

Comparative Study Of Corporate Governance Codes Relevant to the European Union And Its Member States

On behalf of the EUROPEAN COMMISSION,
Internal Market Directorate General

FINAL REPORT & ANNEXES I-III



In consultation with

EASD - EUROPEAN ASSOCIATION OF SECURITIES DEALERS &
ECGN - EUROPEAN CORPORATE GOVERNANCE NETWORK

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COMPARATIVE STUDY OF CORPORATE GOVERNANCE CODES RELEVANT TO THE EUROPEAN UNION AND ITS MEMBER STATES

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The information and views expressed in this Study do not constitute a legal opinion, and should not be relied upon without independent verification and professional advice. Caution in relying on the information contained herein is especially called for given the rapid changes that are taking place in relevant laws and governance codes.

This Study does not necessarily reflect the views of the Commission, nor should the Commission accept any responsibility for the accuracy or completeness of the information contained herein.

* * *

This Comparative Study reflects a considerable team effort involving persons from every EU Member State and regular consultation with representatives of the European Association of Securities Dealers (“EASD”) and the European Corporate Governance Network (“ECGN”). Members of the Federation of European Stock Exchanges (“FESE”) and the Forum of European Securities Commissions (“FESCO”) were also consulted.

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COMPARATIVE STUDY OF CORPORATE GOVERNANCE CODES RELEVANT TO THE EUROPEAN UNION AND ITS MEMBER STATES

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This Comparative Study of corporate governance codes and practices in the European Union was undertaken by Weil, Gotshal & Manges LLP (“WG&M”), in consultation with the European Association of Securities Dealers (“EASD”) and the European Corporate Governance Network (“ECGN”). It is submitted within the framework of the European Commission’s Open Invitation to Tender n°MARKT/2000/04/F.

EXECUTIVE SUMMARY

Rules and norms of corporate governance are important components of the framework for successful market economies. Although corporate governance can be defined in a variety of ways, generally it involves the mechanisms by which a business enterprise, organised in a limited liability corporate form, is directed and controlled. It usually concerns mechanisms by which corporate managers are held accountable for corporate conduct and performance. Corporate governance is distinct from -- and should not be confused with -- the topics of business management and corporate responsibility, although they are related.

Over the past decade, interest in the role that corporate governance plays in economies, and particularly in capital markets, has increased in the European Union and its Member States. The adoption of a common European currency, the freer flow of capital, goods, services and people across EU borders, the competitive pressures of globalisation, the realisation of new technologies, privatisation of state-owned enterprises, the growth and diffusion of shareholding, and increased merger activity among large European corporations -- and among Europe’s largest stock exchanges -- all create tremendous interest on behalf of European issuers and investors, Member States and the European Commission in understanding the commonalities and differences between national corporate governance practices, and any related barriers to the development of a single EU capital market.

The purpose of this Comparative Study is to further the understanding of commonalities and differences in corporate governance practices among EU Member States through an analysis of corporate governance codes and -- to a limited extent -- relevant elements of the underlying legal framework.

This Study identifies and compares existing corporate governance codes in the fifteen EU Member States and other corporate governance codes that may affect the operation of companies within the European Union. As explained in greater detail below, for purposes of this Study, a “corporate governance code” is generally defined as a non-binding set of principles, standards or best practices, issued by a collective body, and relating to the internal governance of corporations.

A total of thirty-five codes meeting this Study's definition have been issued in EU Member States, with every Member State except Austria and Luxembourg having at least one code. The vast majority of these codes (25) were issued after 1997. The United Kingdom accounts for the largest number of codes identified in this Study (11) -- almost one-third of the total -- and also accounts for six of the ten pre-1998 codes identified. Two international and two pan-European codes meeting the Study's definition also have relevance to companies in EU Member States and are analysed herein.

The codes identified in this Study issue from a broad array of groups -- governmental or quasi-governmental entities; committees (or commissions) organised by governments or by stock exchanges; business, industry and academic associations; directors associations; and investor-related groups. As one might expect, therefore, compliance mechanisms and the "official" status of the codes vary widely.

Some codes advocate, or through linkage to stock exchange listing requirements mandate, disclosure by listed companies of the degree to which they comply with code recommendations, together with an explanation of any areas of non-compliance. (Throughout this Report, such disclosure against a code is referred to as disclosure on a "comply or explain" basis.) Even though in some instances disclosure against a code is mandated, *all* of the codes are voluntary inasmuch as the substantive code provisions need not be implemented. Nevertheless, comply or explain disclosure requirements do exert at least some coercive pressure: the tendency for some companies may be to "comply" rather than to explain. (This leads some commentators to express concerns that comply or explain disclosure requirements may lead to an overly mechanical and uniform approach to a company's decisions about ordering its corporate governance -- a mere "box-ticking" exercise.)

Note that even though the corporate governance codes put forward by members of the EU investment community are wholly voluntary in nature, given the investment community's significant economic power in competitive capital markets, and the power of investor voice and share voting, such codes can have significant influence on corporate governance practices.

Few of the codes expressly contemplate the formal review of the extent to which a code is followed. However, in some countries various entities have conducted surveys to track compliance on their own initiative.

DIVERGENCE & CONVERGENCE

In virtually every EU Member State, interest in articulating generally accepted principles and best practices of corporate governance is evident. One can infer from this broad interest that the quality of corporate governance is viewed as important to the national economies of Member States and to their domestic companies.

The growing interest in corporate governance codes among EU Member States may reflect an understanding that equity investors, whether foreign or domestic, are considering the quality of corporate governance along with financial performance and other factors when deciding whether to invest in a company. An oft-quoted McKinsey survey of investor perception indicates that investors report that they are willing to pay more for a company that is well-governed, all other things being equal. (McKinsey Investor Opinion Survey, June 2000)

The corporate governance codes analysed for this Study emanate from nations with diverse cultures, financing traditions, ownership structures and legal origins. Given their distinct origins, the codes are remarkable in their similarities, especially in terms of the attitudes they express about the key roles and responsibilities of the supervisory body and the recommendations they make concerning its composition and practices, as described in more detail below. It is important to note that *the codes tend to express notions of “best practice” - but translation of best practice ideals into actual practice may take time to achieve*. If the ideals expressed in codes reflect a dramatic difference from common practice, and the potential benefits of reform efforts are not well communicated and understood, codes may meet with resistance. Investor interest in the codes and investor support for the practices the codes recommend appear to wear away resistance over time.

The greatest distinctions in corporate governance practices among EU Member States appear to result from differences in law rather than from differences in recommendations that emanate from the types of codes analysed in this Study. A significant degree of company law standardisation has been achieved throughout the European Union in recent years. However, significant legal differences remain. Some commentators suggest that the remaining legal differences are the ones most deeply grounded in national attitudes, and hence, the most difficult to change. In contrast, the codes tend to express a relatively common view of what good governance is and how to achieve it. (Of course, the detailed recommendations of the codes differ to some extent as a function of distinct legal requirements.)

Notwithstanding legal differences among EU Member States, the trends toward convergence in corporate governance practices in EU Member States appear to be both more numerous and more powerful than any trends toward differentiation. In this regard, the codes -- together with market pressures -- appear to serve as a converging force, by focusing attention and discussion on governance issues, articulating best practice recommendations and encouraging companies to adopt them.

- **EMPLOYEE REPRESENTATION**

The greatest difference in corporate governance practice among EU Member States relates to the role of employees in corporate governance, a difference that is usually embedded in law. In Austria, Denmark, Germany, Luxembourg and Sweden, employees of companies of a certain size have the right to elect some members of the supervisory body. In Finland and France, company articles *may* provide employees with such a right. In addition, when employee shareholding reaches three percent (3%) in France, employees are given the right to nominate one or more directors, subject to certain exceptions. (Note that in some countries, including France and the Netherlands, employee representatives may have the right to attend board meetings, but not vote.) In all other EU Member States (with the exception of certain Netherlands companies with self-selecting boards), it is the shareholders alone who elect all the members of the supervisory body. This results in a fundamental difference among EU Member States in the strength of shareholder influence in the corporation.

Giving employees an advisory voice in certain issues is one means of engaging employees in governance issues without diluting shareholder influence. Encouraging employee stock ownership through employee pension funds and other employee stock ownership vehicles is another means of giving employees participatory rights in corporate governance, without diluting shareholder influence, and is favoured by some codes.

- **SOCIAL/STAKEHOLDER ISSUES**

Corporate governance is viewed increasingly as a means of ensuring that the exercise of economic power by the corporate sector is grounded in accountability. Different EU Member States tend to articulate the purpose of corporate governance in different ways; some emphasise broad stakeholder interests and others emphasise ownership rights of shareholders. Although the comparative corporate governance literature and popular discussion tend to emphasise “fundamental” differences between stakeholder and shareholder interests, the extent to which these interests are different can be debated. The majority of corporate governance codes expressly recognise that corporate success, shareholder profit, employee security and well being, and the interests of other stakeholders are intertwined and co-dependent. This co-dependency is emphasised even in codes issued by the investor community.

- **SHAREHOLDER RIGHTS & PARTICIPATION MECHANICS**

The laws and regulations relating to the equitable treatment of shareholders, including minority rights in take-overs, squeeze-outs and other transactions controlled by the company or the majority shareholders, vary significantly among EU Member States. Notice of and participation in shareholder general meetings, and procedures for proxy voting and shareholder resolutions also vary significantly among EU Member States. Such variations in laws and regulations, especially as relates to shareholder participation rights, likely pose barriers to cross-border investment, and may cause a not-insignificant impediment to a single unified capital market in the European Union.

To the extent that codes address these issues, they generally call for shareholders to be treated equitably; for disproportional voting rights to be avoided or at least fully disclosed to all shareholders; and for removal of barriers to shareholder participation in general meetings, whether in person or by proxy.

- **BOARD STRUCTURE, ROLES & RESPONSIBILITIES**

Another major corporate governance difference embedded in law relates to board structure -- the use of a unitary versus a two-tier board. However, notwithstanding structural differences between two-tier and unitary board systems, the similarities in actual board practices are significant. Both types of systems recognise a supervisory function and a managerial function, although the distinctions between the two functions tend to be more formalised in the two-tier structure. Generally, both the unitary board of directors and the supervisory board (in the two-tier structure) are elected by shareholders although, as explained above, in some countries employees may elect some supervisory body members as well. Typically, both the unitary board and the supervisory board appoint the members of the managerial body -- either the management board in the two-tier system, or a group of managers to whom the unitary board delegates authority in the unitary system. In addition, both the unitary board and the supervisory board usually have responsibility for ensuring that financial reporting and control systems are functioning appropriately and for ensuring that the corporation is in compliance with law.

Each board system has been perceived to offer unique benefits. The one-tier system may result in a closer relation and better information flow between the supervisory and managerial bodies; however, the two-tier system encompasses a clearer, formal separation between the

supervisory body and those being “supervised.” With the influence of the corporate governance best practice movement, the distinct perceived benefits traditionally attributed to each system appear to be lessening as practices converge.

As described below, the codes express remarkable consensus on issues relating to board structure, roles and responsibilities; many suggest practices designed to enhance the distinction between the roles of the supervisory and managerial bodies, including supervisory body independence, separation of the chairman and CEO roles, and reliance on board committees.

- **SUPERVISORY BODY INDEPENDENCE & LEADERSHIP**

Most -- if not all -- of the codes place significant emphasis on the need for a supervisory body that is distinct from management in its decisional capacity for objectivity to ensure accountability and provide strategic guidance. Codes that relate to unitary boards emphasise the need for some compositional distinction between the unitary board and members of the senior management team. These codes invariably urge companies to appoint outside (or non-executive) directors -- and some truly “independent” directors -- to the supervisory body. “Independence” generally involves an absence of close family ties or business relationships with company management and the controlling shareholder(s). Codes that relate to unitary boards also frequently call for the positions of the chairman of the board and the CEO (or managing director) to be held by different individuals. (This is already usually the case in two-tier board systems.) Codes that relate to two-tier boards also emphasise the need for independence between the supervisory and managerial bodies. For example, like the unitary board codes, they tend to warn against the practice of naming (more than one or two) retired managers to the supervisory board, because it may undermine supervisory board independence.

- **BOARD COMMITTEES**

It is fairly well accepted in law that many supervisory body functions may be delegated, at least to some degree, to board committees. The codes reflect a trend toward reliance on board committees to help organise the work of the supervisory body, particularly in areas where the interests of management and the interests of the company may come into conflict, such as in areas of audit, remuneration and nomination. While recommendations concerning composition of these committees may vary, the codes generally recognise that non-executive and, in particular, independent directors have a special role to play on these committees.

- **DISCLOSURE**

Disclosure requirements continue to differ among EU Member States, and the variation in information available to investors likely poses some impediment to a single European equity market. However, across the EU Member States, the amount of disclosure about corporate governance practices is increasing and there is a converging trend regarding the type of information disclosed. In part, this is due to efforts to promote better regulation of securities markets and broad use of International Accounting Standards. Consolidation and co-ordination among listing bodies may encourage further convergence. The code movement has also played a role in heightening awareness about the importance of disclosure to shareholders. There appears to be a developing “hardening of norms” concerning disclosure of individual executive and director remuneration across the EU Member States, following

the U.K. example. Moreover, there is a growing interest in both mandatory and voluntary social issue reporting.

Undoubtedly, the codes have served as a converging force. Through comply or explain mandates, several codes require companies to disclose considerably more information about their corporate governance structures and practices than in the past. As to wholly voluntary disclosure, the codes tend to favour greater transparency on all aspects of corporate governance and, in particular, executive and director compensation and director independence. They also encourage greater transparency as to share ownership and, in many instances, issues of broader social concern.

SUMMARY CONCLUSIONS

The most important differences in corporate governance practices among companies incorporated in Member States result from differences in company law and securities regulation rather than differences in code recommendations. For the most part, the code recommendations are remarkable in their similarity and serve as a converging force.

Neither the minor differences expressed in corporate governance codes nor the number of potentially “competing” codes appear to pose impediments to an integrated European equity market. Code variation does not appear to be perceived by private sector participants to raise barriers to company efforts to attract investment capital. Most European companies apparently continue to consider their domestic capital market as their primary source for equity capital. Corporate decisions regarding which capital markets to access appear to be influenced primarily by liquidity and company law considerations, more than by the existence of corporate governance codes. Codes are flexible and non-binding: Even when a “comply or explain” disclosure mandate exists, a company is generally free to choose *not* to follow the code’s prescriptions, so long as it discloses and explains such non-compliance.

By and large, codes are supplemental to company law. Companies may choose from among the codes that emanate from the EU Member State of incorporation. Alternatively, so long as there is no inconsistency with the company law in the State of incorporation, companies are free to seek guidance from codes from any jurisdiction.

The code movement is a positive development, both for companies and for investors, given its emphasis on disclosure, improved board practices, and shareholder protection. Codes have proven beneficial in a number of ways:

- Codes stimulate discussion of corporate governance issues;
- Codes encourage companies to adopt widely-accepted governance standards;
- Codes help explain both governance-related legal requirements and common corporate governance practices to investors;
- Codes can be used to benchmark supervisory and management bodies; and
- Codes may help prepare the ground for changes in securities regulation and company law, where such changes are deemed necessary.

To reiterate, there is little indication that code variation poses an impediment to the formation of a single European equity market. Moreover, the various codes emanating from the Member States appear to support a convergence of governance practices. This, taken together with the need for corporations to retain a degree of flexibility in governance so as to

be able to continuously adjust to changing circumstances, lead us to conclude that the European Commission need not expend energy on the development of a code applicable to companies in the European Union. Ideas about best practice as reflected in the codes should be allowed to develop over time by the business and investment communities, under the influence of market forces.

A voluntary European Union-wide code could conceivably result in some benefits along the lines discussed above. However, efforts to achieve broad agreement among Member States on detailed best practices that fit well with varying legal frameworks is more likely to express a negotiated “lowest common denominator” of “acceptable” practice rather than true “best” practice. Alternatively, an agreed European Union code might focus on basic principles of good governance. However, the OECD Principles of Corporate Governance (which issued in 1999 after considerable consultation with, and participation from, Member States) already set forth a coherent, thoughtful and agreed set of basic corporate governance principles.

A more valuable area for the European Commission to focus its efforts on is the reduction of legal and regulatory barriers to shareholder engagement in cross-border voting (“participation barriers”) as well as the reduction of barriers to shareholders’ (and potential investors’) ability to evaluate the governance of corporations (“information barriers”). These are areas that the European Commission has already included within the mandate of the Winters High Level Group of Company Law Experts, for study and recommendation.

I. INTRODUCTION

Rules and norms of corporate governance are important components of the framework for successful market economies. Although corporate governance can be defined in a variety of ways, generally it involves the mechanisms by which a business enterprise, organised in a limited liability corporate form, is directed and controlled. It usually concerns mechanisms by which corporate managers are held accountable for corporate conduct and performance. Corporate governance is distinct from -- and should not be confused with -- the topics of business management and corporate responsibility, although they are related.

