect the rights and interests of minority shareholders while focusing on the corporate interest.

In order to minimise the potential risks of such a system, a strong and independent board is essential.

### **III.3. The Role of Other Shareholders as Outside Market Monitors**

Given the reliance of this Code on a flexible comply-or-explain approach, shareholders, and in particular institutional investors, should play an important role in carefully evaluating a company's corporate governance and give weight to all relevant factors drawn to their attention, so as to avoid a 'box ticking' approach.

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

Institutional investors should make considered use of their votes and take steps to ensure that their voting intentions are being translated into practice. In this respect, transparency (on their website) on how they have implemented their voting policy could be a useful tool.

### **III.4. From Disclosure to Transparency**

Transparency is an essential ingredient for any form of outside monitoring. Therefore this Code pays a lot of attention to achieving a sufficient level of disclosure.

As important as disclosure may be, it is nevertheless only a means to an end and not an end in itself. Recent fraud cases have shown that more disclosure does not lead by definition to more transparency. On the contrary, in some cases important information was snowed under in an avalanche of data. Moreover, given that companies have to compete in an ever more global and tough business environment, there are limits to fully disclosing all business strategies and information. Therefore a sufficient control of listed companies will always have to rely on outside as well as on inside monitoring.



## **IV. Scope of Application**

This Code is primarily aimed at companies incorporated in Belgium whose shares are traded on a regulated market (listed companies). However, given its flexibility, the Code can also function as a reference framework for all other companies.

Belgian companies are of course submitted to Belgian Company law and other relevant regulations.

This Code has to be seen as complementary to other relevant regulations and guidelines, applicable to i.a. professional market parties such as auditors, mutual funds, analysts, credit institutions and insurance companies.

The Code applies for reporting years beginning on or after 1st January 2005. The Committee recommends that listed companies include in their annual report of 2004 a statement indicating how they expect to comply with this Code and what problems they anticipate. It is desirable that this statement be put on the agenda of the general meeting of shareholders in 2005.

## **V. Structure and Highlights of The Code**

Together with this preamble, the Code contains three main Chapters (Chapter I: the Board, Chapter II: Senior Management and Chapter III: Shareholders), as well as a set of disclosure measures.

Each chapter is divided into sections containing principles (in bold in the text) and best practice provisions.

## **V.1. Principles and Provisions**

### **V.1.1. The Board**

#### ***Role and composition of the Board***

Section one covers the role and composition of the board while stressing its collegial character.

The board's role is two-folded: supporting the company's entrepreneurship whilst controlling the risks connected to its activities.

Composition wise, the board structure should be tailored to suit the needs of the company. The stress is on the balance that should characterise the board; balance in terms of background of its members and most of all balance between executive directors, independent non-executive and other non-executive directors. The key is that no individual or group of directors should dominate the decision making process.

The Code emphasizes the role of the chairman, both as a leader and a facilitator. The Committee advocates the separation of the role of the CEO from that of the Chairman, a solution now adopted by most recent codes.

Then the Code describes the role, rights and duties of directors. Emphasis is placed on the corporate interest and independence of judgement, which should be common to all directors alike.

A specific provision of the Code recommends the adoption by each company of a detailed set of compliance rules (referred to as "the rules") applicable to transactions in company stock, which go beyond the existing legal requirements on insider trading. The aim here is to ensure a high level of transparency and guarantee compliance through monitoring by a compliance officer designated to that effect. The relevant provisions of the Code were drafted with the European Commission's current proposal on the matter in mind.

#### ***Operation of the Board***

Section two describes the operation of the board and includes provisions with respect to board organisation, appointments to the board, induction and professional development of directors, as well as evaluation and remuneration of directors.

As far as board's organisation is concerned, the company is free to define the modus operandi that suits it best. The Committee's goal to that respect is not to impose strict organisational rules but rather to favour corporate efficiency via a high level of transparency.

The Code stresses the need for clarity, objectivity and transparency during the whole course of appointment or re-election. Appointments to the board must be seen as a dynamic process, the board having the duty to regularly question the adequacy of its composition with regard to the challenges faced by it. Non-executive directors' availability is of essence to the company; upon arrival, they should be made well aware of the time commitment their duties imply.

The company should ensure that directors acquire and maintain a thorough knowledge of the company's activities and competitive environment throughout their mandate; hence the provision in the Code for induction upon arrival and continuous personal development afterwards.

Regular self evaluation by the board is also an important element of a good corporate governance policy. Such evaluation should not only apply to the board as a whole but also to the various committees and to each director individually. The board should act upon the results of its evaluation and adapt its composition or improve its operation accordingly.

The remuneration policy should strike a balance between the need to attract skilled professionals and the competitive challenges faced by the company. The Code makes a clear division between non-executive directors' remuneration which should be fixed and reflect their responsibilities and time commitment and that of executive directors which should be appropriately linked to performance.

The Code provides for the disclosure of directors' individual remuneration, received in their capacity of director together with the disclosure of the CEO's remuneration, whether he is a director or not. Likely, for the other executive directors, it is recommended that their remuneration as executives be disclosed along the same lines as the those applicable for the disclosure of the remunerations of the senior management.

### ***Board Committees***

Section three deals with board committees. The Committee strongly advocates the appointment of specific board committees to assist the board with some technical issues such as auditing or important sensitive issues , such as nominations and remunerations.

Indeed, accountability and quality auditing are one of the pillars of good governance and will be carefully scrutinised by shareholders. Therefore, the appointment of an experienced audit committee to assist the board is of critical importance.

The Committee feels that special attention should be brought to internal reporting not only from the audit committee to the board but, more importantly, from the internal auditor to the audit committee. It is with this concern in mind that the Code provides that "the internal auditor will have direct and unrestricted access to the chairman of the audit committee and the chairman of the board".

The board should also install a nomination committee to carry out the recruitment process and by a remuneration committee to deal with remunerations of directors and senior management. The independence of those committees is essential hence the requirement for a majority of the members to be independent non-executive directors.

The Code contains some general principles applicable not only to those predefined committees (nomination, remuneration and audit) but also to any other committee that a company would deem necessary to install.

The main principle is that whatever the tasks of the committee involved, the decision remains within the board.