Modern interest in corporate governance improvement and the development of corporate governance codes in EU Member States dates to the early 1990's and, in particular, a series of financial scandals and related failures of listed companies in the United Kingdom. In 1992, the Cadbury Report was issued in an attempt to address what were perceived as underlying problems in the corporate performance and financial reporting of leading companies, the lack of effective board oversight that contributed to those problems, and pressure for change from institutional investors.

European interest in corporate governance improvement -- and associated company law reform -- and in the development of codes has grown throughout the past decade, gaining considerable momentum in the late 1990's. This interest has paralleled heightened competition brought about by enhanced communication and transportation technologies, and the reduction of regulatory barriers in the European Union and internationally. It has also paralleled growth in the importance of equity markets and a trend toward broader-based shareholding in many EU Member States. Increasing interest in corporate governance improvement and attempts to articulate generally accepted norms and best practices is the result of numerous factors. Chief among them is the recognition that a firm's ability to attract investment capital, which is now internationally mobile, is related to the quality of its corporate governance.

From 1991 through 1997, ten codes -- as defined for purposes of this Study -- were issued in EU Member States. Just over half (six) of these codes were issued in the United Kingdom. In 1998, however, interest in code development exploded across the European Union, with seven codes issued in that year alone. Another seven codes were issued in 1999, and six were issued in 2000. Five more codes (one still in draft form) were issued in 2001.

It is unlikely coincidental that code activity in Europe accelerated after the issuance -- during the height of the Asian economic downturn of 1997-98 -- of an influential report by the OECD Business Sector Advisory Group on Corporate Governance entitled "Corporate Governance: Improving Competitiveness and Access to Capital in Global Markets" ("the Millstein Report"), and the related issuance of the OECD Principles of Corporate Governance in 1999. The flight of capital from Asia, Russia and certain South American nations brought attention to the link between investor confidence and the basic corporate governance principles of transparency, accountability, responsibility and fair treatment of shareholders highlighted in the Millstein Report and expanded on by the OECD Principles.

Both the Millstein Report and the OECD Principles, along with many of the codes issued in or relevant to EU Member States, acknowledge that there is no single agreed system of "good" governance. They tend to recognise that each country has its own corporate culture, national personality and priorities. As stated in Italy's Preda Report: "Corporate governance, in the sense of a set of rules according to which firms are managed and controlled, is the

result of norms, traditions and patterns of behaviour developed by each economic and legal system and is certainly not based on a single model that can be exported and imitated everywhere.” (Report § 2) Likewise, each company has its own history, culture, goals and business cycle maturity: “[D]etermining the ‘best practice’ is not always unequivocal, because making the choice depends on company-specific factors.” (Finland Ministry of Trade & Industry Guidelines, § 1) Therefore, codes tend to recognise that many factors need to be considered in crafting the optimal governance structure and practices for any country or any company. However, the influence of international capital markets is leading to some convergence of governance practices as expressed in the codes.

A. SCOPE OF STUDY & STRUCTURE OF REPORT

The purpose of this Comparative Study is to further the understanding of commonalities and differences in corporate governance practices among EU Member States through an analysis of corporate governance codes and -- to a limited extent -- relevant elements of the underlying legal framework.¹

This Study identifies and compares existing corporate governance codes in the fifteen EU Member States and other corporate governance codes that may affect the operation of companies within the European Union. (A list of the corporate governance codes identified for purposes of this Study is included in Annex I of this Final Report.) As explained in greater detail below (B. Methodology), for purposes of this Study, a “corporate governance code” is generally defined as a non-binding set of principles, standards or best practices, issued by a collective body, and relating to the internal governance of corporations.

This Final Report is structured along the following lines: This Introduction describes the scope of the Study and the structure of the Report; it also sets forth the methodology used. Section II describes the codes identified, their issuing bodies, objective, and compliance mechanisms. Section III provides a more substantive comparative analysis of code provisions within the context of the relevant legal framework. Section IV discusses code enforcement and compliance. In conclusion, Section V highlights areas in which governance practices appear to be converging and those in which practices are not. It includes a discussion of trends and expected developments, and a summary of a roundtable of private sector participants on related issues.

Note that a Discussion of Individual Codes is contained in Annex IV. For each of the fifteen EU Member States, that Discussion begins with a brief overview of the relevant legal framework for corporate governance, and provides the following information for each of the Codes identified:

- Name, date of adoption and adopting body.
- Official languages in which the code is published.

¹ Corporate governance practices arise in the context of, and are affected by, differing national frameworks of law, regulation and stock exchange listing rules, differing business norms and differing cultural values and socio-economic traditions. Effective corporate governance is supported by and dependent on framework conditions, including securities regulation, company law, accounting and auditing standards, bankruptcy laws, judicial enforcement and the nature of the market for corporate control. To understand one nation’s corporate governance practices in relation to another’s, one must understand not only the corporate governance codes that apply but also the underlying legal and enforcement framework. However, a full comparative analysis of this framework is well beyond the scope of this Study.

- Nature of the adopting body and implications for the legal basis and compliance with the code.
- Description of any consultative process in preparing the code and the identity of contributing parties.
- Any formal definition provided in the code of what is meant by “corporate governance.”
- Any explanation provided in the code as to the objectives pursued and manner in which those objectives are presented.
- The criteria used in the code to define the scope of its application to corporate entities (size, legal form, open/closed, listed/non-listed, domestic/foreign, etc.).
- Where several codes have been successively adopted, whether there exists an official consolidated version.
- Code provisions on issues relating to:
 - separate roles and responsibilities of supervisory and managerial bodies;
 - accountability of supervisory and managerial bodies;
 - size, composition, independence and selection criteria and procedures for managerial and supervisory bodies;
 - working methods of managerial and supervisory bodies;
 - remuneration of members of supervisory and managerial bodies;
 - organisation and supervision of internal control systems and relations between supervisory bodies, managerial bodies and internal and external auditors;
 - protection of the rights of shareholders;
 - equal/fair treatment of shareholders (including minority and foreign shareholders); and
 - rights of stakeholders.

In addition, a Comparative Matrix analysing these and other topics in greater detail is provided in Annex V to this Report.

B. METHODOLOGY

The volume of materials concerning corporate governance is vast and growing exponentially in most EU Member States. In addition to articles and treatises on the topic -- in the business, economics, legal and policy literature -- numerous laws, regulations and listing requirements address governance issues. Within this vast literature, a unique group of corporate governance recommendations has arisen in the past decade, loosely called governance “codes,” “principles” or “guidelines.” This growing set of recommendations tends to focus on practices to ensure that corporations are managed effectively and held accountable in their use of assets. It is this unique body of materials that is the primary subject of the Contract and, hence, this Comparative Study.

To identify corporate governance codes relevant to the EU Member States, and obtain the other information required by the Contract, the following methodology was developed:

- Definition of “Corporate Governance Code”: The methodological challenge for this Study was to create a definition of “corporate governance code” that could be applied consistently and was in line with the scope of the Study as set forth in the Contract. Upon broad consultation, it was determined that, for the purposes of this Study, a “corporate governance code” would be defined generally as follows:
 - a systematically arranged set of principles, standards, best practices and/or recommendations;
 - precatory in nature;
 - that is neither legally nor contractually binding;
 - relating to the internal governance of corporations (covering topics such as the treatment of shareholders, the organisation and practices of (supervisory) boards and corporate transparency); and
 - issued by a collective body.

This definition excludes dissertations, legal treatises, articles and books on corporate governance. It also excludes code-like documents or guidelines that are created by a single company or investor. Although such documents can be influential, especially when issued by a large institutional investor, the potential universe of such documents is simply too large for this Study. In addition, under this definition, statutes, regulations, and listing requirements do not qualify as corporate governance codes. Such materials are used as points of reference to understand the framework in which the governance codes exist, and to assist in the comparative analysis, but under the express terms of the Contract they are not treated as “codes.” (Note, however, that documents that are not themselves listing requirements but are linked to the listing standards of a stock exchange through disclosure requirements, or otherwise, are treated as codes.)

- Preliminary Identification of Codes: Through review of WG&M’s prior collection of codes, consultation with the ECGN concerning its collection of code-like documents and additional research, a set of relevant codes was identified -- consistent with the definition set forth above -- for each EU Member State. (A list of the codes identified is included in Annex I.)
- Consultation with Regulatory Authorities & Listing Bodies: EU Member State representatives of the Federation of European Stock Exchanges (“FESE”) and the Forum of European Security Commissions (“FESCO”) were consulted on the preliminarily identified set of codes. These representatives were asked to confirm that the list was complete for their nation or to identify additional codes. (A list of the stock exchange and security commission representatives who were consulted is included in Annex II.)
- Additional Research by Country Correspondents: Country correspondents designated for each EU Member State were asked to review and perform additional research on each of the codes identified to obtain the information requested in the Contract. They were also asked to undertake research to confirm that the list of codes was complete or to identify additional codes. (A list of the country correspondents participating in the Study is included in Annex III.)

Interim Report: The information collected through research and the iterative process outlined above was then analysed and categorised for comparative purposes. A draft

Interim Report addressing the information requested in Item 1 of the Contract was submitted to the European Commission on March 29, 2001 for comments. A revised Interim Report was submitted on May 28, 2001 and formally accepted on July 2, 2001. (Note that two codes originally identified in the Interim Report (one from Germany and one from Sweden) are not included in this Final Report because further research indicated that both their influence and content was limited in scope. These documents are described in the relevant country discussions contained in Annex IV. A number of other codes have been added.)

- Survey of Legal Framework: Country correspondents designated for each EU Member State were asked to provide information about the Member State's basic legal framework for corporate governance. This information was vetted against and augmented by a draft Study undertaken by the Organisation for Economic Co-operation and Development ("OECD"), which compares the legal frameworks for corporate governance of EU Member States (and other nations) through answers by the relevant Ministries to a survey.
- Code Analysis: Each code was analysed for the remaining information requested in the Contract. (A Comparative Matrix analysing the codes identified in this Study on a detailed point-for-point basis is provided as Annex V to this Report.)
- Private Sector Consultation: On September 10, 2001, senior members of the European business community participated in a consultative roundtable in Brussels to discuss their views on whether the variety of corporate governance codes in EU Member States poses impediments to a unified EU capital market. (A list of the issues discussed in this consultation is included in Annex II.)
- Draft Final Report: The information collected from independent research and the process outlined above was analysed for comparative purposes. A draft Final Report was submitted to the European Commission for comments on October 31, 2001.
- Final Report: This Final Report includes the entire contents of the Interim Report and addresses the comments from the Commission dated December 11, 2001. It provides all information specified in the Contract.
- Terminology: Note that much confusion exists in international discussions and documents relating to company boards and their members due to different usage in EU Member States of certain key terms. In the United Kingdom and Ireland, all the members of the unitary board of directors are called "directors," whether or not they are also executives of the company. However, in France, the Netherlands, Germany, Italy and many other countries, the word *directeur*, *direkteur*, *direktor*, or *direttore* (or the equivalent) is exclusively restricted to members of management, and generally means "manager" or "executive." A member of a unitary board in France or Italy is titled *administrateur* or *amministratore*, which is the proper equivalent of "director" in English. When he or she also has managerial or executive functions, titles such as *administrateur-directeur* or *administrateur délégué* are used.

This Report uses the word "director" to mean a member of the unitary board. For two-tier systems, the expressions "supervisory board member" and "management board member" are used. In addition, the Report refers to both unitary boards and supervisory boards as "supervisory *bodies*" to recognise that both entities are charged with the function of monitoring and advising management. This is true whether that management is formed as a management board (as in the two-tier system) or is less

formally constituted as a management team (as in the unitary system). Management boards and management teams are referred to as “managerial *bodies*.”

II. IDENTIFICATION OF RELEVANT CODES

A. DISTRIBUTION

A total of thirty-five documents that qualify as corporate governance codes for purposes of the Study have been identified (using the definition set forth in Section I.B Methodology) in EU Member States. (See Table A: Codes Identified (EU Member States), below.)

The vast majority (13) of the fifteen EU Member States have at least one code document. (Austria and Luxembourg are the only two EU Member States for which no codes have been identified.) However, the distribution of codes is uneven: the United Kingdom accounts for eleven of the codes; Belgium accounts for four (two of which have been consolidated into one document); France, Germany and the Netherlands each account for three; and Denmark, Finland, and Greece account for two each. The remaining five Member States have only one code apiece.

Few if any conclusions can be drawn from the distribution of codes concerning either the status of corporate governance or any reform efforts in the Member States, given the variety of contexts in which the codes have arisen. For one, governance codes in one nation may address principles and practices of corporate governance that other nations establish more fully through company law and securities regulation. (For example, in Sweden and Germany the law details many governance provisions that are addressed by codes in other nations.) For another, a number of EU Member States are engaging, or have already engaged, in review and reform of company law. In some instances this has been related to a code effort; in others it may actually have the effect of delaying or replacing a code effort.

| TABLE A | | |
|---|---|--|
| CODES IDENTIFIED: EU MEMBER STATES | | |
| Nation | Code | Languages |
| Belgium | <ul style="list-style-type: none"> • Recommendations of the Federation of Belgian Companies (January 1998) • Recommendations of the Belgian Banking & Finance Commission (January 1998) • Cardon Report (December 1998) • The Director's Charter (January 2000) | <ul style="list-style-type: none"> • Dutch, French and English • Dutch, French and English • Dutch, French and English • French and English |
| Denmark | <ul style="list-style-type: none"> • Danish Shareholders Association Guidelines (February 2000) • Nørby Report & Recommendations (December 2001) | <ul style="list-style-type: none"> • Danish and English • Danish (English summary available) |
| Finland | <ul style="list-style-type: none"> • Chamber of Commerce/Confederation of Finnish Industry & Employers Code (February 1997) • Ministry of Trade & Industry Guidelines (November 2000) | <ul style="list-style-type: none"> • Finnish (English summary available) • Finnish and English |
| France | <ul style="list-style-type: none"> • Viénot I Report (July 1995) • Hellebuyck Commission Recommendations (June 1998; Updated October 2001) • Viénot II Report (July 1999) | <ul style="list-style-type: none"> • French (English translation available) • French (English translation available) • French (English translation available) |

| | | |
|----------------|--|--|
| Germany | <ul style="list-style-type: none"> • Berlin Initiative Code (June 2000) • German Panel Rules (July 2000) • Cromme Commission Code (draft, December 2001) | <ul style="list-style-type: none"> • German and English • German and English • German (English translation available) |
| Greece | <ul style="list-style-type: none"> • Mertzanis Report (October 1999) • Federation of Greek Industries Principles (August 2001) | <ul style="list-style-type: none"> • Greek and English • Greek (English translation available) |
| Ireland | <ul style="list-style-type: none"> • IAIM Guidelines (March 1999) | <ul style="list-style-type: none"> • English |
| Italy | <ul style="list-style-type: none"> • Preda Report (October 1999) | <ul style="list-style-type: none"> • Italian (English translation available) |
| Netherlands | <ul style="list-style-type: none"> • Peters Report (June 1997) • VEB Recommendations (1997) • SCGOP Handbook & Guidelines (August 2001) | <ul style="list-style-type: none"> • Dutch (English translation available) • Dutch (English translation available) • Dutch (English translation available) |
| Portugal | <ul style="list-style-type: none"> • Securities Market Commission Recommendations (November 1999) | <ul style="list-style-type: none"> • Portuguese and English |
| Spain | <ul style="list-style-type: none"> • Olivencia Report (February 1998) | <ul style="list-style-type: none"> • Spanish (English translation available) |
| Sweden | <ul style="list-style-type: none"> • Swedish Shareholders Association Policy (November 1999) | <ul style="list-style-type: none"> • Swedish (English translation available) |
| United Kingdom | <ul style="list-style-type: none"> • Institute of Chartered Secretaries & Administrators Code (February 1991) • Institutional Shareholders Committee Statement of Best Practice (April 1991) • Cadbury Report (December 1992) • PIRC Shareholder Voting Guidelines (April 1994; Updated March 2001) • Greenbury Report (July 1995) • Hermes Statement (March 1997; Updated January 2001) • Hampel Report (January 1998) • Combined Code (July 1998) • Turnbull Report (September 1999) • NAPF Corporate Governance Code (June 2000) • AUTIF Code (January 2001) | <ul style="list-style-type: none"> • English • English • English • English • English • English • English • English • English • English • English • English |

Table B, Codes Identified (Pan European & International), below, lists four pan-European and international codes identified to date that are relevant to EU Member States. These include codes from the OECD, the International Corporate Governance Network (“ICGN”), the European Association of Securities Dealers (“EASD”) and a group of investors known as “Euroshareholders.”

| TABLE B | | |
|---|---|--|
| CODES IDENTIFIED: PAN-EUROPEAN & INTERNATIONAL | | |
| Nation | Code | Languages |
| International Organisations | <ul style="list-style-type: none"> • OECD Principles of Corporate Governance (May 1999) • ICGN Statement (July 1999) | <ul style="list-style-type: none"> • English, French, German, and Spanish • English (French translation available) |
| Pan-European Organisations | <ul style="list-style-type: none"> • Euroshareholders Guidelines (February 2000) • EASD Principles and Recommendations (May 2000) | <ul style="list-style-type: none"> • English • English |

For a complete list of codes identified, with exact denomination and date of adoption, see Annex I: List of Corporate Governance Codes Relevant to European Union Member States.

Note that each code is officially published in the language of the nation in which it issued and many are also published in other languages, as indicated in Tables A and B. An English translation or summary is available for every code that is not otherwise officially available in English.

B. ISSUING BODY, LEGAL BASIS & COMPLIANCE

1. NATURE OF ISSUING BODY

A wide variety of organisations in the EU Member States have issued governance codes meeting this Study's definition. These include:

- Governmental or quasi-governmental entities (3);
- Committees or commissions organised or appointed by governments (4);
- Stock exchange-related bodies (2);
- Hybrid committees related to both stock exchanges and business, industry, investor and/or academic associations (5);
- Business, industry and academic associations (9);
- Associations of directors (1); and
- Various types of investor groups (11).

Table C: Issuers & Code Compliance Mechanisms (EU Member States), below, categorises codes in the EU Member States by type of issuing body and the compliance mechanisms for accomplishing the codes' objectives. As Table C shows, much of the interest in code development throughout the European Union has come from the investor community.

Investor associations and investor-related groups have issued almost one-third of the total. In addition, an investor association -- Institutional Shareholders Committee (U.K.) -- in April 1991 issued one of the earliest codes identified by this Study.

2. LEGAL BASIS & COMPLIANCE MECHANISMS

As one might expect given the variety of the groups involved in developing codes, compliance mechanisms and the "official" status of codes varies widely. However, all of the codes call for voluntary adoption of their substantive recommendations.

- Fifteen of the codes specifically encourage voluntary disclosure related to governance.
- Six codes either recommend or envision the creation of a mandatory disclosure "comply or explain" framework or are being recommended to listed companies by a stock exchange on a comply or explain basis. (Kørby Commission Report (Denmark); Cromme Commission Code (Germany) (expected); Preda Report (Italy); Cadbury Report (U.K.); Greenbury Report (U.K.); Combined Code (U.K.))
- Another code provides advice on complying with such a framework (Turnbull (U.K.)).
- At least eight codes -- all from investor-related entities -- create criteria for the selection of portfolio companies, shareholder voting, protection of shareholder rights, or encourage pressure through investor voice or voting.

- Finally, two codes focus on guidelines for director remuneration.

(Codes were categorised by the major compliance mechanism relied on; some are associated with more than one such mechanism.)

Note that even though the corporate governance codes put forward by members of the EU investment community are wholly voluntary in nature, given the investment community's significant economic power in competitive capital markets, and the power of investor voice and share voting, such codes can have significant influence on corporate governance practices. Frequently, an investor association will recommend that its members apply governance criteria in the selection of companies for their investment portfolio and/or subsequent voting decisions. At least eight investor-related codes in the EU Member States can be categorised as having this compliance approach: Hellebuyck Commission Recommendations (France); IAIM Guidelines (Ireland); Swedish Shareholders Association Policy; AUTIF Code (U.K.); NAPF Corporate Governance Code (U.K.); PIRC Guidelines (U.K.); Hermes Statement (U.K.); SCGOP Handbook & Guidelines (Netherlands).

A number of investor-related codes rely on disclosure, either by: encouraging companies to disclose voluntarily their governance practices using the code itself or another code as a benchmark (Danish Shareholders Association Guidelines; SCGOP Handbook & Guidelines (The Netherlands)); encouraging disclosure by institutional investors of how they vote on governance issues (AUTIF Code (U.K.)); or supporting a stock exchange listing rule requiring that listed companies disclose to shareholders in the annual report, or other such document, whether they comply with the code, explaining or justifying any departure (IAIM Guidelines (Ireland)).

The organisations or groups that can be categorised as made up of business or industry representatives, frequently including some members from academia, have been the next most active in developing corporate governance codes. Such groups account for nine of the codes issued in EU Member States. Like the investor codes, these codes are voluntary in nature. Most of them call for voluntary disclosure and compliance with best practices. Unlike the investor codes, they lack a market mechanism to encourage compliance. Although purely aspirational in nature, such codes do influence corporate governance practices. Frequently they are based on recommendations from investors or they express what is already acknowledged to be common practice for a respected segment of the corporate community. In some cases, voluntary compliance may be thought to help forestall government or listing body regulation, or additional pressures from investors. This may explain why most of these codes encourage some form of disclosure by companies about corporate governance practices. (Note that elements of the Greenbury Code (U.K.) were appended to London Stock Exchange Listing Rules and required certain disclosures.)

Committees related to a stock exchange, which may also include a business/industry association, account for seven codes. In every instance, compliance with the codes issued by these stock exchange-related bodies is voluntary in as much as a company need not abide by the specific corporate practices recommended to retain listed status. However, in the United Kingdom two of the codes (first the Cadbury Code, and then the Combined Code which superseded Cadbury) were linked to listing rules to require listed companies to disclose whether they follow the code recommendations or explain why they do not ("comply or explain"). Thus, listed companies on the London Exchange need not follow the recommendations of the Combined Code (or Cadbury before it). However, they must disclose whether they follow its recommendations and must provide an explanation

concerning divergent practices. (According to the Financial Services Authority, which is now charged with overseeing company compliance with London Stock Exchange listing requirements, there are as yet no cases in which a company has been sanctioned for failing to disclose against the Combined Code. When disclosure problems have been noticed by the authorities, they have been addressed through discussions with the companies concerned, and there has been no resort to sanctions.) The Preda Report (Italy) is associated with a similar comply or explain requirement. Such mandatory disclosure requirements generally exert significant pressure for compliance.

Four of the codes identified in EU Member States were issued by a committee (or commission) best categorised as organised by government and three were issued by a governmental or quasi-governmental entity. One might expect that codes from such government-related bodies would be more likely to contemplate or discuss reform in company or securities law and related regulation. Generally this does not appear to be the case, although the Mertzanis Report (Greece) does contemplate that at a later date its recommendations may serve as the basis for legal reform. The Ministry of Trade & Industry Guidelines (Finland), the Securities Market Commission Recommendations (Portugal) and the Recommendations of the Belgian Banking & Finance Commission all encourage voluntary disclosure of corporate governance practices -- in addition to voluntary adoption of best practice standards. The Cromme Report (Germany), which is still in draft, is expected to be linked to a comply or explain legal requirement. And the Copenhagen Stock Exchange has recommended that listed companies voluntarily disclosure compliance with the Nørby Report & Recommendations (Denmark).

One code was issued by a directors association. The Director's Charter (Belgium) is wholly aspirational, with a focus on educating directors about their role and encouraging them to follow practices that support good board function.

| TABLE C | | |
|---|--|---|
| ISSUERS & CODE COMPLIANCE MECHANISMS: EU MEMBER STATES | | |
| Issuing Body Type | Code | Compliance Mechanism |
| Governmental/quasi-governmental entity | Recommendations of the Belgian Banking & Finance Commission (January 1998) (Belgium) | <i>Voluntary (disclosure encouraged):</i> encourages voluntary adoption of best practice standards and voluntary disclosure |
| | Securities Market Commission Recommendations (November 1999) (Portugal) | <i>Voluntary (disclosure encouraged):</i> encourages voluntary adoption of best practice standards and voluntary disclosure |
| | Ministry of Trade & Industry Guidelines (November 2000) (Finland) | <i>Voluntary (disclosure encouraged):</i> encourages voluntary adoption of best practice standards and voluntary disclosure |

| | | |
|--|--|--|
| Committee (commission) organised by government | Olivencia Report (February 1998) (Spain) | <i>Voluntary</i> : encourages voluntary adoption of best practice standards |
| | Mertzanis Report (October 1999) (Greece) | <i>Voluntary (may serve as basis for legal reform)</i> : encourages voluntary adoption of best practice standards; advocates “comply or disclose” framework (in connection with listing rules) |
| | Nørby Report & Recommendations (December 2001) (Denmark) | <i>Voluntary (disclosure encouraged)</i> : Copenhagen Stock Exchange recommends that listed companies disclose (voluntarily) on a “comply or explain” basis |
| | Cromme Commission Code (draft, December 2001) (Germany) | <i>Disclosure (comply or explain)</i> : anticipated that mandatory disclosure framework will apply |
| Committee related to a stock exchange | Cardon Report (December 1998) (Belgium) | <i>Voluntary (disclosure encouraged)</i> : encourages voluntary adoption of best practice standards and voluntary disclosure |
| | Preda Report (October 1999) (Italy) | <i>Disclosure (comply or explain)</i> : creates mandatory disclosure framework (in connection with listing rules to encourage improved practice); encourages voluntary adoption of best practice standards |
| Committee related to a stock exchange and a business, industry, investor and/or academic association | Cadbury Report (December 1992) (U.K.) | <i>Disclosure (comply or explain)</i> : advocates disclosure framework (in connection with listing rules) to encourage improved practices; also encourages voluntary adoption of best practice standards [See Combined Code] |
| | Peters Report (June 1997) (Netherlands) | <i>Voluntary (disclosure encouraged)</i> : encourages voluntary adoption of best practice standards and voluntary disclosure |
| | Hampel Report (January 1998) (U.K.) | <i>Disclosure (in line with the Combined Code’s provisions)</i> : also encourages voluntary adoption of best practice standards [See Combined Code] |
| | Combined Code (July 1998) (U.K.) | <i>Disclosure (comply or explain)</i> : creates mandatory disclosure framework (in connection with listing rules) to encourage improved practices |
| | Turnbull Report (September 1999) (U.K.) | <i>Voluntary (advise on compliance with Combined Code)</i> : advises on compliance with mandatory disclosure framework (in connection with listing rules) to encourage improved practices |
| Business, industry and/or academic association or committee | Institute of Chartered Secretaries & Administrators Code (February 1991) (U.K.) | <i>Voluntary</i> : encourages voluntary adoption of best practice standards |
| | Viénot I Report (July 1995) (France) | <i>Voluntary</i> : encourages voluntary adoption of best practice standards |
| | Greenbury Report (July 1995) (U.K.) | <i>Disclosure (comply or explain) (now disclosure required in line with the Combined Code’s provisions)</i> : encourages voluntary adoption of best practice standards; recommends guidelines for director remuneration |
| | Chamber of Commerce/Confederation of Finnish Industry & Employers Code (February 1997) (Finland) | <i>Voluntary (disclosure encouraged)</i> : encourages voluntary adoption of best practice standards and voluntary disclosure |
| | Recommendations of the Federation of Belgian Companies (January 1998) (Belgium) | <i>Voluntary (disclosure encouraged)</i> : encourages voluntary adoption of best practice standards and voluntary disclosure |
| | Viénot II Report (July 1999) (France) | <i>Voluntary (disclosure encouraged)</i> : encourages voluntary adoption of best practice standards and voluntary disclosure; recommends legal reforms |
| | Berlin Initiative Code (June 2000) (Germany) | <i>Voluntary (disclosure encouraged)</i> : encourages voluntary adoption of best practice standards and voluntary disclosure |
| | German Panel Rules (July 2000) (Germany) | <i>Voluntary (disclosure encouraged)</i> : encourages voluntary adoption of best practice standards and voluntary disclosure |
| | Federation of Greek Industries Principles (August 2001) (Greece) | <i>Voluntary (disclosure encouraged)</i> : encourages voluntary adoption of best practice standards and voluntary disclosure |
| Directors association | The Director’s Charter (January 2000) (Belgium) | <i>Voluntary (association members encouraged to comply)</i> : encourages voluntary adoption of best practice standards |

| | | |
|--|---|---|
| Investors association | Institutional Shareholders Committee Statement of Best Practice (April 1991) (U.K.) | <i>Voluntary (association members recommended to apply to portfolio companies): encourages voluntary adoption of best practice standards</i> |
| | VEB Recommendations (1997) (Netherlands) | <i>Voluntary (association members recommended to apply to portfolio companies): encourages voluntary adoption of best practice standards</i> |
| | Hellebuyck Commission Recommendations (June 1998; Updated October 2001) (France) | <i>Voluntary (association members recommended to apply to portfolio companies): creates voluntary criteria for investment selection and shareholder voting by association members</i> |
| | IAIM Guidelines (March 1999) (Ireland) | <i>Voluntary (now disclosure in line with the Combined Code's provisions): recommends mandatory disclosure framework (in connection with listing rules) to encourage improved practices; recommends guidelines for director remuneration; creates voluntary criteria for investment selection and shareholder voting by association members</i> |
| | Swedish Shareholders Association Policy (November 1999) (Sweden) | <i>Voluntary (association members recommended to apply to portfolio companies): creates voluntary criteria for investment selection and shareholder voting by association members</i> |
| | Danish Shareholders Association Guidelines (February 2000) (Denmark) | <i>Voluntary (disclosure encouraged): encourages voluntary adoption of best practice standards and voluntary disclosure</i> |
| | NAPF Corporate Governance Code (June 2000) (U.K.) | <i>Voluntary (association members recommended to apply to portfolio companies): creates voluntary criteria for investment selection and shareholder voting by institutional investors</i> |
| | AUTIF Code (January 2001) (U.K.) | <i>Voluntary (disclosure encouraged): creates voluntary criteria for investment selection and shareholder voting by association members</i> |
| | SCGOP Handbook & Guidelines (August 2001) (Netherlands) | <i>Voluntary (disclosure encouraged): recommends that portfolio companies disclose whether they comply with Peters Report or explain non-compliance; creates voluntary criteria for investment selection and shareholder voting by association members</i> |
| Investor advisor | PIRC Shareholder Voting Guidelines (April 1994; Updated March 2001) (U.K.) | <i>Voluntary (institutional investors recommended to apply to portfolio companies): creates voluntary criteria for investment selection and shareholder voting by institutional investors</i> |
| Investor in association with other investor groups | Hermes Statement (March 1997; Updated January 2001) (U.K.) | <i>Voluntary (issuer states shares will be voted accordingly): creates voluntary criteria for investment selection and shareholder voting by association members</i> |

The four pan-European and international codes that are relevant to EU Member States have been issued by four distinct types of organisations: an intergovernmental organisation (OECD Principles); a committee related to a pan-European association of securities professionals (EASD Principles and Recommendations); an association of investors and others having an interest in governance (ICGN Statement); and an investors association (Euroshareholders Guidelines).

As set forth in Table D: Issuers & Code Compliance Mechanisms (Pan-European & International), below, compliance with each of these codes is also entirely voluntary. The two investor-related codes -- the ICGN Statement and Euroshareholders Guidelines -- both encourage members to apply their recommendations to companies in their portfolios.

The EASD Principles & Recommendations provide voluntary guidelines. When the Principles & Recommendations were issued in 2000, EASDAQ intended to append them to its requirements for companies listed on EASDAQ on a “comply or explain” basis. Subsequently, control of EASDAQ transferred to NASDAQ (and its name changed to NASDAQ Europe). The current NASDAQ Europe Rule Book makes no express reference to the EASD Principles & Recommendations. However, it does contain a number of corporate governance listing requirements that may have been influenced by the code effort.

The OECD Principles are also wholly voluntary, but given their status -- they were ratified by OECD Ministers (and hence by all of the EU Member States) -- they are quite influential in describing the basic governance principles that should be embodied in each nation's legal, regulatory and/or advisory framework. They also recommend significant disclosure by companies about corporate governance, corporate ownership and corporate performance.

| TABLE D | | |
|--|--|--|
| ISSUERS & CODE COMPLIANCE MECHANISMS: PAN-EUROPEAN & INTERNATIONAL | | |
| Issuing Body Type | Code | Compliance Mechanism |
| Intergovernmental organisation | OECD Principles of Corporate Governance (May 1999) | <i>Voluntary</i> : encourages creation, assessment & improvement of appropriate legal & regulatory framework; encourages voluntary adoption of best practice standards |
| Committee related to pan-European association of securities professionals | EASD Principles and Recommendations (May 2000) | <i>Voluntary (disclosure encouraged)</i> : advocates disclosure on a comply or explain basis for markets and companies adopting the code, to encourage improved practice |
| Association of investors and others (including business/industry) interested in corporate governance | ICGN Statement (July 1999) | <i>Voluntary (investors recommended to apply to portfolio companies; companies recommended to disclose compliance or explain)</i> : pressure through investor voice/voting; encourages voluntary adoption of best practice standards |
| Investors association | Euroshareholders Guidelines (February 2000) | <i>Voluntary (association members (investors) recommended to apply to portfolio companies)</i> : pressure through investor voice/voting |

C. CONTRIBUTIONS & CONSULTATIONS

The processes used to obtain input, the parties contributing to the creation of corporate governance codes, and the nature of broader consultations engaged in by the issuing bodies vary greatly among the identified codes. To varying degrees, code issuers received contributions from an array of industry groups, corporate executives, government and regulatory agencies and investor groups. Consultative activities ranged from publication of consultative documents with public invitation to comment, to consultations with government, business and investor groups.