### **V.1.2. Senior Management**

One key factor to good governance lies in the efficient interaction between the board and the senior management. This requires a clearly established distribution of their respective responsibilities, powers and duties.

Given the variety of governance structures adopted by Belgian companies it is up to each company to determine which persons compose its senior management (Management Committee, Managing Directors, Executive Committee, etc) and the procedures for their nomination, evaluation and remuneration.

Nevertheless, the Committee is of the opinion that the senior management should at least comprise all executive directors and, if applicable, the (other) members of the Management Committee (whether or not organised within the scope of article 524bis of the Code on Companies).

As far as remunerations are concerned, the Commission advocates for the board's active involvement in the determination of the remuneration policy and for a high level of transparency as to the amount and structure of the senior management's remuneration.

### **V.1.3. Shareholders**

With due attention to the principle of equality of treatment of shareholders, the Code aims at encouraging constructive relationships between the company and its shareholders. This could namely be achieved via a good dissemination of relevant information, especially but not only before meetings, effective dialogue during the meetings, facilitating of the vote in absentia, etc... A good understanding between the parties involved should also favour a constructive dialogue when it comes to the assessment by shareholders of the company's corporate governance practices.

## **V.2. Disclosure and Role of the BFIC**

The Banking Finance and Insurance Commission (BFIC) acting within its mission of supervision of the periodic and ongoing information obligations of listed companies, as laid down in the law of August 2, 2002, will contribute to the external monitoring of the Code. It will lend its support to the implementation of the disclosure provisions which the Code addresses to Belgian listed companies, in addition to the obligations imposed by the applicable laws and regulations.

The existence and the acceptance by the Belgian financial world of the single Code on corporate governance (initiated by FEB and Euronext Brussels) will contribute to the reinforcement of the Belgian financial market and the confidence of the investors.

As was the case with its 1998 Recommendations, the BFIC recommends listed companies to disclose relevant information about their corporate governance rules and practices in accordance with the provisions of the Code. It is up to the listed companies to determine whether they comply with the Code's provisions, or explain their reasons for non compliance. In case no disclosure about a specific item as identified in the Code's chapter on "disclosure" has been made, the BFIC intends, within the framework of its control program, to draw the attention of the listed company to that fact and invite it to disclose, as the case may be, the reasons for not complying with the specific Code's provision. The BFIC's role is limited to verifying the observance of the "comply or explain" principle, and to recommend companies to live up to it. Moreover, the BFIC

intends to publish, from time to time, general comparative overviews of corporate governance practices in Belgian listed companies.

However, with respect to the disclosure items that are imposed pursuant to the applicable laws or regulations – whether or not said items are part of the Code - the BFIC's competences, including its powers to impose sanctions, remain unchanged. Its role in monitoring the Code does not alter its legally mandated supervisory responsibility.

## **B. CODE**

**The company should adopt the governance structure that matches its needs.**

The company should disclose in its corporate governance statement the governance structure that it adopts.

### **I. The Board of Directors**

#### **I.1. Role and Composition of the Board**

##### **I.1.1. The Board: a Collegial Body**

**Every company should be headed by an effective and collegial board, which is collectively responsible for the long-term success of the company.**

##### **I.1.2. Role of the Board**

**The board's role is to support performance by providing entrepreneurial leadership for the company while enabling risks to be assessed and managed within a framework of prudent and effective controls.**

###### **I.1.2.1. The Entrepreneurial Role of the Board**

**The board should decide on the company's values and strategy, its risk appetite and key policies and should ensure that its obligations to all its shareholders are understood and met, taking into consideration other stakeholders' interests.**

The board should explicitly determine which matters are reserved for the board. These should be included in a formal schedule.

The board should determine the senior management's structure of the company. He should ensure that the necessary financial and human resources are in place for the company to meet its objectives.

#### **I.1.2.2. The Monitoring Role of the Board**

**The board should review management performance and account to shareholders for the discharge of its responsibilities.**

With respect to its monitoring responsibilities, the board should:

- ensure the integrity of the company's financial statements;
- review the existence and functioning of a system of internal control, including adequate identification and management of risks;
- select, supervise the performance of, and communicate with, the external auditor;
- supervise the internal audit function;
- supervise compliance with legal, regulatory and contractual requirements.

#### **I.1.3. Board Balance and Independence**

**The board's composition should match the needs of the company.**

The board should be small enough for efficient decision-making and large enough for its members to contribute experience and knowledge from different fields and for changes to the board's composition to be managed without undue disruption.

The composition of the board should be determined on the basis of the necessary diversity and complementarities.

**The composition of the board should be a balance of executive directors, independent non-executive and other non-executive directors.**

**No individual or group of directors should dominate the board's decision-making.**



At least half the board should comprise non-executive directors.

The board should determine and disclose in its corporate governance statement the criteria of independence it chooses to apply, by reference to article 524 of the Code on Companies.

The board should identify the non-executive directors it considers to be independent and disclose its reasoning.

Any independent director who ceases to satisfy the requirements of independence laid down by the board must immediately inform the board.

#### **I.1.4. The Chairman of the Board**

##### **I.1.4.1. Division of Responsibilities**

**There should be a clear division of responsibilities at the head of the company between the running of the board and the executive responsibility for the running of the company's business. No one individual should have unfettered powers of decision-making.**

The chairman of the board and the CEO should not be the same individual. The division of responsibilities between the chairman and the CEO should be clearly established, set out in writing and agreed by the board.

##### **I.1.4.2. Role of the Chairman**

**The chairman is responsible for the leadership of the board, ensuring its effectiveness on all aspects of its role.**

The chairman sets the agenda of the meetings of the board after consultation with the CEO and ensures that procedures relating to preparatory work, deliberations, passing of resolutions and implementation of decisions are properly followed.

The chairman is responsible for ensuring that the directors receive accurate, timely and clear information prior to the meetings and, where necessary, between meetings. All directors should receive the same board information.

The chairman is responsible for developing a climate of trust within the board, contributing to open discussion, constructive dissent and support for the board's decisions.

The chairman should promote effective interaction between the board and the senior management.

The chairman should ensure that all directors can make a knowledgeable and informed contribution to board discussions and that there is sufficient time for consideration and discussion before decision-making.