Approximately ten of the codes discussed in this report involved formal consultations of one form or another. In some cases (*e.g.*, Peters Code (Netherlands), Cadbury Report (U.K.) and Combined Code (U.K.)), these consultations consisted of the publication of a draft document with a request for comments by interested parties. Such comments were then incorporated into the final code. In other cases (*e.g.*, the Finnish Ministry of Trade & Industry Guidelines and the Olivencia Report (Spain)), the drafting group requested and received assistance from parties with specific knowledge and experience relating to the subject of corporate governance in their nation. Roughly forty-five percent (45%) of the codes included in this Report do not indicate whether the issuing body consulted with any other parties. Even in many of these situations, however, consultations may in fact have taken place. Moreover, the diverse viewpoints and constituencies represented by the members of the drafting group or issuing body likely acted as an informal consultation. The codes generally are silent as to whether investor entities outside the domestic market were consulted.

D. OBJECTIVES PURSUED

The codes express a relatively small range of objectives, either directly or by implication. Table E, below, shows the code objectives associated with each code emanating from the EU Member States, again grouped by type of issuing body. Verbatim language from the codes regarding how they present their objectives can be found in the Discussion of Individual Codes provided in Annex IV.

The most common apparent objective is improving the quality of (supervisory) board governance of companies. (Note that significant judgements were made on such categorisation, and improving the quality of board governance was a common “default” category because of the focus of most recommendations.) This objective is most strongly associated with the codes emanating from business and industry-related groups (and the one directors association).

The next most common objectives are: improving accountability of companies to shareholders and/or maximising shareholder value; and improving companies’ performance, competitiveness and/or access to capital. Not surprisingly, the latter objective is the focus of many of the government-related entities and of both the Cardon Report (Belgium) and the Preda Report (Italy), while the former objective is the apparent focus of a majority of the investor-related codes.

The code from the Belgian Banking & Finance Commission is unique in that its only stated objective is improving the quality of governance-related information available to the capital markets. Four of the codes in the United Kingdom can be categorised as having this as one of two objectives: the Cadbury Report, the Greenbury Report, the Hampel Report and the Combined Code (which incorporates elements of the other three codes) can all be categorised as seeking to improve the quality of both supervisory board governance of companies *and* governance-related information available to the equity markets and their participants.

| TABLE E | | |
|--|--|---|
| CODE OBJECTIVES: EU MEMBER STATES | | |
| Issuing Body Type | Code | Objectives |
| Governmental/quasi-governmental entity | Recommendations of the Belgian Banking & Finance Commission (January 1998) (Belgium) | Improve quality of governance-related information available to equity markets |
| | Securities Market Commission Recommendations (November 1999) (Portugal) | Improve companies’ performance, competitiveness and/or access to capital |
| | Ministry of Trade & Industry Guidelines (November 2000) (Finland) | Improve companies’ performance, competitiveness and/or access to capital |
| Committee (commission) organised by government | Olivencia Report (February 1998) (Spain) | Improve companies’ performance, competitiveness and/or access to capital |
| | Mertzanis Report (October 1999) (Greece) | Improve companies’ performance, competitiveness and/or access to capital |
| | Nørby Report & Recommendations (December 2001) (Denmark) | Improve companies’ performance, competitiveness and/or access to capital. |
| | Cromme Commission Code (draft, December 2001) (Germany) | Improve companies’ performance, competitiveness and/or access to capital |

| | | |
|--|--|---|
| Committee related to a stock exchange | Cardon Report (December 1998) (Belgium) | Improve companies' performance, competitiveness and/or access to capital |
| | Preda Report (October 1999) (Italy) | Improve companies' performance, competitiveness and/or access to capital; improve quality of governance-related information available to equity markets |
| Committee related to a stock exchange and a business, industry and/or academic association | Cadbury Report (December 1992) (U.K.) | Improve quality of board (supervisory) governance; improve quality of governance-related information available to equity markets |
| | Peters Report (June 1997) (Netherlands) | Improve quality of board (supervisory) governance |
| | Hampel Report (January 1998) (U.K.) | Improve quality of board (supervisory) governance; improve quality of governance-related information available to equity markets |
| | Combined Code (July 1998) (U.K.) | Improve quality of board (supervisory) governance; improve quality of governance-related information available to equity markets |
| | Turnbull Report (September 1999) (U.K.) | Improve quality of board (supervisory) governance |
| Business, industry and/or academic association or committee | Institute of Chartered Secretaries & Administrators Code (February 1991) (U.K.) | Improve quality of board (supervisory) governance |
| | Viénot I Report (July 1995) (France) | Improve quality of board (supervisory) governance |
| | Greenbury Report (July 1995) (U.K.) | Improve quality of board (supervisory) governance; improve quality of governance-related information available to equity markets |
| | Chamber of Commerce/Confederation of Finnish Industry & Employers Code (February 1997) (Finland) | Improve quality of board (supervisory) governance |
| | Recommendations of the Federation of Belgian Companies (January 1998) (Belgium) | Improve companies' performance, competitiveness and/or access to capital |
| | Viénot II Report (July 1999) (France) | Improve quality of board (supervisory) governance |
| | Berlin Initiative Code (June 2000) (Germany) | Improve quality of board (supervisory) governance |
| | German Panel Rules (July 2000) (Germany) | Improve accountability to shareholders and/or maximise shareholder value; improve board (supervisory) governance |
| | Federation of Greek Industries Principles (August 2001) (Greece) | Improve companies' performance, competitiveness and/or access to capital |
| Directors association | The Director's Charter (January 2000) (Belgium) | Improve quality of board (supervisory) governance |
| Investors association | Institutional Shareholders Committee Statement of Best Practice (April 1991) (U.K.) | Improve quality of board (supervisory) governance |
| | VEB Recommendations (1997) (Netherlands) | Improve accountability to shareholders and/or maximise shareholder value |
| | Hellebuyck Commission Recommendations (June 1998; Updated October 2001) (France) | Improve accountability to shareholders and/or maximise shareholder value |
| | IAIM Guidelines (March 1999) (Ireland) | Improve quality of board (supervisory) governance |
| | Swedish Shareholders Association Policy (November 1999) (Sweden) | Improve accountability to shareholders and/or maximise shareholder value |
| | Danish Shareholders Association Guidelines (February 2000) (Denmark) | Improve accountability to shareholders and/or maximise shareholder value |
| | NAPF Corporate Governance Code (June 2000) (U.K.) | Improve accountability to shareholders and/or maximise shareholder value |
| | AUTIF Code (January 2001) (U.K.) | Improve accountability to shareholders and/or maximise shareholder value |
| | SCGOP Handbook & Guidelines (August 2001) (Netherlands) | Improve accountability to shareholders and/or maximise shareholder value |

| | | |
|--|--|--|
| Investor advisor | PIRC Shareholder Voting Guidelines (April 1994; Updated March 2001) (U.K.) | Improve accountability to shareholders and/or maximise shareholder value |
| Investor in association with other investor groups | Hermes Statement (March 1997; Updated January 2001) (U.K.) | Improve accountability to shareholders and/or maximise shareholder value |

Table F, below, provides the breakdown of categories for the code objectives of the pan-European and international codes. The OECD Principles and the ICGN Statement are aimed at improving corporate performance, competitiveness and access to capital. The EASD Principles & Recommendations aim to do so as well, but also seek to improve the quality of governance-related information available to equity markets. The Euroshareholders Guidelines aim to improve accountability of companies to shareholders and/or maximise shareholder value.

| TABLE F | | |
|--|--|---|
| CODE OBJECTIVES: PAN-EUROPEAN & INTERNATIONAL | | |
| Issuing Body Type | Code | Objectives |
| Intergovernmental organisation | OECD Principles of Corporate Governance (May 1999) | Improve companies' performance, competitiveness and/or access to capital |
| Committee related to a pan-European association of securities professionals | EASD Principles and Recommendations (May 2000) | Improve companies' performance, competitiveness and/or access to capital; improve quality of governance-related information available to equity markets |
| Association of investors and others (including business/industry) interested in corporate governance | ICGN Statement (July 1999) | Improve companies' performance, competitiveness and/or access to capital |
| Investors association | Euroshareholders Guidelines (February 2000) | Improve accountability to shareholders and/or maximise shareholder value |

E. SCOPE

The vast majority of the codes describe practices for joint stock corporations that are listed and traded on stock exchanges, as indicated in Tables G and H, below. However, many of the codes indicate that the recommendations or principles expressed can also be of value to non-listed, closely held and state-owned corporations. Furthermore, the codes issued by investor-related entities, while they generally aim to improve the governance of listed companies, often seek to do so by influencing investors' investment decisions and share voting behaviour.

TABLE G

CODE SCOPE: TYPES OF COMPANIES CONSIDERED

| Issuing Body Type | Code | Scope of Companies Considered |
|--|--|---|
| Governmental/quasi-governmental equity | Recommendations of the Belgian Banking & Finance Commission (January 1998) (Belgium) | Listed companies |
| | Securities Market Commission Recommendations (November 1999) (Portugal) | Listed companies; encouraged to all companies |
| | Ministry of Trade & Industry Guidelines (November 2000) (Finland) | Listed companies and other privatised companies |
| Committee (commission) organised by government | Olivencia Report (February 1998) (Spain) | Listed companies and other privatised companies |
| | Mertzanis Report (October 1999) (Greece) | Listed companies |
| | Nørby Report & Recommendations (December 2001) (Denmark) | Listed companies; encouraged to all companies |
| | Cromme Commission Code (draft, December 2001) (Germany) | Listed companies; encouraged to all companies |
| Committee related to a stock exchange | Cardon Report (December 1998) (Belgium) | Listed companies; encouraged to all companies |
| | Preda Report (October 1999) (Italy) | Listed companies |
| Committee related to a stock exchange and a business, industry and/or academic association | Cadbury Report (December 1992) (U.K.) | Listed companies; encouraged to all companies |
| | Peters Report (June 1997) (Netherlands) | Listed companies |
| | Hampel Report (January 1998) (U.K.) | Listed companies |
| | Combined Code (July 1998) (U.K.) | Listed companies |
| | Turnbull Report (September 1999) (U.K.) | Listed companies |
| Business, industry and/or academic association or committee | Institute of Chartered Secretaries & Administrators Code (February 1991) (U.K.) | Listed companies; encouraged to all companies |
| | Viénot I Report (July 1995) (France) | Listed companies |
| | Greenbury Report (July 1995) (U.K.) | Listed companies; encouraged to all companies |
| | Chamber of Commerce/Confederation of Finnish Industry & Employers Code (February 1997) (Finland) | Listed companies |
| | Recommendations of the Federation of Belgian Companies (January 1998) (Belgium) | All companies |
| | Viénot II Report (July 1999) (France) | Listed companies |
| | Berlin Initiative Code (June 2000) (Germany) | Listed companies; encouraged to all companies |
| | German Panel Rules (July 2000) (Germany) | Listed companies |
| | Federation of Greek Industries Principles (August 2001) (Greece) | Listed companies; encouraged to all companies |
| Directors association | The Director's Charter (January 2000) (Belgium) | All companies |

| | | |
|--|---|------------------|
| Investors association | Institutional Shareholders Committee Statement of Best Practice (April 1991) (U.K.) | Listed companies |
| | VEB Recommendations (1997) (Netherlands) | Listed companies |
| | Hellebuyck Commission Recommendations (June 1998; Updated October 2001) (France) | Listed companies |
| | IAIM Guidelines (March 1999) (Ireland) | Listed companies |
| | Swedish Shareholders Association Policy (November 1999) (Sweden) | Listed companies |
| | Danish Shareholders Association Guidelines (February 2000) (Denmark) | Listed companies |
| | NAPF Corporate Governance Code (June 2000) (U.K.) | Listed companies |
| | AUTIF Code (January 2001) (U.K.) | Listed companies |
| | SCGOP Handbook & Guidelines (August 2001) (Netherlands) | Listed companies |
| Investor advisor | PIRC Shareholder Voting Guidelines (April 1994; Updated March 2001) (U.K.) | Listed companies |
| Investor in association with other investor groups | Hermes Statement (March 1997; Updated January 2001) (U.K.) | Listed companies |

| TABLE H | | |
|--|--|---|
| CODE SCOPE: PAN-EUROPEAN & INTERNATIONAL | | |
| Issuing Body Type | Code | Scope of Companies Considered |
| Intergovernmental organisation | OECD Principles of Corporate Governance (May 1999) | Listed companies; encouraged to all companies |
| Committee related to a pan-European association of securities professionals | EASD Principles and Recommendations (May 2000) | Listed companies |
| Association of investors and others (including business/industry) interested in corporate governance | ICGN Statement (July 1999) | Listed companies |
| Investors association | Euroshareholders Guidelines (February 2000) | Listed companies |

F. CONSOLIDATED/MERGED CODES

In only two nations -- Belgium and the United Kingdom -- have codes been merged or consolidated.

In Belgium, the code issued by the Belgian Banking & Finance Commission and the code issued by the Brussels Stock Exchange (Cardon Report) were consolidated in original form in December 1998 into a single document entitled “Corporate Governance for Belgian Listed Companies” (referred to below as the “Dual Code”). These codes are analysed separately in this Report.

In the United Kingdom, the Combined Code, which was issued in July 1998, has integrated certain of the recommendations of the Cadbury Report with those of the Greenbury and Hampel Commissions. The Combined Code is now linked to the London Stock Exchange

listing rules for disclosure purposes. Because the Combined Code makes certain choices in integrating the various recommendations, it and all three of the codes it is drawn from are analysed separately in the Report.

In addition, several codes have been updated from time to time, with the new edition replacing the old. Updated codes include the Hellebuyck Commission Recommendations (issued in June 1998 and updated in October 2001); the PIRC Shareholder Voting Guidelines (issued in April 1994 and periodically updated, most recently in March 2001); and the Hermes Statement (issued in March 1997 and updated January 2001).

(Note that in France, the first code issued by the committee chaired by Marc Viénot, now known as Viénot I, was neither superseded by nor consolidated into the code issued by the second Viénot committee, known as Viénot II.)

III. COMPARATIVE ANALYSIS

A. DEFINITIONS OF CORPORATE GOVERNANCE

The term “corporate governance” is susceptible of both broad and narrow definitions -- and many of the codes identified by this Study do not even attempt to articulate what is encompassed by the term. Table I: Definitions of Corporate Governance, below, includes examples of definitions used in codes emanating from both the EU Member States and pan-European and international sources.

The majority of the definitions articulated in the codes relate corporate governance to “control” -- of the company, of corporate management, or of company or managerial conduct. Perhaps the simplest and most common definition of this sort is that provided by the Cadbury Report (U.K.), which is frequently quoted or paraphrased: “Corporate governance is the system by which businesses are directed and controlled.”

Another related theme common to the definitions of corporate governance found in these codes concerns “supervision” of the company or of management. In addition, a number of definitions relate corporate governance to a legal framework, rules and procedures and private sector conduct. Finally, some of the codes -- this is common in the definitions in the international codes -- speak of governance encompassing relationships between shareholders, (supervisory) boards and managers.

| TABLE I |
|--|
| DEFINITIONS OF CORPORATE GOVERNANCE |
| EU Member States |
| <p><i>“Corporate governance is the system by which companies are directed and controlled.”</i> Cadbury Report, Report ¶ 2.5 (U.K.)</p> <p><i>“‘Corporate governance’ refers to the set of rules applicable to the direction and control of a company.”</i> Cardon Report, ¶2 (Belgium)</p> <p><i>“[Corporate governance is] the organisation of the administration and management of companies. . . .”</i> Recommendations of the Federation of Belgian Companies, Foreword</p> <p><i>“[Corporate governance is] [t]he goals, according to which a company is managed, and the major principles and frameworks which regulate the interaction between the company’s managerial bodies, the owners, as well as other parties who are directly influenced by the company’s dispositions and business (in this context jointly referred to as the company’s stakeholders). Stakeholders include employees, creditors, suppliers, customers and the local community.”</i> Nørby Report & Recommendations, Introduction (Denmark)</p> <p><i>“Corporate governance describes the legal and factual regulatory framework for managing and supervising a company.”</i> Berlin Initiative Code, Preamble</p> <p><i>“Corporate Governance, in the sense of the set of rules according to which firms are managed and controlled, is the result of norms, traditions and patterns of behaviour developed by each economic and legal system. . . .”</i> Preda Report, Report § 2 (Italy)</p> <p><i>“[T]he concept of Corporate Governance has been understood to mean a code of conduct for those associated with the company . . . consisting of a set of rules for sound management and proper supervision and for a division of duties and responsibilities and powers effecting the satisfactory balance of influence of all the stakeholders.”</i> Peters Report, §1.2 (Netherlands)</p> <p><i>“Corporate Governance is used to describe the system of rules and procedures employed in the conduct and control of listed companies.”</i> Securities Market Commission Recommendations, Introduction (Portugal)</p> |

Pan-European & International

"[C]orporate governance . . . involves a set of relationships between a company's management, its board, its shareholders and other stakeholders. Corporate governance also provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined."