**The chairman should establish a close relationship with the CEO, providing support and advice while fully respecting the executive responsibilities of the CEO.**

The board may entrust the chairman with other specific responsibilities.

The company secretary may assist the chairman in performing his or her duties.

## **I.1.5. Directors**

### **I.1.5.1. General**

**All directors should focus on the corporate interest. Independence of judgement is required in the decisions of all directors, executive and non-executive alike, whether the non-executive directors are independent or not.**

**While they are part of the same collegial body, the executive directors on the one hand and the non-executive directors on the other, each have a specific and complementary role to play on the board.**

Executive directors should provide all relevant business and financial information and proposals for the board to function effectively.

Non-executive directors should constructively challenge and help develop strategy and key policies proposed by senior management.

Non-executive directors should scrutinise the performance of senior management in meeting agreed goals.

Non-executive directors should satisfy themselves as to the integrity of financial information and ensure that financial controls and systems of risk management are robust and effective.

### **I.1.5.2. Commitment**

#### **Board members should show commitment to their duties.**

Directors should make sure they receive detailed and accurate information and study it carefully so as to acquire and maintain at all times a strong command of the key issues relevant to the business of the company. They should seek clarification whenever they deem it necessary.

### **I.1.5.3. Conflicts of Interest**

#### **Each member of the board should arrange his or her personal and business affairs so as to avoid conflicts of interest with the company.**

If a conflict arises, the member of the board concerned should inform the chairman whereupon the chairman will take the necessary measures and, if required, apply the relevant provisions of the Code on Companies.

### **I.1.5.4. Transactions in Company Stock**

#### **The board shall draw up a set of rules (the “rules”) regulating the declaration and conduct obligations regarding transactions in shares or other financial instruments of the company (the “company’s stock”) carried out by directors and other designated persons for their own account and the information regarding such transactions to be disclosed to the market.**

The rules shall provide certain limitations on the carrying out of transactions in the company’s stock for designated periods preceding the announcement of its financial results (“closed periods”) or in any other period considered sensitive (“prohibited periods”).

The board shall make sure that a compliance officer is designated, who will have the duties and responsibilities assigned by the rules (the “compliance officer”). The compliance officer shall inter alia monitor the directors’ and other designated persons’ compliance with the rules.

The rules shall provide that before any transaction in the company’s stock, a director shall inform the compliance officer about the transaction he or she intends to carry out.

Any transaction by a board member in the company’s stock – of which the compliance officer has been informed – shall be made public within the period defined in the rules.

The board should also designate the other persons to whom these rules will apply.

### **I.1.5.5. Transactions between the company and its board members**

**The board should establish a policy for the transactions between the company and its board members, which are not covered by the provisions on the conflict of interest, and disclose it in its corporate governance statement.**

Transactions between the company and its board members should take place at arms' length.

## **I.2. Operation of the Board**

### **I.2.1. Board Organisation**

**The board should define its own *modus operandi*. The board's organisation should be such that the board is able to perform its tasks effectively and efficiently.**

The board should meet sufficiently regularly to discharge its duties effectively. The number of board and board committees meetings and the individual attendance record of directors should be disclosed in the annual report.

Board meetings are based on a detailed agenda specifying the topics to be discussed and whether they are for information purposes, for deliberation or for decision-making purposes. The minutes of the meeting should sum up the discussions, specify any decisions taken and state any reservations voiced by directors.

Non-executive directors should meet at least once a year without the CEO and the other executive directors present.

The board should set out the procedures to follow for any acts involving the company and should stipulate the instances in which the signature of directors is required. The board should also adopt procedures to follow when decisions have to be reached between board meetings.

The board should appoint a company secretary, reporting to the board on how board procedures, rules and regulations are followed and complied with. Individual directors should have access to the company secretary.

The terms of reference (composition, role and operation) of the board should be disclosed in the corporate governance statement.

## **I.2.2. Appointments to the Board**

### **I.2.2.1. General**

**The board, under the lead of its chairman and upon recommendation of the nomination committee, should regularly assess its size and composition and make timely and adequate changes whenever needed. The board should apply the rule set out in I.1.3.**

The board should satisfy itself that plans are in place for orderly succession for appointments to the board, and that any appointment and re-election, whether of executive or non-executive directors, will allow to maintain an appropriate balance of skills and experience on the board.

**There should be a rigorous and transparent procedure for the appointment and re-election of directors.**

The board should draw up appointment procedures and selection criteria for board members, allowing for specific rules for executive and non-executive directors where appropriate.

The chairman should ensure that the relevant tasks involved in the appointment process are carried out.

The chairman or another non-executive director should lead the nomination process. A committee should be set up with the specific purpose to deal with nominations.

**All appointments/re-elections to the board should be made on merit and against objective criteria.**

For any new appointment to the board, an evaluation of the skills, knowledge and experience already present and needed on the board should be conducted and, in the light of this evaluation, a description of the role and capabilities required should be prepared (also referred to as a 'profile').

The candidates should then be carefully assessed to determine whether their skills and experience match the board's predefined profile.

When dealing with a first appointment, the chairman should make sure that, before considering the approval of the candidate, the board has been supplied with ample information such as the candidate's resume (CV), the assessment of the candidate, a list of the positions the candidate currently holds, , and, if applicable, the necessary information in order to assess his independence.

When dealing with re-election, an appraisal of the director's commitment and effectiveness should be conducted in accordance with a pre-established and transparent procedure.

Suitable candidates should be recommended for nomination to the board by the nomination committee and the proposal for appointment or re-election should be decided by the board.

Proposal for appointment by the shareholders' meeting should be accompanied by relevant information on the professional qualifications of the candidate together with a list of the positions the candidate already holds. The board will indicate whether the candidate satisfies the independence criteria and the proposed term of the mandate.

The above information should be made public by the company at the time of the convening notice for the general meeting and should be reflected in the annual report.

#### **I.2.2.2. Non-Executive Directors**

**Non-executive directors should be made well aware of the extent of their duties at the time of their application, in particular as to the time commitment that the performance of their duties will imply.**

Non-executive directors should undertake that they have sufficient time to meet what is expected of them taking into consideration the number and importance of their other commitments.

Changes to their other relevant commitments and their new commitments outside the company should be reported to the chairman of the board in due time.