OECD Principles, Preamble

* * *

"Corporate governance comprehends that structure of relationships and corresponding responsibilities among a core group consisting of shareholders, [supervisory] board members and managers designed to best foster the competitive performance required to achieve the corporation's primary objective."

Millstein Report to OECD, p. 13

B. CULTURE, OWNERSHIP CONCENTRATION & LAW

EU Member States exhibit a rich diversity in corporate governance practices, structures and participants, reflecting differences in culture, traditional financing options and corporate ownership concentration patterns, and legal origins and frameworks. This rich diversity complicates corporate governance comparisons between nations. Nonetheless, the codes that have been issued in Member States in the last decade express significant similarities: they reveal that as reliance on equity financing increases and shareholdings broaden in Europe, a common understanding is emerging of the role that corporate governance plays in the modern European corporation.

A growing academic literature focuses on the impact of culture on corporate governance systems. In sum, it notes that some EU Member States emphasise co-operative relationships and consensus and other Member States emphasise competition and market processes in their corporate governance frameworks. The typical examples cited of these differences in culture among EU Member States are Germany and the United Kingdom. The United Kingdom is often characterised as more market-oriented, with a higher value placed on competition, while Germany is often characterised as traditionally valuing co-operation and consensus. The German emphasis on co-operation and consensus has been pointed to as underpinning the role of employee co-determination and works councils within the German corporation, and the rights given employees of certain sized companies to information about the economic and financial situation of the company and major plans for organisational changes, such as mergers.

The degree to which Member States have relied on equity markets for corporate finance has also varied significantly throughout EU Member States, although in all Member States equity financing appears to be gaining in importance. For example, in the Netherlands, bank lending has been a far more important source of financing, traditionally, than the stock markets. With less traditional reliance on equity markets for financing, shareholding has been fairly concentrated.

| TABLE J | |
|--|---|
| FACTORS AFFECTING CORPORATE GOVERNANCE SYSTEMS | |
| U.K. | NETHERLANDS |
| <ul style="list-style-type: none"> • market culture • market-oriented • short-term strategy • relatively more reliance on equity • stock exchange relatively large • relatively less influence of controlling shareholder(s) | <ul style="list-style-type: none"> • consensus culture • network-oriented • long-term strategy • relatively more reliance on debt • stock exchange relatively small • relatively more influence of controlling shareholder(s) |
| <i>See Fraser, Henry, and Wallage (2000).</i> | |

The issues that corporate governance rules and codes seek to address, and the breadth and liquidity of equity markets, vary with ownership concentration:

- Where corporate ownership is widely dispersed, and ownership and control of management become separated, equity markets tend to be liquid, but the small, dispersed shareholders may lack capacity, incentives and power to monitor the corporate managers -- the “collective action” problem. In theory, the role of the supervisory body (whether the board of directors in a one-tier system or the supervisory board in a two-tier system) is to monitor management as a solution to this problem. However, boards must guard against domination by the managers who control critical information about corporate performance and often have significant influence on board composition itself. Therefore, where equity markets are highly liquid and shareholders are widely dispersed, corporate governance codes tend to focus on supervisory body structures and practices to ensure that the supervisory body is a distinct entity, capable of expressing an objective viewpoint and able to act separately from management, as well as to encourage shareholder participation in voting.
- Where certain rights of ownership are dispersed, yet control rights are not fully separated from ownership -- as when a large shareholder or consortium maintains a control stake, whether by holding a majority of stock outright or by retaining disproportionate voting rights or other preferences -- concerns shift to ensuring the fair treatment of minority shareholders.

As Table K shows, in Austria, Belgium, Germany and Italy more than half of listed industrial companies have a large holder of stock who accounts for 50% or more of the company’s ownership. Such large controlling shareholders are far less common in the United Kingdom.

| TABLE K | | | | | | |
|---|--|---|---|---|-------------|-------------|
| OWNERSHIP CONCENTRATION & MARKET CAPITALISATION OF DOMESTIC LISTED COMPANIES | | | | | | |
| Nation | Number of Domestic Listed Companies, 2000 | % of Companies: No Holder with Majority Control* | % of Companies: No Holder with at least 25%* | Market Cap as % of GDP (excludes investment funds) Main and Parallel Markets** | | |
| | | | | 1990 | 1995 | 2000 |
| Austria | 97 | 32.0 | 14.0 | 17 | 14 | 16 |
| Belgium | 161 | 34.3 | 6.4 | 33 | 37 | 80 |
| Denmark | 225 | n.a. | n.a. | 29 | 32 | 69 |
| Finland | 154 | n.a. | n.a. | 17 | 35 | 243 |
| France | 808 | n.a. | n.a. | 26 | 33 | 112 |
| Germany | 744 | 35.8 | 17.5 | 22 | 24 | 68 |
| Greece | 309 | n.a. | n.a. | 18 | 14 | 96 |
| Ireland | 76 | n.a. | n.a. | n.a. | 39 | 87 |
| Italy | 291 | 43.9 | 34.2 | 14 | 19 | 72 |
| Luxembourg | 54 | n.a. | n.a. | 101 | 176 | 179 |
| Netherlands | 234 | 60.6 | 19.6 | 42 | 72 | 175 |
| Portugal | 109 | n.a. | n.a. | 13 | 18 | 58 |
| Spain | 1019 | 67.4 | 32.9 | 23 | 27 | 90 |
| Sweden | 292 | 73.7 | 35.8 | 40 | 75 | 144 |
| United Kingdom | 1926 | 97.6 | 84.1 | 87 | 122 | 185 |
| * See Barca & Becht (2001). | | | | | | |
| ** FIBV & OECD data base; see Nestor, International Financial Law Review (2001). | | | | | | |
| n.a. indicates that the information is not available from the sources cited. | | | | | | |

Finally, it has been suggested in the academic literature that the origin of the legal system may have some correlation to the corporate governance protections available to shareholders, for reasons that are not yet clear. As Table L indicates, EU Member States can be categorised as having legal systems based on four distinct foundations.

| TABLE L | | | |
|-----------------------|----------------------|----------------------------|----------------------|
| LEGAL ORIGINS | | | |
| COMMON LAW | CIVIL LAW | | |
| English Origin | French Origin | Scandinavian Origin | German Origin |
| Ireland | Belgium | Denmark | Austria |
| United Kingdom | France | Finland | Germany |
| | Greece | Sweden | |
| | Italy | | |
| | Luxembourg | | |
| | Netherlands | | |
| | Portugal | | |
| | Spain | | |

See LaPorta, Lopez-de-Silanes, Shleifer & Vishny (1998); Reynolds & Flores (1989).

All these differences -- finance, law and culture -- may be catalogued in attempts to broadly describe national systems of governance. (See Table M: Typical Descriptions of Corporate Governance Models, below.) They have also been used to categorise different evolutionary stages of corporate governance. Such distinctions and categorisations may be useful up to a point. However, they tend to emphasise overly-broad distinctions that are blurring as governance systems continually adjust. In addition, by describing models in opposition to one another -- “shareholder” vs. “stakeholder,” “insider” vs. “outsider,” and perhaps worst of all, “Anglo-Saxon” vs. “Continental” -- they tend to polarise the discussion of corporate governance in a manner that is of questionable value.

| TABLE M | |
|--|---------------------|
| TYPICAL DESCRIPTIONS OF CORPORATE GOVERNANCE MODELS | |
| market-oriented | bank-oriented |
| outsider-dominated | insider-dominated |
| shareholder-focused | stakeholder-focused |
| Anglo-Saxon | Rhineland |

As noted by Hansmann and Kraakman (January 2000), “[d]espite the apparent divergence in institutions of governance, share ownership, capital markets, and business culture across developed economies, the basic law of the corporate form has . . . achieved a high degree of uniformity and continued convergence is likely.” Whether or not one agrees with the prediction of further convergence, a significant degree of uniformity as to the basic elements of company law and of corporate governance practice is apparent, as discussed in more detail below.

Nonetheless, EU Member States face somewhat distinct corporate governance challenges. In some Member States, the governance issues centre primarily on the ability of the supervisory body -- either the supervisory board in a two-tier system or the board of directors in a unitary system -- to hold managers accountable to a broad base of relatively dispersed shareholders. This is a very common theme in the code literature in the United Kingdom and Ireland, although it also appears throughout the code literature emerging from continental EU Member States. In other Member States, the central issues involve protecting minority shareholders to ensure fair treatment where there is a dominant shareholder and ensuring that a controlling shareholder, a group or reciprocal or cross-holdings arrangements do not overly influence supervisory and managerial bodies.

C. STAKEHOLDER & SHAREHOLDER INTERESTS

1. INTERESTS OF SOCIETY AND STAKEHOLDERS

a. GENERAL

In every EU Member State, governments allow enterprises to organise as limited liability joint stock corporations as an efficient means of serving the interests of society as a whole -- by co-ordinating capital, human and other resources to produce goods and services that members of society need or desire. The central elements that define the corporate form are embedded in the company law of all EU Member States:

- Providers of equity capital hold a property interest in the corporation (usually proportional to the amount of investment) and as a collective body they “own” the corporation; this property interest is (usually) associated with proportional rights of control and participation in both risk and profit;
- The liability of the equity capital providers is limited to the amount of capital invested;
- The property interests held by equity capital providers are transferable;
- In forming the corporation, the equity providers delegate large elements of control over the corporation to a distinct supervisory body; and
- The corporation has full legal personality, which includes the authority to own assets, bind itself to contracts, and be held legally responsible for its actions.

In every EU Member State, corporations are subject to the control of three entities -- a shareholder body, typically organised through a general meeting (the “GM” or “AGM”); a supervisory body (a supervisory board in a two-tier board system or a board of directors in a unitary board system); and, a management body (a management board in a two-tier board system or a less formally structured management team in a unitary board system).

However, legal systems in EU Member States make different choices about how best to ensure that the interests of certain resource providers are protected. They express different conclusions on issues such as:

- Whether labour concerns and protection of creditors can be sufficiently protected by contract and other specific laws tailored to address such concerns, or whether such concerns are better addressed through board structures and other company law requirements;

- The degree to which shareholders, as providers of risk capital, should participate in company decisions; and
- The degree to which company managers and supervisory bodies should consider shareholder interests in comparison to other constituencies' interests in guiding their decisions (and, if so, in what time frame shareholder interests should be deemed relevant).

Different answers to these questions lead to different approaches to issues such as minimum capital requirements and who should have a voice in selecting members of the supervisory body. Although a significant degree of company law standardisation has been achieved throughout the European Union, some commentators suggest that the remaining legal differences are the ones most deeply grounded in national attitudes, and hence, the most difficult to change.

The greatest difference among EU Member States relates to the role of employees in corporate governance, a difference that is usually embedded in law. In Austria, Denmark, Germany, Luxembourg and Sweden, employees of companies of a certain size have the right to elect some members of the supervisory body. In Finland and France, company articles *may* provide employees with such a right. In addition, when employee shareholding reaches three percent (3%) in France, employees are given the right to nominate one or more directors, subject to certain exceptions. In all other EU Member States (with the exception of certain Netherlands companies with self-selecting boards), it is the shareholders who elect all the members of the supervisory body. This results in a fundamental difference among EU Member States in the strength of shareholder influence in the corporation.

Under the law of some Member States, works councils may also have an advisory voice on certain issues addressed by the supervisory body, as in the Netherlands and France. Giving employees an advisory voice in certain issues is one means of engaging employees in governance issues without diluting shareholder influence. Encouraging employee stock ownership is another means of giving employees participatory rights in corporate governance, but without diluting shareholder influence, and is favoured by some codes. Ownership through employee pension funds and other employee stock ownership vehicles could give trade unions, works councils and employees greater involvement in corporate governance as shareholders.

Note that legislation has been proposed in the Netherlands that would give employees a role in nominating (but not electing) supervisory board members in large companies currently subject to the Structure Act of 1971. This new legislation would give shareholders of structure regime companies the right to elect the supervisory body, a body that is currently self-selecting.

The role of employees in selecting members of the supervisory body is discussed further below in Section D.2.a.

b. GOVERNANCE & THE CORPORATE PURPOSE

Although it should not be confused with the broad topic of corporate social responsibility, increasingly corporate governance is perceived to provide a means of ensuring that corporate economic power is grounded in accountability. Different EU Member States tend to articulate the purpose of the corporation -- and the focus of corporate governance -- in

different ways. Some Member States emphasise broad societal and constituency interests; others emphasise the property rights of shareholders.

The comparative corporate governance literature and popular discussion tend to emphasise “fundamental” differences in stakeholder and shareholder interests. However, the extent to which these interests differ, at least outside of the short term, can be debated. The codes widely recognise that corporate success, shareholder profit, employee security and well being and the interests of other stakeholders are intertwined and co-dependent. This co-dependency is emphasised even in codes issued by the investor community.

| TABLE N |
|--|
| ALIGNED INTERESTS |
| <p><i>“Corporate success is linked to the ability to align the interests of directors, managers and employees with the interests of shareholders [C]orporate actions must be compatible with societal objectives.... Attending to legitimate social concerns should, in the long run, benefit all parties, including investors.”</i> Millstein Report to OECD, p. 18</p> <p><i>“Boards that strive for active co-operation between corporations and stakeholders will be most likely to create wealth, employment and sustainable economies. They should disclose their policies on issues involving stakeholders, for example, workplace and environmental matters.”</i> ICGN Statement 9</p> |

OECD Principle III states: “The corporate governance framework should recognise the rights of stakeholders as established by law and encourage active co-operation between corporations and stakeholders in creating wealth, jobs, and the sustainability of financially sound enterprises.” The Principles further explain that: “Where stakeholder interests are protected by law, stakeholders should have the opportunity to obtain effective redress for violation of their rights.” (Principle III.B) And OECD Principle V.C states that: “The board should . . . take into account the interests of stakeholders.” The annotation further explains that “boards are expected to take due regard of, and deal fairly with . . . stakeholder interests including those of employees, creditors, customers, suppliers and local communities.” (Annotation to Principle V; *accord*, Mertzanis Report (Greece), Principle 3 & §§ 3.1-3.4)

It is notable the extent to which codes from shareholder groups, including the International Corporate Governance Network (“ICGN”), as well as other codes, agree:

“The ICGN is of the view that the board should be accountable to shareholders and responsible for managing successful and productive relationships with the corporation’s stakeholders. The ICGN concurs with the OECD Principle that ‘active co-operation between corporations and stakeholders’ is essential in creating wealth, employment and financially sound enterprises over time. The ICGN affirms that performance-enhancing mechanisms promote employee participation and align shareholder and stakeholder interests. These include broad-based employee share ownership plans or other profit-sharing programs.”

(Amplification of OECD Principle III)

The EASD Principles and Recommendations (Principle V) state that: “Pursuing the long-term interests of the company, boards are agents who perform orientation and monitoring functions for which they are accountable to all shareholders.” They further recommend,

however, that “[b]oards are responsible for ensuring that the company’s stakeholders’ rights are respected and their concerns addressed, and that policies in this respect are developed.” (Recommendation V.1)

The Preda Report (Italy) identifies shareholder maximisation as the primary objective. It tempers this, however, by recognising that, “in the longer term, the pursuit of this goal can give rise to a virtuous circle in terms of efficiency and company integrity, with beneficial effects for other stakeholders -- such as customers, creditors, consumers, suppliers, employees, local communities, and the environment -- whose interests are already protected in the Italian legal system.” (Report § 4) The Peters Report (Netherlands) calls on companies to “seek a good balance” between the interests of shareholders, who provide risk capital, and other stakeholders. “In the long-term, this should not mean a conflict of interest.” (§ 1.1) The Berlin Initiative Code merely calls on the management board and the supervisory board “to be aware of social responsibility to a reasonable extent.” (§§ III.1.4 & IV.1.4) (Of course, this Code may downplay social issues because such concerns, at least as they relate to employees, are already well expressed in law.)

The Viénot I Report (France) (p. 5) takes a different approach. It states that the board is to promote the “interests of the company.” This is understood to be “the overriding claim of the company considered as a separate economic agent, pursuing its own objectives which are distinct from those of shareholders, employees, creditors including the internal revenue authorities, suppliers and customers. It nonetheless represents the common interest of all these persons, which is for the company to remain in business and prosper.”

Note that in the United Kingdom, under common law the board is required to promote the interests of the company as a whole, which are viewed as synonymous with the interests of the “corporators”-- *i.e.*, the entire body of shareholders. Proposed revisions to the Company Act would include a statutory statement of director duties to emphasise that the primary duty of a director is to “act in the way he decides, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole.” According to the proposed revision, this would require taking into account a number of factors, including the impact of actions on employees, the environment and corporate reputation. However, it is not yet clear whether this would pose a new responsibility on the board, or whether it simply recognises that a broad variety of interests impact the interests of the company and its shareholders.