Any term beyond 12 years for a non-executive director should be subject to particularly rigorous review, taking into account the need for progressive refreshing of the board. Serving more than 12 years could be relevant to the determination of the non-executive director's independence.

#### **I.2.2.3. Designation of Chairman**

For the designation of the chairman by the board, the board should define a suitable profile, taking into consideration the chairman's specific role on the board as described in I.1.4.2 and other parts of this Code.

### **I.2.3. Induction and Professional Development of Directors**

#### **I.2.3.1. Induction Program**

**Newly appointed directors should receive an appropriate induction to ensure their early effective contribution to the board.**

The chairman should ensure that new directors receive a full, formal and tailored induction on joining the board.

The induction process should help the director grasp the fundamentals of the company, including its governance, strategy, key policies, finance and business challenges. In addition, the induction program should provide advice on a board member's rights and obligations.

For new audit committee members, this program should cover the audit committee's terms of reference and provide an overview of the company's internal control organisation and risk management systems. It should also include meeting the external auditor and the relevant company staff.

For directors joining other board committees, the induction provided should encompass a description of their specific role and duties and any other information linked to the specific role of that committee.

#### **1.2.3.2. Professional Development**

**Directors should continually update their skills and knowledge and familiarity with the company to fulfill their role both on the board and on board committees. The company should provide the necessary resources for developing and updating its directors' knowledge and capabilities.**

#### **1.2.4. Evaluation of Board Effectiveness**

##### **1.2.4.1. General**

**The board should undertake a formal and rigorous periodic evaluation of its own performance and that of its committees and individual directors.**

Although evaluation is a board responsibility, the board should be assisted in this evaluation by the nomination committee, and possibly also by external experts.

##### **1.2.4.2. Aim and Purpose of the Evaluation**

**Regular evaluation by the board of its own effectiveness should promote continuous improvement in the governance of the company.**

This evaluation process should have four objectives:

- assessing how the board operates;
- checking that the important issues are suitably prepared and discussed;

- evaluating the actual contribution of each director's work through the director's presence at board and committee meetings and his constructive involvement in discussions and decision-making;
- checking the board's current composition as against the board's desired composition.

#### **I.2.4.3. Evaluation of Directors**

**There should be a periodic appraisal of the contribution of each director aimed at adapting the composition of the board according to changing circumstances.**

The individual evaluation should aim to show whether each director continues to contribute effectively and to demonstrate commitment to the role (including commitment of time for board and committee meetings and any other duties). Special attention should be given to the evaluation of the chairman.

The board should act on the results of the performance evaluation by recognising its strengths and addressing its weaknesses and, where appropriate, proposing new members to be appointed or proposing not to re-elect existing members.

#### **I.2.4.4. Evaluation of the Board and its Committees**

**The board is responsible for the quality of its own performance.**

In order to continually improve board effectiveness, the board should regularly (e.g. at least every two to three years) conduct a systematic evaluation of its operations and those of its committees.

To improve board performance, the non-executive directors should regularly (preferably once a year) assess their interaction with senior management.

#### **I.2.5. Remuneration of Directors**

##### **I.2.5.1. General**

**Levels of remuneration should be sufficient to attract, retain and motivate directors having the profile determined by the board.**

##### ***Non-executive directors' remuneration***

The remuneration of non-executive directors should take into account their responsibilities and time commitment.



Non-executive directors should only be paid a fixed remuneration. They should not be entitled to performance-related remuneration such as bonuses, long term incentive schemes, fringe benefits nor to pension benefits.

Under Belgian law, any director's mandate may be terminated "ad nutum" (at any time) without any form of compensation.

### ***Executive directors' remuneration***

Provisions on the remuneration of non-executive directors are applicable for the remuneration of executive directors in their capacity of board members.

Provisions on the remuneration of senior management are applicable for the remuneration of executive directors in their executive capacity.

#### **I.2.5.2. Disclosure**

**The annual report should contain full and detailed information on the amount of the remuneration received by each non-executive director.**

The annual report should contain the information on the remuneration received by executive directors in their capacity of board members and of members of senior management as detailed in II.5.2.

Disclosure of the remuneration of directors should be given on a consolidated basis.

### **I.3. Board Committees**

#### **I.3.1. Standing Rules**

##### **I.3.1.1. Role and Powers**

**The board should set up specialised committees to analyse specific issues and advise the board on those issues. The decision-making remains within the board.**

These committees should be mandated to analyse specific technical issues and report to the board to enable it to take its decisions or perform its monitoring function.

The board should set up an audit committee to assist the board in fulfilling its oversight responsibilities in respect of control in the broadest sense.

The board should set up a nomination committee and a remuneration committee

The nomination committee and the remuneration committee may be combined provided all their members satisfy the requirements to be part of the remuneration committee.

The board may decide to set up any other committee it deems necessary. Unless the board decides otherwise, those committees should also apply the standing rules.

#### **I.3.1.2. Composition and Operation**

**The board determines the terms of reference of each committee detailing its role, composition and operation. Otherwise, operating rules governing board meetings shall apply by analogy for committee meetings.**

The chairman shall ensure that the board appoints committee members and a chairman for each of those committees. The nomination committee may assist the chairman in this duty.

The composition of these board committees should be given sufficient attention. Each committee is composed of at least three members.

Given their role in handling potential conflicts of interest and subject to stricter provisions where applicable, they should be composed of a majority of non-executive directors except where a stricter rule applies. In deciding on the specific composition of the committees, consideration should be given to the needs, role or competence required for the optimal functioning of each committee.

The president of the board should have a standing invitation at the meetings of any committee of which he is not a member.

Each committee may invite any non-member to attend its meetings.

Board committees may seek external professional advice on topics falling within their terms of reference at the company's expense after duly informing the chairman of the board.

The board shall receive from each committee a report on its deliberations and findings after each committee meeting.

#### **I.3.1.3. Disclosure**

**The terms of reference of the committees should be disclosed in the corporate governance statement.**

## **I.3.2. Audit Committee**

### **I.3.2.1. Composition**

**The board should set up an audit committee all members of which should be non-executive independent directors. The board should satisfy itself that the committee has sufficient relevant expertise, notably in financial matters in order to fulfil its role effectively.**

The chairman of the board should not be an audit committee member.

Appointments should be for up to three years, extendable by no more than two additional consecutive three-year periods, provided that its members remain independent.

### **I.3.2.2. Role**

**The board should determine the role of the audit committee. The audit committee should report regularly to the board on the exercise of its duties, identifying any matters in respect of which it considers that action or improvement is needed, and making recommendations as to the steps to be taken.**

The audit committee should develop a long-term audit program encompassing recurrently all activities of the company.

Parent companies should ensure that the audit review and the reporting on that review cover the group as a whole.

### ***Financial reporting***

The audit committee should review the financial reporting to ensure it presents – both on a statutory or consolidated basis- a true, fair and understandable view of the company's position and prospects.

This review involves not only assessing the correctness and completeness of financial information and the accounting policies applied but also the quality and consistency of financial information.

It should cover periodic and interim information before it is made available to the public. It should be based on an audit program adopted by the committee.

**The committee should discuss significant financial reporting issues with both senior management and the external auditor.**

### ***Internal controls***

The audit committee should review the system of internal controls set up by senior management.

The audit committee should review and approve the statements included in the annual report on internal control.

The audit committee should review the specific arrangements made, by which staff of the company may, in confidence, raise concerns about possible improprieties in matters of financial reporting or other matters. If deemed necessary, arrangements should be made for proportionate and independent investigation of such matters and for appropriate follow-up action.

### ***Risk management***

The audit committee should review the effectiveness of the systems set up to identify, assess and manage risks inherent to the business of the company.

The audit committee should review the statements to be included in the annual report on risk management.

### ***Internal audit process***

An independent internal audit function should be established, with resources and skills adapted to the company's nature, size and complexity.

The audit committee should approve the hiring and dismissal of the head of the internal audit, approve the internal audit plan and budget, and should at least twice a year discuss with the head of the internal audit a report on the work performed, the risk coverage and the quality of internal control and risk management

The head of the internal audit should have direct and unrestricted access to the chairman of the audit committee and the chairman of the board.

The audit committee should review the effectiveness of the internal audit, having regard to the complementary roles of the internal and external audit functions.

### ***External audit process***

The audit committee should oversee the company's relationship with the external auditor.

The audit committee is primarily responsible for making a recommendation to the board on the appointment, renewal of appointment or dismissal of the external auditor and for proposing the remuneration and terms of engagement of the external auditor. In accordance with the Code on Companies, this proposal should be submitted to the shareholders for approval.

The audit committee should review the external auditor's independence, in particular, concerning the requirements of the Code on Companies, and the Royal Decree of April 4, 2003.

The audit committee should also help develop and implement a specific policy on the engagement of the external auditor to supply non-audit services, taking into account the specific requirements of the Code on Companies. The audit committee should monitor matters to ensure that this policy is adhered to.

The audit committee should review the effectiveness of the external audit, taking into consideration relevant professional and regulatory standards.

### **Compliance**

The audit committee should review the effectiveness of the systems set up to ensure compliance with all legal and regulatory requirements and with the internal principles of business conduct (if applicable).

#### **I.3.2.3. Operation**

The audit committee should meet at least three times a year. It should review annually its terms of reference and its own effectiveness and recommend any necessary changes to the board.

At least twice a year, the audit committee should meet the external and internal auditors, to discuss matters relating to its terms of reference and any issues arising from the audit process.

#### **I.3.3. Nomination Committee**

##### **I.3.3.1. Composition and Operation**

**The board should set up a nomination committee composed of a majority of independent non-executive directors.**

The chairman or a non-executive director should chair the committee.

The chairman of the board should not chair the nomination committee when dealing with the designation of his successor.

The nomination committee should meet at least once a year and every time changes need to be made to the composition of the board, whether for appointment or re-election.

The CEO participates to the meetings of the nomination committee when it deals with the nomination of senior management.

In performing its duties, the nomination committee should be able to use any resources it deems appropriate, including external advice.

### **I.3.3.2. Role**

**The role of the nomination committee should be to ensure that the appointment and re-election process is organised in an objective and professional way.**

In this context, the nomination committee should make recommendations to the board with regard to the appointment of directors. More specifically, the nomination committee should:

- draft appointment procedures for board members
- periodically assess the size and composition of the board and make recommendations to the board with regard to any changes;
- identify and nominate, for the approval of the board, candidates to fill vacancies as they arise;
- properly consider issues related to succession planning.

Besides, the nomination committee should assist the board for the nomination of senior management, unless otherwise decided by the board.

### **I.3.4. Remuneration Committee**

#### **I.3.4.1. Composition and Operation**

**The board should establish a remuneration committee all members of which should be non-executive directors, the majority being independent. The chairman or another non-executive director should chair the committee.**

The remuneration committee should meet at least twice a year.

The CEO participates to the meetings of the remuneration committee when it deals with the remuneration of senior management.

#### **I.3.4.2. Role**

The board should entrust the remuneration committee with making or reviewing proposals to the board with regard to:

- the remuneration policy for non-executive directors and the proposals to be submitted to the shareholders;
- the remuneration policy for senior management including at least:
  - the main contractual terms including the main characteristics of pension schemes and termination arrangements.
  - the remuneration, including

- the relative importance of each component of the remuneration;
- the performance criteria chosen for the variable elements;
- the fringe benefits.

Besides, unless the board decides otherwise, the remuneration committee should assist the board in deciding on individual remuneration, including, as the case may be, on bonuses and long-term incentives – stock related or not –, under the form of stock options or other financial instruments.

The remuneration committee should also be responsible for selecting any consultant who advises the committee and setting its terms of reference. A statement should be made available of whether he has any other connection with the company.

## **II. Senior Management**

### **II.1. Definition and Role of Senior Management**

#### **II.1.1. Definition**

**The board should adopt the senior management's structure that matches the needs of the company.**

Senior management should at least include all executive directors and, if there exists a management committee, all members of this committee, whether or not established within the scope of article 524bis of the Code on Companies.

The company should disclose the members of the senior management in its corporate governance statement.

#### **II.1.2. Role**

**Senior management is entrusted with the running of the company, according to the responsibilities and duties assigned to it by the board.**

The board determines the overall responsibilities and duties of the senior management, in accordance with a process agreed between the board and senior management.