A number of codes address stakeholder issues by advocating greater transparency generally as concerning specific issues. The PIRC Guidelines (U.K.) advocate that the board of directors report on (and be held accountable for) the quality of the company’s relations with stakeholders, because they underpin long-term success. (Part IV, p. 12) The Dual Code (Belgium) notes that “[t]ransparency is the basis on which trust between the company and its stakeholders is built” (§ I.A.7) The Swedish Shareholders Association Policy echoes a similar theme. (Guideline 2.2) The Ministry of Trade & Industry Guidelines (Finland) (2.1.2) expressly provides:

“In the annual report or the relating environmental audit, an account of the measures implemented should be given in order to take account of *environmental values* in the business of the company.”

Several codes encourage stock ownership for employees or other incentive compensation (Swedish Shareholders Association Policy, § 3.7; Peters Report (the Netherlands), § 4.6; PIRC Guidelines (U.K.), Part III, p. 11; OECD Principle III.C)

The number of -- and interest in -- social responsibility rankings and indices is growing, bringing direct capital market pressure to bear on corporations for responsible stakeholder relations. Increasingly, investor-related groups are emphasising to companies held in their portfolios that investors view social responsibility as intertwined with corporate success. For example, the Association of British Insurers, whose members hold approximately 25% of outstanding equity in U.K. companies, has announced that it expects boards to assess risks and opportunities in social, environmental and ethical matters. The Association has reminded that failure to do so may damage corporate reputation and financial well being. In a related vein, in April 2001, U. K. fund manager Morley announced it would vote against FTSE 100 managements that fail to disclose “comprehensive” reports on environmental records and policies. Similarly, the AFG-ASFFI, the professional association of French fund managers, is asking corporate boards to consider “the concept of sustainable development, social responsibility and the environment.”

Interest in both mandatory and voluntary social issue reporting is growing throughout the EU. In July 2000, a new U.K. regulation was issued requiring investment fund companies to disclose whether they have policies on social investment. The U.K. company law review effort also recommended that boards disclose the impact of major decisions on communities, employees and suppliers. French corporate law was recently amended to require listed companies to disclose in their annual reports how they take into account the social and environmental consequences of their activities, including how they adhere to principles set forth by the International Labour Organisation.

2. INTERESTS OF SHAREHOLDERS

a. PROTECTION OF THE RIGHTS OF SHAREHOLDERS.

In all EU Member States, equity shares in a limited liability corporation are considered a form of property that can be conveyed through purchase, sale or transfer. However, in some EU Member States, restrictions can be applied to the conveyance of shares in the articles of association or articles of incorporation.

In large measure, the legal role of the shareholders -- as organised through the general meeting -- is similar in most EU Member States with only a few exceptions, as indicated in Table O, below. The major difference concerns selection of the supervisory body. Through participation in the general meeting, shareholders typically elect the supervisory body. However, in Austria, Denmark, Germany, Luxembourg and Sweden, employees of companies of a certain size also elect some members of the supervisory body. In Finland and France, company articles *may* provide employees with such a right. This is a fundamental corporate governance difference among EU Member States that impacts the influence of shareholders in the corporation by reducing their ability to elect (and influence) the supervisory body. (Works councils may also have an advisory voice on certain issues addressed by the supervisory body, as in the Netherlands and France.) Note that legislation has been proposed in the Netherlands that would give employees a role in nominating (but not electing) supervisory board members in structure regime companies; this legislation would give shareholders of structure regime companies the right to elect the supervisory body, a body that is currently self-selecting.

(1) Items Reserved for Shareholder Action

In almost every EU Member State, shareholders have authority to amend the articles or other organic documents (this often requires a supermajority vote), approve new share issues, approve the selection of the external auditors, approve the annual accounts, approve the distribution of dividends, approve extraordinary transactions such as mergers, acquisitions and take-overs, and as noted above, elect the supervisory body (subject to employee rights in certain EU Member States).

Generally, EU Member States recognise the right of shareholders, regardless of the size of their holdings, to participate and vote in the general meeting. Some exceptions apply, however. For example, in some Member States -- including Portugal, Spain and the United Kingdom -- the articles can alter this right.

The laws and regulations relating to notice of and participation in shareholder general meetings, and procedures for proxy voting and shareholder resolutions vary significantly among EU Member States and this very likely poses some impediments to cross-border investment. (These issues are discussed in greater detail in Section II.D.2.b.(3), below.)

| TABLE O | | | | | | | |
|--|--------------|----------|------------------|-----------------|----------|---------|-----------|
| TYPICAL ITEMS RESERVED FOR SHAREHOLDER ACTION OR APPROVAL* | | | | | | | |
| Nation | Share Issues | Articles | Supervisory Body | Annual Accounts | Auditors | Mergers | Dividends |
| Austria | X | X | XX | — | X | X | X |
| Belgium | ** | X | X | X | X | X | X |
| Denmark | X | X | XX | X | X | X | X |
| Finland | X | X | X | X | X | X | X |
| France | X | X | X | X | X | X | X |
| Germany | X | X | XX | X | X | X | X |
| Greece | X | X | X | X | X | X | X |
| Ireland | ** | X | X | ***** | X | X | ***** |
| Italy | X | X | X | X | X | X | X |
| Luxembourg | ** | X | XX | X | X | X | X |
| Netherlands | X | X | *** | **** | — | ** | — |
| Portugal | ** | X | X | X | X | X | X |
| Spain | X | X | X | X | X | X | X |
| Sweden | X | X | XX | X | X | X | X |
| United Kingdom | ** | X | X | ***** | X | X | ***** |
| * Under regulatory framework or as otherwise usually provided in articles of association or incorporation. | | | | | | | |
| ** If not otherwise authorised in the articles of association. | | | | | | | |
| Bold XX under “Supervisory Body” indicates that employees also have right to elect some directors. | | | | | | | |
| *** Not under structure regime; legislation under consideration to require. | | | | | | | |
| **** Legislation under consideration to require. | | | | | | | |
| ***** Vote not required, but usual practice. | | | | | | | |
| See OECD Comparative Company Law Overview (draft, forthcoming 2002). | | | | | | | |

Although usually mandated by law and company articles, many codes itemise the issues reserved for shareholder decision at the general meeting.

(2) Disclosure

Disclosure is an issue that is highly regulated under the securities laws of EU Member States. Disclosure requirements continue to differ among EU Member States, and the variation in information available to investors likely poses some impediment to a single European equity market. However, across EU Member States, disclosure is becoming more similar, in no small part because of efforts to promote better regulation of securities markets and broad use of International Accounting Standards. Consolidation and co-ordination among listing bodies may encourage further convergence.

In all EU Member States, shareholders of listed companies have access to information about corporate performance and leadership through both mandatory and voluntary disclosures and reports. Financial data must be disclosed on an annual basis in all instances, and often on a semi-annual or quarterly basis. In addition, in many EU Member States, listed companies are required to disclose information that investors would consider material, as such information is available.

The codes tend to favour greater voluntary transparency as to executive and director compensation. They also encourage greater transparency as to share ownership and corporate governance practices, as a means of ensuring accountability to shareholders.

Disclosure and transparency are discussed in greater detail in Section D.3.a, below.

b. RULES/RECOMMENDATIONS REGARDING EQUAL/FAIR TREATMENT OF SHAREHOLDERS

The codes vary widely in the extent to which they discuss issues relating to the equal treatment of shareholders, in part because in many EU Member States these issues are already addressed in law. OECD Principle II sets forth the general proposition that “[t]he corporate governance framework should ensure the equitable treatment of all shareholders, including minority and foreign shareholders.” It also provides that shareholders should have some ability to enforce their rights.

(1) One share/one vote

The laws applicable to shareholder voting rights in EU Member States vary in the degree to which they recognise the principle of share voting proportionality. Although the concept of share voting proportionality is recognised generally in all Member States -- and the principle of one share/one vote may apply as to the majority of common shares -- the laws in many Member States provide for or allow exceptions. For example, many Member States allow shares associated with multiple voting rights and shares associated with no voting rights. Most commonly, company law may allow for various classes of stock to be issued with different voting rights. This is least controversial from an investor perspective so long as full disclosure of the differential voting rights of all classes is available to potential purchasers. Of more concern from a shareholder perspective are practices that give greater voting rights to longer-term holders of stock or practices that cap voting rights at a certain level. Such practices have been criticised as effectively enabling minority shareholders to exert control

over the company. Although some Member States (notably Germany) have recently revised their laws to limit disproportionate voting rights, wide variation continues.

According to a 2001 survey of companies in the Euro Stoxx 50 by Die Wertpapier Spezialisten (“DWS”), only seventeen of the forty-three European companies sampled comply fully with the one-share/one-vote principle:

- Multiple voting rights are used by thirty-five percent (35%) of the sample;
- Priority or golden shares are used by twenty-six percent (26%);
- A ceiling (or limitation) on voting rights is used by twenty-three percent (23%);
- Non-voting shares are utilised by sixteen percent (16%); and
- An ownership ceiling is used by ten percent (10%) of the sample.

(p.30.)

(The Euro Stoxx 50 survey included companies from the following European countries, all of which are Member States: Belgium, Finland, France, Germany, Italy, the Netherlands, Spain.)

The codes tend to support a one share/one vote principle, although many favour some flexibility. For example, according to OECD Principle II.A, “[a]ll shareholders of the same class should be treated equally.” However, the annotation explains that preference shares and participation certificates that lack voting rights may be efficient ways of distributing risk and reward; it explains that Principle II is not meant to present an absolute view in favour of one share/one vote in all circumstances. (Annotation to OECD Principle II.A) The Peters Report (Netherlands) takes a view in line with the flexible approach of OECD Principle II. It states that, while the general principle should be one of “proportionality . . . between capital contribution and influence,” priority shares and certificates that result in disproportionate rights may be justified in certain circumstances, including those involving a threatened change in control. (§ 5.1)

The ICGN Statement adopts OECD Principle II, but goes further in warning that those capital markets that retain inequality in voting rights may be disadvantaged in competing for capital. (ICGN Amplification of OECD Principle II) The EASD Principles & Recommendations also disfavour deviations from one share/one vote, but note that if deviations cannot be avoided, they should at least not apply in the same share class (in accord with OECD Principle II); they should be easy to understand; and they should be disclosed and explained. (Recommendation III.2)

Most codes issued by bodies affiliated with investors take a harder line. (The exception of the ICGN Statement is noted above.) The Danish Shareholders Association Guidelines favour abandoning shares with disproportionate voting rights. (§ I) The Hermes Statement (U.K.) disfavors issuance of shares with reduced or no voting rights. (§ 4.1) The PIRC Guidelines agree: “Dual share structures with different voting rights are disadvantageous to many shareholders and should be reformed.” (Part V, p. 15) The Hellebuyck Commission Recommendations (France) (§ I.C.3) view double voting rights as “a way to reward the loyalty of certain shareholders.” However, “[b]eing in favour of the principle ‘one share, one vote,’ the Commission takes the view that this practice, which can allow control of a company to be held by minority shareholders, can be abused and used in a manner contrary to

the spirit of reasonable corporate governance.” The Euroshareholders Guidelines (Guideline II) are most adamant:

“The principle of ‘one share, one vote’ is the basis of the right to vote. Shareholders should have the right to vote at general meetings in proportion to the issued shareholder capital. In line with this principle, certification (The Netherlands) should be terminated because it deprives the investor of his voting right and transfers influence to a trust office which lies within the company’s own sphere of influence. Nor should companies issue shares with disproportional voting rights, intended to influence the balance of power within the annual general meeting (AGM).”

(2) Protection from controlling shareholders

Other issues relating to the equal rights and fair treatment of shareholders include the mechanisms for protecting minority shareholders in situations where the majority or controlling shareholders’ interests may not be the same as the interests of the company and/or the other shareholders.

The Dual Code (Belgium) encourages that all transactions between the company and its dominant shareholders be on “an arm’s length,” “normal commercial” basis. (§ I.A.1.9) The Viénot I Report urges that, where there are controlling shareholders, the board should be “particularly attentive,” taking all interests into due account. (p. 13)

The Olivencia Report (Spain) advocates a specific procedure for protecting minority shareholders from the interests of controlling shareholders. Significant shareholders who serve on supervisory bodies should abstain from voting in decisions in which they have a direct or indirect interest, including in a hostile take-over situation. (§ II.8.6)

(3) General meeting participation and proxy voting

The ability of shareholders to participate in general meetings may be limited by the practical difficulties and costs associated with a host of laws and requirements relating to basic issues of notice, proof of shareholding and meeting and proxy mechanics. For example, it is not uncommon for voting at the general meeting to be limited by share blocking or registration requirements. Share blocking and registration requirements generally act to suspend the trading rights typically associated with shares for some period of time prior to the general meeting. Share blocking and registration requirements seek to ensure that voting is legitimately limited to the current owner of the share (or legitimate proxy).

The specific legal requirements and mechanisms for participating and voting (including by proxy) at the general meeting -- such as notice requirements, record dates, share blocking or registration requirements and procedures, proxy voting requirements, the use of corporate funds to collect proxy votes, the rules for voting shares held in custody, and the rules for placing an item on the agenda -- vary considerably among the EU Member States. These differences pose impediments to cross-border investment and this in an area in which greater harmonisation of requirements among Member States may be called for.

Detailed analysis of such technical differences is beyond the subject matter of this Study. (These issues are under current study by the European Commission’s High Level Group of Company Law Experts.) However, a comparative analysis of many of these types of issues

will soon be available for all EU Member States in a study by the OECD Steering Group on Corporate Governance, *Company Law in OECD Countries -- A Comparative Overview* (forthcoming 2002).

| TABLE P | | | |
|-----------------------------------|------------------------------|--|---|
| GENERAL MEETING MECHANICS* | | | |
| NATION | MINIMUM NOTICE OF AGM | SHARE BLOCKING/ REGISTRATION REQUIRED | SHAREHOLDER PROPOSALS |
| Austria | 14 days | Possible/Possible | 5% of capital |
| Belgium | 16 days | Yes/Yes | 20% of capital |
| Denmark | 8 days | No/Yes | Any shareholder |
| Finland | 17 days | No/Yes | Any shareholder |
| France | 30 days | Yes/Yes | .5 to 5% of capital (per company size) |
| Germany | 28 days | No/Yes | 5% of shares; 1 share for counterproposal |
| Greece | 20 days | Yes/Yes | 5% of shares |
| Ireland | 21 days | No/No | 10% of capital (to call meeting) |
| Italy | 15 days | Yes/Yes | 10% of capital (to call meeting) |
| Luxembourg | 16 days | No/Possible | 20% of capital (to call meeting) |
| Netherlands | 15 days | No/No | New legislation: 1% of capital or Euro50 million market value |
| Portugal | 30 days | Yes/No | 5% of capital |
| Spain | 15 days | No/ | 5% of capital (to call meeting) |
| Sweden | 28 days | No/Yes | Any shareholder |
| United Kingdom | 21 days | No/No | 5% of votes or 100 shares when 100 GBP is paid up |

* OECD Comparative Company Law Overview (draft, forthcoming 2002).

The ability to participate in general meetings and proxy voting is touched on by some of the codes, although as stated above the law usually provides significant requirements relating to shareholder participation. The OECD Principles advocate that processes and procedures for general shareholder meetings treat all shareholders fairly -- and not make it unduly difficult or expensive to vote. (Annotation to OECD Principle II.A.3) Voting by proxy is favoured, as is consideration of new technologies that might facilitate participation. (Annotation to OECD Principle I.C.3) The ICGN Statement suggests exploring options such as telecommunication and other electronic channels to facilitate shareholder participation. (ICGN Amplification of OECD Principle I) Other codes also address these or similar issues. (See Securities Markets Commission Recommendations (Portugal), § 6; Peters Report (the Netherlands), § 5.4.4).

A number of codes call for transparency as to voting results or emphasise that all votes should be counted or counted equally. (e.g., OECD Principles of Corporate Governance, Principle I.C; ICGN Statement, Amplification of OECD Principle I; Euroshareholders Guidelines, Guideline II; EASD Principles & Recommendations, Recommendation I.2;

NAPF Corporate Governance Code (U.K.), § 10; Combined Code (U.K.), Code § C.2.1; Olivencia Report (Spain), § III.18)

D. THE SUPERVISORY & MANAGERIAL BODIES

1. BOARD SYSTEMS

A major corporate governance difference among EU Member States that is embedded in law relates to board structure -- the use of a unitary versus a two-tier board. In the majority of EU Member States (11), the unitary board structure is predominant, although in five of these States, the two-tier structure is also available. In Austria, Germany, the Netherlands, and, it can be argued, Denmark, the two-tier structure is predominant -- with a supervisory board and a distinct executive board of management required for certain types of corporations or corporations of a certain size. Note that in several EU Member States, including Finland and Sweden, a board of directors and a separate general manager or managing director may be required. In addition, several Member States have a unitary board of directors and a separate board of auditors. For purposes of this Study, such variations are categorised as falling under a unitary system (although other commentators may categorise such variations as two-tier).