Senior management should have sufficient latitude to propose and implement corporate strategy adopted by the board while taking into account the company's values, its risk appetite and key policies.

The board should duly empower senior management to enable it to perform its responsibilities and duties.

The board determines the terms of reference of the senior management detailing its role, powers, composition and operation. These terms should be made available in the corporate governance statement.

## **II.2. Accountability to the Board**

**Senior management is accountable to the board for the performance of its responsibilities.**

Senior management should provide the board in due time with all information necessary for the exercise of the duties of the board.

**It is senior management's duty to present the board with a balanced and understandable assessment of the company's financial situation.**

Senior management should put in place internal controls (i.e. systems established to identify, assess, manage and monitor financial and other risks).

Senior management is responsible and accountable for the preparation (completeness, timeliness, reliability and accuracy) of the company's financial statements, in accordance with the accounting principles and policies approved by the board.

## **II.3. Decision-Making Policy**

**Clear procedures should exist for:**

- **proposals from senior management for decisions to be made by the board;**
- **the decision-making by senior management;**
- **the reporting of key decisions made by senior management, on the basis of its own powers; and**
- **external representation of the company.**

Both the board and senior management should respect the agreed procedures. These procedures should be reviewed and adjusted if required for the effective exercise by the board and the senior management of their respective duties.



The powers to represent the company solely or jointly and the extent of, and limitations on, those powers shall be clearly defined, taking into account the way in which the board entrusted senior management with the running of the company and the relevant provisions of the Code on Companies. All concerned should be fully acquainted with the scope of these powers.

## **II.4. Transactions in Company Stock and Transactions between the Company and Members of its Senior Management**

The rules for transactions in the company's stock should apply to senior management (see I.1.5.4.).

The board should establish a policy for the transactions between the company and the members of its senior management and disclose it in its corporate governance statement.

Transactions between the company and its senior members should take place at arms' length.

## **II.5. Appointment, Remuneration and Evaluation**

### **II.5.1. Appointment**

The board should determine the procedures on the nomination of the senior management.

### **II.5.2. Remuneration**

#### **II.5.2.1. Remuneration policy**

**The board determines the remuneration policy of the senior management.**

The level and structure of the remuneration of senior managers should be such that qualified and expert professionals can be recruited, retained and motivated taking into account the nature and scope of their individual responsibilities.

An appropriate proportion of the senior management's remuneration package should be structured so as to link rewards to corporate and individual

performance thereby aligning the senior management's interest with the interests of the company and its shareholders.

Where senior managers are eligible for annual bonuses, their grant should be subject to relevant and objective performance conditions designed to enhance corporate value.

Stock-based long-term incentive schemes should be approved at the shareholders' meeting.

As a rule, shares granted or any other form of deferred remuneration should not vest, and options should not be exercisable, within less than three years.

Compensation commitments in the event of early termination should be carefully considered. The aim should be to avoid rewarding poor performance.

If a senior manager is also an executive director, the remuneration should include the compensation received in his capacity as an executive director.

#### **II.5.2.2. Procedure**

**The board should determine formal and transparent procedures on the remunerations of the senior management.**

**Nobody should be involved in deciding on his own remuneration.**

#### **II.5.2.3. Disclosure**

**The information disclosed on the remunerations of senior management should provide shareholders with an accurate view of the amount and structure of those remunerations.**

Disclosure of the remunerations should be given on a consolidated basis.

#### **CEO**

The annual report should disclose the individual remuneration of the CEO, with a split between:

- Basic remuneration
- Variable remuneration: any bonuses relating to the financial reported year
- "Other components" of the remuneration, such as cost of pensions, insurance coverage, monetary value of other fringe benefits, with an explanation and, if appropriate, amounts of the main components.

If the CEO is also a board member, the annual report should also disclose full and detailed information on the amount of the remuneration he receives in such capacity.

#### ***Other members of senior management***

The annual report should at least disclose the global remuneration for the other members of the senior management, with a split in three global amounts:

- Basic remuneration
- Variable remuneration: any bonuses relating to the financial reported year
- "Other components" of the remuneration, such as cost of pensions, insurance coverage, monetary value of other fringe benefits, with an explanation and, if appropriate, amounts of the main components.

If some members of the senior management are also board members, the annual report should also disclose full and detailed information on the amount of the remuneration they receive in such capacity.

#### ***Options or other stock related remuneration***

For the CEO and the other members of the senior management, the annual report should disclose, on an individual basis, the number and key features of options or other stock related remuneration.

### **II.5.3. Evaluation**

**Evaluation and review procedures for senior management performance should be established.**

At least once a year, the remuneration committee should discuss with the CEO both the operation and performance of senior management. In this regard, the evaluation criteria should be clearly specified.

### **II.5.4. Termination Arrangements**

**The annual report should disclose the main contractual terms on termination arrangements for members of the senior management.**

### **III. The Shareholders**

#### **III.1. The Company's Relationship with Its Shareholders**

**The company should endeavour to facilitate shareholder access to information as much as possible.**

The company should make the relevant information accessible through electronic means in advance of general meetings.

The articles of association and the corporate governance statement should be available at any time.

The shareholders' meeting should be used to communicate with shareholders and to encourage their participation.

The board should inform the shareholders in such a way that the shareholders can exercise their rights with knowledge of the essential basis of their decisions.

When convening meetings, the company should provide appropriate explanations on agenda items and on motions put forward by the board.

The chairman should encourage all directors to attend shareholders' meetings. The chairman should also take the necessary measures for relevant questions from shareholders to be answered.

**The company should facilitate the exercise of shareholders' statutory rights.**

The company should facilitate voting in absentia, such as proxy voting.

#### **III.2. Communication with the Shareholders**

##### **III.2.1. Dialogue with Shareholders**

**The company should enter into a dialogue with shareholders based on the mutual understanding of objectives.**

The company should maintain sufficient contact with shareholders to understand their issues and concerns.

The company should provide its shareholders with a timetable on periodic information and shareholders' meetings.

### **III.2.2. Transparency of the Shareholding Structure**

**The company should disclose its shareholding and control structure and any important cross-shareholdings, insofar as it is aware of them, and as soon as it has received the relevant information.**

The company should make public the major shareholders, with a description of their voting rights and special control rights, and, if they act in concert, a description of the key elements of existing shareholders' agreements.