Notwithstanding formal structural differences between two-tier and unitary board systems, the similarities in actual board practices are significant. Generally, both the unitary board of directors and the supervisory board (in the two-tier structure) are elected by shareholders although, as explained, in some countries employees may elect some supervisory body members as well. Under both types of systems, there is usually a supervisory function and a managerial function, although this distinction may be more formalised in the two-tier structure. And both the unitary board and the supervisory board have similar functions. The unitary board and the supervisory board usually appoint the members of the managerial body -- either the management board in the two-tier system, or a group of managers to whom the unitary board delegates authority in the unitary system. In addition, both bodies usually have responsibility for ensuring that financial reporting and control systems are functioning appropriately and for ensuring that the corporation is in compliance with law.

Each system has been perceived to have unique benefits. The one-tier system may result in a closer relation and better information flow between the supervisory and managerial bodies; the two-tier system encompasses a clearer, formal separation between the supervisory body and those being “supervised.” However, with the influence of the corporate governance best practice movement, the distinct perceived benefits traditionally attributed to each system appear to be lessening as practices converge. The codes express remarkable consensus on issues relating to board structure, function, roles and responsibilities. Many suggest practices designed to enhance the distinction between the roles of the supervisory and managerial bodies, including supervisory body independence, separation of the chairman and CEO roles, and reliance on board committees.

| TABLE Q | | | |
|--|------------------------|--|---|
| PREDOMINANT BOARD & LEADERSHIP STRUCTURE UNDER REGULATORY FRAMEWORK | | | |
| Member State | Board Structure | Employee Role in Supervisory Body | Separate Supervisory & Managerial Leadership |
| Austria | <i>Two-tier</i> | Yes | Yes |
| Belgium | Unitary* | No | Not Required |
| Denmark | <i>Two-tier</i> | Yes | Yes |
| Finland | Unitary* | Articles may provide | Yes |
| France | Unitary* | Articles may provide (& Advisory) | Not Required |
| Germany | <i>Two-tier</i> | Yes | Yes |
| Greece | Unitary* | No | Not Required |
| Ireland | Unitary | No | Not Required |
| Italy | Unitary** | No | Not Required |
| Luxembourg | Unitary | Yes | Not Required |
| Netherlands | <i>Two-tier</i> | Advisory | Yes |
| Portugal | Unitary* ** | No | Not Required |
| Spain | Unitary | No | Not Required |
| Sweden | Unitary | Yes | Yes |
| United Kingdom | Unitary | No | Not Required |
| * Other structure also available. ** Board of auditors also required. | | | |

In the majority of EU Member States, the law does not provide employees a role in the supervisory body (although in Finland and France, company articles may provide that right). However, in five EU Member States, employees elect a portion of the supervisory body.

2. THE SEPARATE ROLES & RESPONSIBILITIES OF SUPERVISORY & MANAGERIAL BODIES

The role of the supervisory body is similar across EU Member States. In unitary systems it is generally charged with the direction, control and management of the corporation, and the board of directors generally delegates day-to-day managerial authority to one or more managers. There are variations -- for example, in several countries -- including Denmark, Finland and Sweden -- the law provides that for companies of a certain size or type a general manager or managing director must be appointed. In such instances, managerial power is not wholly delegated at the option of the unitary supervisory body, but is provided at least to some extent directly by law.

In two-tier systems, the law provides a greater distinction between the role of the supervisory body and the role of the managerial body. In either system, however, the supervisory body is charged generally with appointing and dismissing and remunerating senior managers; ensuring the integrity of financial reporting and control system; and ensuring the general legal compliance of the corporation.

Most of the codes reiterate directly or contemplate the legal proposition that the supervisory body assumes responsibility for monitoring the performance of the corporation, while the management body has authority for the day-to-day operations of the business. For example, according to the draft Cromme Commission Report, “[T]he task of the Supervisory Board is to advise regularly and supervise the management board in the management of the enterprise. It must be involved in decisions of fundamental importance to the enterprise. The supervisory board appoints and dismisses the members of the management board. Together with the management board, it ensures that there is long-term successor planning.” (§§ 1.1 & 1.2)

The codes tend to emphasise that supervisory responsibilities are distinct from management responsibilities. This distinction between the roles of the supervisory and managerial bodies tends to be emphasised with more clarity in codes that relate to two-tier board structures, which more formally separate both the composition and the functions of the two bodies, as discussed below.

The codes differ in the level of specificity with which they describe the distinct roles of the supervisory and managerial bodies, and some of the specific ways in which the duties are allocated. For example, the Dual Code (Belgium) provides that: “The board of directors is responsible for all strategic decisions, for ensuring that the necessary resources are available to achieve the objectives, for appointing and supervising the executive management and, lastly, for reporting to the shareholders on the performance of its duties.” (§ I.A.2) Other governance guidelines and codes of best practice are far less specific. Different degrees of specificity among codes on this point likely reflect variations in the degree to which company law or listing standards already specify supervisory and managerial body responsibilities, rather than any significant substantive differences.

Note however that there are subtle distinctions in how codes view the apportionment of responsibilities between the supervisory and management bodies. Some codes place greater emphasis on the distinct role of management than others. This may be due in part to the more formal distinction in two-tier board structures between the supervisory body and the managerial body. In contrast, in unitary board systems, the board of directors is charged with leading and controlling the business; it delegates day-to-day operations to members of management.

In discussing the apportionment of responsibilities in the German two-tier structure, the Berlin Initiative Code explains: “The supervisory board plays an important role with its selection and supervision of the management board. It does not, however, have any managerial function.” (Thesis 6) It serves as “supervisory authority which controls and advises the management board in the sense of ‘checks and balances.’ In this, it is not on an equal footing next to, or even above, the management board.” Rather it serves as a “counterweight.” (Commentary on Thesis 6) According to the Berlin Initiative Code, it is the management board that “forms the company’s clear focus of decision-making” (§ I.6); “the management board leads the public corporation” (§ III.1.1); and “[d]ecisions of fundamental importance for the company (basic decisions) are the responsibility of the management board as a whole.” (§ III.3.4.)

In French one-tier boards, “the board of directors . . . determines the company’s strategy, appoints the corporate officers charged with implementing that strategy, supervises management, and ensures that proper information is made available to shareholders and

markets concerning the company's financial position and performance, as well as any major transactions to which it is a party.” (Viénot I Report, p. 2)

3. THE ACCOUNTABILITY OF SUPERVISORY & MANAGERIAL BODIES.

In most EU Member States, members of the supervisory and managerial bodies must exercise care and prudence, and avoid conflicts of interests in taking actions and decisions in the interests of the company, and/or its shareholders as a collective body.

Accountability of the supervisory and managerial bodies for the activities of the corporation is a central theme of corporate governance codes. How that accountability is expressed and to whom it is directed varies somewhat, depending on how the primary objective of the corporation is viewed (as discussed above). The codes generally specify that the supervisory body should either promote the interests of the company or the interests of the shareholders or both.

In much of continental Europe, the emphasis is on promoting the company's interests. The Viénot I Report (France) explains: “The interest of the company may be understood as the overriding claim of the company considered as a separate economic agent, pursuing its own objectives which are distinct from those of shareholders, employees, creditors including the internal revenue authorities, suppliers and customers. It nonetheless represents the common interest of all these persons, which is for the company to remain in business and prosper. The Committee thus believes that directors should at all times be concerned solely to promote the interests of the company.” (Viénot I Report, p. 5) The Viénot I Report also states that the supervisory body “collectively represent[s] all shareholders and it must at all times put the company's interests first.” (Viénot I Report, p. 2)

The Mertzanis Report (Greece) emphasises accountability “to the corporation and its shareholders” (Principle 5), as do the OECD Principles (Principle V). The Greenbury Report (U.K.) states that “[i]t is a well-established principle . . . that [the supervisory body is] responsible and accountable to shareholders for all aspects of a company's affairs.” (Report ¶ 4.3) The German Panel Rules take a broader view centred on reinforcing the confidence of “current and future shareholders, lenders, employees, business partners and the general public. . . .” (§ I)

Note that even those codes that emphasise accountability to shareholders do not ignore stakeholder concerns. For example, the OECD Principles state that the interests of stakeholders should be taken into account. (Principle V.C) The OECD Principles explain that this means “tak[ing] due regard of, and deal[ing] fairly with, other stakeholder interests including those of employees, creditors, suppliers and local communities. Observance of environmental and social standards is relevant in this context.” (Annotation to OECD Principle V) The ICGN -- which is made up primarily of investors but also includes other types of members -- makes the same point. (ICGN Statement, Preamble & Amplified OECD Principle III)

a. TRANSPARENCY & DISCLOSURE

As discussed above, disclosure is an issue that is highly regulated under the securities laws of many nations. However, disclosure as to supervisory body composition seems to be slowly converging. As indicated by Table R, the amount of disclosure in annual reports and stock

exchange filings related to supervisory body members, varies among Member States, but appears to be increasing.

| TABLE R | | | | | |
|---|--|------------------------------|---------------|---------------------------------|-----------------------|
| DISCLOSURE RE: BOARD INFORMATION* | | | | | |
| Nation | Director's Primary Executive Position | Other Board Positions | Tenure | Director's Shareholdings | Director's Age |
| Austria | @42% | @32% | 0% | 0% | 0% |
| Belgium | @80% | @14% | @94% | 0% | @30% |
| Denmark | 100% | @91% | @8% | @15% | @23% |
| Finland | 100% | @79% | @50% | @85% | 100% |
| France | @87% | @83% | @83% | @52% | @63% |
| Germany | @96% | @82% | @12% | 0% | @10% |
| Greece | n.a. | n.a. | n.a. | n.a. | n.a. |
| Ireland | n.a. | n.a. | n.a. | n.a. | n.a. |
| Italy | 100% | @94% | @73% | @71% | @5% |
| Luxembourg | n.a. | n.a. | n.a. | n.a. | n.a. |
| Netherlands | @95% | @92% | @82% | @8% | 100% |
| Portugal | @38% | @45% | @14% | @45% | @22% |
| Spain | @80% | @51% | @20% | @11% | @2% |
| Sweden | 100% | 100% | @94% | @91% | 100% |
| United Kingdom | 100% | 100% | 100% | 100% | @97% |
| European Average 2001 | @88% | @78% | @67% | @44% | @49% |
| European Average 1999 | @71% | @50% | @45% | @50% | @35% |
| * Heidrick & Struggles European Survey (2001); Rough percentages of companies providing information in annual reports & stock exchange filings. | | | | | |
| n.a. indicates that the information is not available from the sources cited. | | | | | |

In addition, there is a “hardening of norms” concerning disclosure of individual executive and director remuneration across the EU Member States, following the U.K. example. In the past three years, listing rules or legislation have passed or been proposed to require greater transparency in Ireland, France, the Netherlands and Belgium:

- Effective in 2001, the Dublin Stock Exchange became the second stock market in Europe (after the London Stock Exchange) to require disclosure of individual executive remuneration;
- In France in 2000, MEDEF, the French employer association, issued a strong recommendation to companies to voluntarily publish such information. Under new regulation, listed companies are now required to disclose specific information on remuneration of two to four of a company’s top executives;
- Recently the Dutch Ministries of Justice, Economic Affairs and Social Welfare & Employment submitted a joint bill to Parliament that would require listed companies

to disclose in annual reports individual salary and option grant information for all supervisory and management board members; and

- In Belgium, similar legislation was announced that would require listed companies to disclose the remuneration of individual board members and senior executives. However, recently the effort has stalled because of resistance from senior executives and it is unclear whether it will pass and come into effect in the foreseeable future.

Note that there is room in EU Member States for voluntary corporate disclosure beyond what is mandated by law, and many of the codes advocate disclosure of corporate activities and performance as a means of ensuring accountability to shareholders and other stakeholders. According to the Cardon Report (Belgium), “[t]ransparency is the basis on which trust between the company and its stakeholders is built. . . .” (Dual Code of the Brussels Stock Exchange/CBF, § I.A.7; *accord*, Cadbury Report, Report ¶ 3.2)

Codes frequently discuss disclosure of financial performance in an annual report to shareholders. Generally law requires this, but some codes address it as well. Similarly, even though supervisory and managerial bodies are often subject to legal requirements concerning the accuracy of disclosed information, a number of codes emphasise the responsibility to disclose accurate information about the financial performance of the company, as well as information about agenda items, prior to the annual general meeting of shareholders. For example, the EASD Principles & Recommendations call for disclosure -- at a minimum -- of information on: company objectives, company accounts, identity of significant shareholders (if known), identity of supervisory and key managerial body members, material foreseeable risk factors, related party transactions, arrangements giving certain shareholders disproportionate control, governance structures and policies, and internal controls; they also advocate that disclosed information should be readily and simultaneously available to all shareholders and at a minimal cost. (Recommendations VIII.1-3) The OECD Principles add to this list: the financial and operating results of the company; voting rights; remuneration of supervisory board and key managerial board members; and, material issues regarding employees and other stakeholders. (OECD Principle IV.A)

The Mertzanis Report (Greece) adds to a similar (but not identical) list: the disclosure of corporate targets and prospects; and execution of unusual and complex transactions. (§ 4.1) The Danish Shareholders Association Guidelines also advocates disclosure of transactions by directors and managers in company stock. (§ V) Again, disclosure of many, if not most, of these matters may be required by law or listing requirements, to some degree. The Olivencia Report (Spain) summarises the overall approach of many of the codes, whether stated or implied: “The board of directors, beyond current regulatory requirements should be in charge of furnishing markets with quick, accurate and reliable information, particularly in connection with the shareholder structure, substantial changes in governance rule, and especially relevant transactions” (§ III.19)

One area of considerable difference in governance practice among EU Member States involves disclosure of remuneration for key individuals in the company. The disclosure of compensation of individual supervisory and managerial body members has been mandated in the United Kingdom by listing requirements, and most shareholder groups are in favour of such disclosure. However, until fairly recently, resistance to such disclosure has been considerable among many EU Member States. Nevertheless, in the past three years, new listing rules or legislation have passed to require greater remuneration transparency in Ireland and France, and legislative reforms have been proposed in the Netherlands and Belgium.

Many codes recommend that the policies upon which supervisory and managerial body members are compensated be disclosed. (Euroshareholders Guidelines, Guideline V; EASD Principles & Recommendations, Principle VI; Recommendations of the Federation of Belgian Companies, § 1.7; Dual Code of the Brussels Stock Exchange/CBF, §§ I.B.2.1, I.B.3.1 & II.B.2); Danish Shareholders Association Guidelines, § II.; Ministry of Trade & Industry Guidelines (Finland), § 2.2.2)

Another area of disclosure that some codes address concern issues relating to treatment of stakeholders and social issues. For example, the Millstein Report, which was a precursor to the OECD Principles, recommended that corporations “disclose the extent to which they pursue projects and policies that diverge from the primary objective of generating long-term economic profit so as to enhance shareholder value in the long term.” (Millstein Report, Perspective 21) The EASD Principles & Recommendations advocate disclosure and explanation of instances in which concerns other than overall shareholder return or shareholder interests guide corporate decision-making. (Preamble) The ICGN Statement includes a similar recommendation. (ICGN Amplification of OECD Principle I)

Finally, several codes contemplate disclosure of information relevant to the interests of stakeholders (*e.g.*, Mertzanis Report (Greece), § 3.3), or environmental and social issues. (See Ministry of Trade & Industry Guidelines (Finland), § 2.1.2; AUTIF Code (U.K.), Principle 9; Hermes Statement (U.K.), Appendix 4 (Guidelines for Reporting on Social, Environmental and Ethical Matters); PIRC Guidelines (U.K.), Part 7 (Environmental Reporting))

b. CONFLICTS OF INTEREST

The laws of most EU Member States recognise, at least by implication, that conflicts of interest are inherent in the conduct of companies. However, where they cannot be avoided, they can be minimised. Many companies organise formal procedures for such instances.

Codes address the management of conflicts of interest in a variety of ways. Some discuss the need to try to avoid, or avoid and disclose, conflicts. Others simply advocate disclosure. Many codes look to director independence as a means of reducing conflicts.

The Dual Code of the Brussels Stock Exchange/CBF advocates disclosure in the annual reports as to the relevant interests of directors. (§ I.B.2.2) It also calls for arms’ length transactions between the company and a major shareholder. (§ I.A.1.9) The OECD Principles also emphasise that supervisory and managerial board members should disclose “any material interests in transactions or matters affecting the corporation.” (OECD Principle II.C) The EASD Principles and Recommendations urge that conflicts be avoided, where possible; when conflicts are inevitable they should be managed and disclosed. (Principle IX) Moreover, self-dealing contrary to corporate interests should be prohibited, and insider trading should be prohibited. (Recommendations IX.1 & IX.2)

The draft Cromme Commission Code (Germany) includes an entire section addressing conflicts of interest for management board members. In addition to reminding that management board members are subject to comprehensive non-competition obligations, and may not pursue personal interests or advantages in business decisions or appropriate business opportunities, it provides for immediate disclosure of conflicts to the chairman of the supervisory board as well as to other members of the management board. (§§ IV.3.1-3.4)

The many codes that advocate greater “independence” in the composition of boards as a means of reducing the likelihood of conflicts are discussed in Section II.E.4 below.