Cross-shareholdings exceeding 5% of the shareholdings or voting rights should be disclosed.

The company should make public other direct and indirect relationships between the company and major shareholders.

The company should make public relevant information on board members appointed at the proposal of major shareholders.

### **III.3. Role of Major Shareholders**

**For companies with one or more major shareholders, the board should endeavour to have the major shareholders make a considered use of their position and respect the rights and interests of minority shareholders. Independence of judgement within the board and adequate balance in the board composition are crucial in this respect.**

### **III.4. Evaluation of Corporate Governance by Investors**

**Given the reliance on market regulation to enforce the flexible comply-or-explain approach of this Code's best practices, the board should endeavour to have investors, and in particular institutional investors, play an important role in properly evaluating a company's corporate governance.**

The board should endeavour to have institutional and other investors avoid a 'box-ticking' approach and give weight to all relevant factors drawn to their attention.

The board should endeavour that investors carefully consider explanations given for departure from this Code and are able to make reasoned judgements in each

case. The board should engage in a dialogue with investors if those investors do not accept the company's position, bearing in mind in particular the company's size and complexity and the nature of the risks and challenges it faces.

## **C. DISCLOSURE**

Regarding the disclosure of information relating to corporate governance the Code distinguishes the following forms:

- Corporate Governance Statement;
- Corporate Governance chapter in the annual report.

Besides, companies should publish updates regarding their corporate governance information whenever certain events occur or in case particular modifications of information published in their corporate governance publications (statement and/or annual report) arise.

The information on corporate governance should be communicated to BFIC and published in accordance with the relevant provisions of the Royal Decree of 31 March 2003 (the “Royal Decree”) relating to the publication of occasional information. This means that companies publishing corporate governance information should:

- provide the BFIC with this information forthwith and no later than the moment when the information is made available to the public or holders of financial instruments;
- provide a press agency and the market operator, at the time of publishing, with a copy of the information or a notice indicating where the information concerned can be obtained.

Companies that make use of their website to publish the information as referred to in the Royal Decree should observe all the conditions to do so stated in the Royal Decree and should:

- Provide for a Corporate Governance (sub)section in the section of their website that is reserved for financial and obligatory information;
- Publish the Corporate Governance Statement at least by this channel;
- Post in the same (sub)section:
  - the corporate governance information that is published through other forms and channels (Corporate Governance chapter in the annual report, updates of the corporate governance information, ...);
  - (a link to) the latest version of the Company’s Articles of Association;
  - (a link to) the Belgian Code on Corporate Governance.
- Post a link to the Corporate Governance Statement in the Corporate Governance chapter in the electronic version of the annual report.

Companies that make no use of a company website to publish the information as referred to in Royal Decree should publish the Corporate Governance Statement at least together with the Corporate Governance chapter in their annual report.

Updates of corporate governance information can be price-sensitive. In that case legal rules relating to publication of price sensitive information apply. Concerning

non price-sensitive information updates, companies should establish and disclose their own provisions for publication.

## **I. Corporate Governance Statement**

The aim of the Corporate Governance Statement is to define and to describe the company's corporate governance policy. It should contain an explanation of the extent of and the reasons for any material non-compliance with the Code as well as a description of the company's governance practices. It should be set up according to the following structure and should at least include relevant information about the following elements.

### **➤ General**

- The company's general corporate governance policy.
- The governance structure adopted by the company.
- The company's general adherence to the principles of the Belgian Code on Corporate Governance.
- The principles of the Code with which the company does not comply and an explanation of the extent of and the reasons for any material non-compliance.
- The date of adoption or of the latest update of the Statement.
- A comment on the modalities of publication of updates to the Corporate Governance Statement and/or the Corporate Governance chapter in the annual report (channels, delay,...).

### **➤ The Board**

- The provisions of the Code concerning the board and the board committees with which the company does not comply and an explanation of the extent of and the reasons for any material non-compliance.
- A table of board members, containing information on :
  - Their capacity (chairman, executive, independent, other non-executives).
  - Their committee membership (chairman or member).
- The terms of reference of the board, containing relevant information on its role, composition and operation :
  - The role of the board (I.1.2.).
  - The intended balance in the composition of the board (I.1.3.).
  - The criteria of independence the board chooses to apply (I.1.3.).
  - Identification of the directors the board considers to be independent together with its argumentation (I.1.3.).



- The division of responsibilities between the chairman and the CEO (I.1.4.1.).
  - The role of the chairman (I.1.4.2.).
  - The specific functions of directors (I.1.5.1. + I.1.5.2.).
  - The rules for transactions in company stock (I.1.5.4.).
  - The company's policy on transactions between the company and its directors (I.1.5.5).
  - A description of the modus operandi of the board (I.2.1.).
  - The policy regarding the provision of information to the board and its members (I.1.4.2.).
  - The appointment of a company secretary (I.2.1.).
  - The procedure and selection criteria for the appointment and re-election of directors (I.2.2.1. + I.2.2.3.).
  - The board's policy on induction and professional development of directors (I.2.3.).
  - A description of the process used for evaluating the board's effectiveness (I.2.4.).
  - The remuneration policy for executive and non-executive directors (I.2.5.4.1.).
- The terms of reference of board committees, containing relevant information on their role, composition and operation (I.3.1.3.).

*For each board committee:*

- Scope of the advisory role entrusted to it by the board (I.3.1.1. + I.3.2.2. + I.3.3.2. + I.3.4.2.).
- The rules regarding the composition of the committee (I.3.1.2. + I.3.2.1. + I.3.3.1. + I.3.4.1.).
- The rules regarding the operation of the committee (I.3.1.2. + I.3.2.3. + I.3.3.1. + I.3.4.1.).
- The rules regarding the reporting from the committee to the board (I.3.1.2. + I.3.2.2.).

*For the audit committee:*

- The competence requirements for members of the committee to ensure that the committee has sufficient relevant financial expertise (I.3.2.1.).
  - The policy regarding its review of the financial reporting (I.3.2.2.).
  - The policy regarding its review of the effectiveness of the internal audit, the internal control, the risk management systems and the systems set up to ensure compliance (I.3.2.2.).
  - The policy regarding its oversight of the company's relations with the external auditor and regarding its review of the external auditors' independence (I.3.2.2.).
  - Specific policy on the servicing of non-audit services by the external auditor (I.3.2.2.).
  - The fact that an internal audit was established and its role, structure and access to information within the company and the group (I.3.2.2.).
- Any other element the company considers relevant.

➤ **Senior Management**

- The provisions of the Code concerning senior management with which the company does not comply and an explanation of the extent of and the reasons for any material non-compliance.
- A table of senior management members, containing information on their function.
- The senior management's terms of reference, containing relevant information on the composition, role and operation of senior management :
  - The composition and structure of senior management (II.1.1.).
  - The role of senior management (II.1.2.).
  - The responsibilities of senior management (II.1.2.).
  - The decision-making policy (II.3.).
- The company's policy on transactions between the company and members of its senior management (II.4.).
- The nomination process (II.5.1.), the remuneration policy (II.5.2.1.) and the evaluation and review procedures (II.5.3) of senior management.
- Any other element the company considers relevant.

➤ **Shareholders**

- The provisions of the Code on shareholders with which the company does not comply and an explanation of the extent of and the reasons for any material non-compliance.
- The measures taken to facilitate shareholder access to information (III.1.).
- The measures taken to facilitate the efficiency of the general meeting of shareholders in terms of communication with the shareholders and their participation in the general meeting (III.1.).
- The measures taken to facilitate the exercise of shareholders' statutory rights (III.1.).
- The measures taken to enter into a dialogue with shareholders (III.2.1.).
- Information on the shareholding structure (III.2.2.).
- Information on the role of major shareholders (III.3.).
- The profit appropriation policy of the company.
- Any other element the company considers relevant.

Each company should publish its Corporate Governance Statement at the latest at the time of publication of the annual report relating to the financial year 2005.

## **II. Corporate Governance Chapter in the Annual Report**

The aim of the Corporate Governance chapter in the annual report is to disclose the application of the principles of the Code and to provide an overview of the relevant corporate governance issues of the last financial year. It should be set up according to the following structure and should at least include relevant information about the following elements.

### **➤ General**

- A reference to the Corporate Governance Statement and a summary of the most significant changes made to it over the course of the financial year and an explanation of the extent of and the reasons for any material change.
- A comment on the modalities of publication of updates to the Corporate Governance Statement and/or the Corporate Governance chapter in the annual report (channels, delay, ...).

### **➤ The Board**

- The provisions of the Code concerning the board and the board committees with which the company has not complied during the financial year and an explanation on the extent of and the reasons for any material non-compliance.
- A table of board members, containing relevant information:
  - Nationality, age.
  - Date first appointment, most recent -re-election and end of current term.
  - Capacity (chairman, executive, independent, other non-executives).
  - Committee membership (chairman or member).
  - Other significant directorships and commitments.
  - Professional background.

- A report on the operation of the board and the board committees over the past financial year:

*With respect to the board:*

- A summary of the appointments and re-appointments decided by the last general meeting of shareholders, indicating the major reasons for the appointment or re-appointment and the proposed term of the mandate (I.2.2.).
- The number of meetings held over the course of the financial year (I.2.1.).
- The major issues dealt with.
- A report on the conflicts of interest that have arisen (I.1.5.3.).

*With respect to the board committees:*

- Any changes in the composition of the committee.
- The number of committee meetings held over the course of the financial year (I.2.1.).
- The attendance of other persons to the committee meetings (I.3.1.2.) with, for the remuneration committee, an indication concerning the use of remuneration consultants and their connection to the company (I.3.4.1.).
- The major issues dealt with.

- For each individual director :
  - the transactions in company stock executed over the course of the financial year (I.1.5.4.).
  - the attendance record at board meetings and committee meetings (I.2.1.).
- The full and detailed information on the remuneration received by each non-executive director (I.2.5.4.2.).
- External audit:
  - Identification of the external auditor.
  - The total amount of fees paid to the external auditor (on a statutory and consolidated basis), with a split between the fees paid for audit and non-audit services.
- Any other element the company considers relevant.

➤ **Senior Management**

- The provisions of the Code concerning senior management with which the company has not complied during the financial year and an explanation of the extent of and the reasons for any material non-compliance.
- A table of senior management members, containing relevant information on:
  - Nationality, age.
  - Function.
  - Other directorships.

- Professional background.
- Any changes in the composition of senior management.
- For each senior manager, the transactions in company stock executed over the course of the financial year.
- The remuneration of the CEO, on a consolidated basis (II.5.2.), with a split between :
  - Basic remuneration.
  - Variable remuneration: any bonuses relating to the financial reported year.
  - “Other components” of the remuneration, such as cost of pensions, insurance coverage, monetary value of other fringe benefits, with an explanation and, if appropriate, amounts of the main components.

If the CEO is also a board member, the annual report should also give full and detailed information on the amount of the remuneration he receives in such capacity.

- The global remuneration of the other members of the senior management (II.5.2.), with a split in three global amounts:
  - Basic remuneration.
  - Variable remuneration: any bonuses relating to the financial reported year.
  - “Other components” of the remuneration, such as cost of pensions, insurance coverage, monetary value of other fringe benefits, with explanation and, if appropriate, amounts of the main components.

If some members of the senior management are also board members, the annual report should also disclose full and detailed information on the amount of the remuneration they receive in such capacity.

- Disclosure, on an individual basis, of the options or other stock related remuneration of the CEO and the other members of the senior management (II.5.2.).
- The main contractual terms on termination arrangements (II.5.4.).
- Any other element the company considers relevant.

### ➤ **Shareholders**

- The provisions of the Code concerning shareholders with which the company has not complied during the financial year and an explanation of the extent of and the reasons for any material non-compliance.
- Significant changes in the shareholders’ structure of the company (III.2.2.).
- Significant changes in the role of major shareholders (III.3.).
- Capital structure on the annual balance sheet date:
  - The amount of the issuer’s ordinary capital.
  - Details on the authorised capital.
  - Changes of capital that took place within the last three financial years.

- Outstanding warrants, convertible bonds and options.
- Any other element the company considers relevant.

Each company should start to publish this information at the latest in the annual report relating to the financial year 2005.■