4. THE SIZE, COMPOSITION, INDEPENDENCE, SELECTION CRITERIA & PROCEDURES OF SUPERVISORY & MANAGERIAL BODIES.

Most codes address topics related to supervisory body size and composition (including qualifications and membership criteria), as well as the nomination process, and supervisory body independence and leadership. Few codes address these issues in any detail as they relate to the management body; those codes that do tend to involve two-tier board structures.

a. SIZE

Minimum supervisory body size is usually set by law or listing rules. As set forth in Table S below, the typical legal minimum is around three members, but average size is closer to twelve or thirteen members. (According to a 2001 European Survey by Heidrick & Struggles, the average supervisory body size of 350 top listed European companies is 12.5 members, down from 13.5 members in 1999.)

| TABLE S | | |
|--|-----------------------|------------------|
| SUPERVISORY BODY SIZE | | |
| Nation | Legal Minimum* | Average** |
| Austria | 3 | N/A |
| Belgium | 3 | @ 15 |
| Denmark | 3 | N/A |
| Finland | 5 | N/A |
| France | 3 | @ 14 |
| Germany | 3 | @ 18 |
| Greece | See articles | N/A |
| Ireland | 2 | N/A |
| Italy | See articles | @ 13 |
| Luxembourg | 3 | N/A |
| Netherlands | n.a. | @ 8 |
| Portugal | n.a. | @ 10 |
| Spain | 3 | @ 15 |
| Sweden | 3 | @ 10 |
| United Kingdom | 2 | @ 8 |
| European Average : 2001 - 12.5; 1999 - 13.5. | | |
| * OECD Comparative Company Law Overview (draft, forthcoming 2002). | | |
| n.a. indicates that the information is not available from the sources cited. | | |
| ** Heidrick & Struggles European Survey (2001). | | |

Fewer than half of the codes discuss the issue of board size. Those that do usually discuss the need for the board not to be overly large:

- “The Commission takes the view that, in most cases, the board of directors should not consist of more than twelve members. The board of directors should decide on the number of directors necessary to govern the company in the best possible manner, taking into account all relevant data. Therefore, the board must consist of enough members to allow a fruitful discussion; too high a number of directors will not enhance the exchange of ideas.” (Dual Code (Belgium), § I.B.1.8)
- “For reasons of flexibility in the decision-making process, it is recommended that the maximum number of board members be no higher than thirteen.” (Mertzanis Report (Greece), § 5.11)
- “[E]ach board should balance the number of members with due efficiency, taking into consideration that an excessive number of members may hamper the desired cohesion and contribution of each member in discussion and decision-taking.” (Securities Market Commission Recommendations (Portugal), § 14)

b. QUALIFICATIONS AND CRITERIA

A common theme apparent in codes emanating from EU Member States is that the quality, experience, and independence of the supervisory body’s membership affects its ability to perform its duties. Membership criteria are described by various codes with different degrees of specificity, but tend to highlight issues such as experience, personal characteristics (including independence), core competencies and availability.

| TABLE T |
|---|
| BOARD COMPOSITION |
| <p>“The board should be composed of capable members representing all-round competence.” Swedish Shareholders Association Policy, § 2.1.</p> <p>“[N]on-executive directors should be selected with the same impartiality and care as senior executives.” Cadbury Report (U.K.), ¶ 4.15.</p> <p>“Boards should only appoint as directors executives whom they judge to be able to contribute [by showing leadership, speaking for the area for which he/she is directly responsible, and exercising independent judgement]. Board appointment should not be regarded simply as a reward for good performance in an executive role.” Hampel Report (U.K.) Guideline 3.6.</p> <p>“[A]s to the suitability of the persons appointed [to the supervisory board], the decisive factor is ability.” Berlin Initiative Code (Germany), § IV.4.1.</p> |

In addition, the codes tend to emphasise that a key role of the supervisory body is determining the composition of the board. For example, the Preda Report (Italy) states: “[E]ach company should determine the . . . experience and personal traits of its non-executive directors in relation to its size, the complexity and specific nature of its sector of activity, and the total membership of the board.” (Code § 2.2) The Peters Report (the Netherlands) emphasises that: “The supervisory board of each company should draw up a desired profile of itself in consultation with the [management board]. The supervisory board should evaluate this profile periodically and draw conclusions regarding its own composition, size, duties and procedures. New developments, for example technological and financial innovations, are also of importance The profile should reflect, *inter alia*, the nature of activities, the degree of internalisation [and] the size ... of the company.” (§ 2.2)

As to management board composition, the Berlin Initiative Code encourages supervisory boards to consider “balanced multiplicity of qualifications and the ability of individual . . . members to work together as a team. . . .” (§ II.1.1)

Given the self-selection of supervisory board members in structure regime companies, the Peters Report (Netherlands) emphasises the need to obtain the confidence of the shareholders’ meeting when appointing both management and supervisory board members. (§ 5.3)

c. DIRECTOR NOMINATION

The process by which supervisory body members are nominated has gained attention in many codes, which tend to emphasise the need for a formal and transparent process for appointing new directors. (See Combined Code (U.K.), Principle A.5.; Swedish Shareholders Association Policy, § 1.2.1; Olivencia Report (Spain), § III.11)

The use of nominating committees is favoured in the United Kingdom as a means of reducing the CEO’s influence in selecting the body that is charged with monitoring his or her performance. (See Hampel Report, Principle A.V) This same concern is expressed in the Viénot I Report (France) as part of the rationale for relying on a nominating or “selection” committee. (Viénot I Report, pp. 14-15). Other codes from EU Member States that discuss the use of nominating committees include the Combined Code (U.K.) (Code § 1, A.5.D); Hermes Statement (U.K.) (Appendix 3); Hampel Report (U.K.) (Guideline 3.19); Swedish Shareholders Association Policy (§ 1.2.1); Olivencia Report (Spain) (§ III.11); Peters Report (the Netherlands) (§ 2.10); German Panel Rules (§ III.3); Hellebuyck Commission Recommendations (France) (§ II.B.2); and the Dual Code (Belgium) (§ I.A.2).

The international and pan-European codes also favour reliance on nominating committees. OECD Principle V.E.1 and the relevant annotation (p. 42) suggest that non-executive directors serve on the nominating committee. The ICGN goes further, and calls for such committees to be composed wholly or at least predominantly of independent non-executives. (ICGN Amplified OECD Principle V) At the same time, however, it is generally agreed that the board as a whole bears ultimate responsibility for nominating directors. (See, e.g., Viénot I Report (France), pp. 14-15; Dual Code (Belgium) § I.B.2.4; Olivencia Report (Spain), § II.5.1)

Generally the nominating committee studies the company’s needs, suggests a profile for board candidates and recommends candidates to the supervisory body to be put forth to the shareholders for election. Of course, there are exceptions, including those instances where employees elect a certain number of directors -- as in Austria and Germany -- as well as the system of co-optation in the Netherlands for structure regime companies in which the supervisory board is self-selecting so that shareholders do not elect supervisory board members. (As noted in Annex IV, Section K, legislation is under consideration in the Netherlands that would give shareholders of structure regime companies the right to elect supervisory board members.) Italy is another exception: According to the Preda Report, in Italy, proposals for supervisory body members are put forward by shareholders -- usually the majority or controlling shareholders. (Code, § 7.2)

d. MIX OF INSIDE & OUTSIDE (INCLUDING “INDEPENDENT”) DIRECTORS

Notwithstanding the diversity in board structures among EU Member States, all codes place significant emphasis on the need for a supervisory body that is sufficiently distinct from management to exercise its decisional capacity objectively, to ensure accountability and provide strategic guidance. The ability to exercise objective judgement of management’s performance is important to the supervisory body’s ability to monitor management. A general consensus is developing throughout EU Member States that this is in part an issue of board composition, and that listed company supervisory bodies should include a significant proportion of outsiders (usually persons who are not executives or employees or controlling shareholders). (Note that many codes use the terms “non-executive director” and “executive director.”) Although outside directors may be more likely to be objective than members of management or controlling shareholders, many code documents also recognise that even an outside director may lack the necessary objectivity if he or she has significant financial or personal ties to management or the controlling shareholder(s). Therefore, a number of codes recommend that at least some of the outside directors should lack such relationships.

In two-tier board systems, the supervisory and managerial bodies are already distinct in terms of composition. (Denmark is an exception: there can be overlap in the membership of the two board tiers.) This should facilitate not only objectivity but also help expose management to a multiplicity of viewpoints. Usually under law current management board members are not allowed to sit on the supervisory body although members of the management board may meet with the supervisory board. It is not unusual, however, for retired members of the management body to serve on the supervisory board. Some codes recommend this practice be limited. For example, the Peters Report (Netherlands) states that “[n]o more than one former member of the company’s [management board] should serve on the supervisory board.” (§ 2.5) The German Panel Rules advocate that “[t]he proposal for election to the supervisory board shall not include, as a matter of course, the election of retiring management board members.” (§ III.1.b)

Supervisory boards may also include executives from other entities having close business and cross-shareholding relationships with the company, and “reciprocal” directorships are not unusual. These kinds of relationships may hinder objectivity, yet they have not garnered the kind of scrutiny in two-tier systems that they have in unitary board systems. Nevertheless, the German Panel Rules urge supervisory boards to include “a sufficient number of independent persons who have no current or former business association with the [company’s] group.” (§ III.1.b) The Peters Report also calls for the supervisory body “to be composed in such a way that its members operate independently and critically in relation to each other and the [management board].” (§ 2.3) It calls on supervisory board members “to perform their duties without a mandate from those who nominated them and independently of the subsidiary interests associated with the company.” (§ 2.6)

The codes that address unitary board systems tend to devote considerable attention to the appropriate mix of inside and outside (or executive and non-executive) members, to ensure that the supervisory body is distinct enough from the management team to play a supervisory role and to bring a diversity of opinions to bear on issues facing the company. This is perhaps best expressed in the Cadbury Report (U.K.) (Report ¶ 4.1):

“Every public company should be headed by an effective board which can both lead and control the business. . . . [T]his means a board made up of a combination of executive directors, with their intimate knowledge of the

business, and of outside, non-executive directors, who can bring a broader view to the company's activities, under a chairman who accepts the duties and responsibilities which the post entails.”

The codes from EU Member States with unitary systems almost always devote significant attention to this issue. For example:

- The Ministry of Trade & Industry Guidelines (Finland) discuss the important role of “external” members of the board in ensuring independent decision-making, and suggest that the larger the company, the more important the role. (§ 2.2.1)
- The Swedish Shareholders Association Policy advocates that the unitary board consist of “six to nine members that do not have assignments for, or business connections with the company.” It further recommends that, other than the managing director, company employees should not serve on the board. (§ 2.1)
- The Dual Code (Belgium) (§§ I.B.1.4 & I.B.2.2) calls for the supervisory body to include a majority of outsiders (non-executives), and for “a number” of these to be “independent.”
- The Danish Shareholders Association Guidelines (§ II) also favour having some outsiders on the board of directors.

The Olivencia Report (Spain) urges boards to “incorporate a reasonable number of independent directors who have a good reputation in their profession and are detached from the management team and from significant shareholders.” (§ III.2) It views independent directors as particularly important in representing the interests of minority shareholders, in relation to the controlling interests in a company. The Report notes that it is common for significant shareholders to serve (or be represented) on the supervisory body, and terms such board members “proprietary directors.” It considers such directors to be outsiders, but not independent. According to the Report, “[o]utside directors should widely outnumber executive directors . . . and the proportion between proprietary and independent directors should be established bearing in mind the [proportion of shareholding concentration to “free-floating” or more widely dispersed shares].” (Recommendation 3)

The Preda Report (Italy) (Code §§ 2.1 & 2.2) also views independent directors as a counterbalance to majority interests. It notes that in Italy non-executives usually outnumber executive directors. In commentary, it advocates including non-executive directors and truly “independent” directors as the best way to guarantee consideration of the interests of both majority and minority shareholders. (Code § 3 & Report, § 5.1). It emphasises that “[t]he number and standing of the non-executive directors shall be such that their views can carry significant weight.” (Code § 2.1) The Recommendations of the Federation of Belgian Companies (§§ 1.3 & 2.2) express a similar view.

In the United Kingdom and Ireland, code recommendations generally agree that boards of publicly traded corporations should include some outside (or non-executive) directors, and that some of these outsiders should be independent directors. The Combined Code (Code § 1, A.3.1) -- like the Hampel Report (Guidelines 2.5 & 3.14) before it -- calls for non-executive directors to comprise not less than one-third of the board, and for a majority of these directors to qualify as “independent.” (The Combined Code is adopted in Ireland's IAIM Guidelines and, as discussed in Annex IV, Sections H and O below, both the Irish and London Stock Exchange listing rules require that corporations disclose the degree to which

they comply with the Combined Code.) The PIRC Guidelines (U.K.) (Part II, p.6) advocate that non-executives comprise at least 50% of the board and that a clear majority of these non-executive qualify as independent.

Like the EU Member States' codes, the international and pan-European codes also emphasise the need for the supervisory body to be distinct to some degree from the managerial body to enable it to exercise objective judgement on corporate affairs.

The OECD Principles (V.E.1) advise that having “a sufficient number of non-executive board members capable of exercising independent judgement” is important for supervisory body tasks where there is potential for conflicts with management, such as financial reporting, nomination and remuneration. The EASD Principles & Recommendations (Recommendation VI.1.b) generally agree, as does the ICGN Statement (Amplification of OECD Principle V), which further provides: “[I]ndependent non-executives should comprise no fewer than three members and as much as a substantial majority.”

In France, the law imposes limits on the number of insiders that can serve on the unitary board of directors. Only one-third can hold a contract of employment (*i.e.*, executives). The Viénot II Report (p. 15) recommends that truly independent directors account for at least one-third.

e. DEFINITION OF INDEPENDENCE

As discussed above, the codes emanating from EU Member States express a common understanding of the need for the supervisory body to be able to exercise objective judgement on corporate affairs, including on the performance of management. Likewise they commonly recognise that this requires the supervisory body to be distinct in composition from management to some degree. Generally the codes agree that a significant proportion of non-executives, including some persons who lack close ties with management, controlling shareholders, and the company, is necessary to position both the supervisory board and the unitary board to perform their supervisory duties. As discussed above, there is no firm consensus on what the proportions of executive, non-executive and, within the latter category, independents should be, or on the definition of an “independent” director. Although the concept of director independence is similar in many codes, definitions of “independence” vary.

The following types of persons have relationships often judged by the codes to impede director independence:

- A present or former executive of the company or an executive or board member of an associated company (subsidiaries, etc.);
- A close family member of an executive;
- A controlling or dominant shareholder;
- An executive or board member of an entity that is a controlling or dominant shareholder;
- An individual with business, financial or close family relationships with a controlling or dominant shareholder;
- A significant supplier of goods or services to the firm (including advisory or consulting services);

- A person having any other type of relationship that might interfere with the exercise of objective judgement.

This approach to defining director independence is found in Belgium (*e.g.*, the Dual Code § I.B.2.2.), France (*e.g.*, Hellebuyck Commission Recommendations, § II.B.1), and Greece (Mertzanis Report, §§ 6.2 & 6.3). The Preda Report (Italy) is similar except it does not discuss family relationships. (Code, § 3) As discussed below, variations on this approach are followed in other EU Member States, usually with less specificity or with less concern expressed about relationships with major shareholders.

The PIRC Shareholder Voting Guidelines (U.K.) provide perhaps the most stringent definition of director independence. According to PIRC, in order to be viewed as independent, directors should not:

- Have held an executive position within the company group;
- Have had an association with the company of more than nine years;
- Be related . . . to other directors or advisors to the company;
- Have been appointed other than through an appropriately constituted nomination committee or equivalent . . . ;
- Be employed with a professional adviser to the company;
- Have a service contract, hold share options or other conditional share awards, receive remuneration other than [ordinary director’s] fees, receive consultancy payments or be eligible for pensions benefits or participate in bonus schemes;
- Receive fees . . . indicative of significant involvement in the company’s affairs . . . ;
- Receive remuneration from a third party in relation to the directorship;
- Benefit from related party transactions;
- Have cross directorships . . . ;
- Hold . . . a senior position with a political or charitable body to which the company makes contributions . . . ;
- Hold a notifiable holding . . . or serve as a director or employee of another company which has a notifiable holding in the company [or] in which the company has a notifiable holding;
- Be . . . on the board of a significant customer or supplier to the company;
- Act as the appointee or representative of a stakeholder group other than the shareholders as a whole; or
- Serve as a director or employee of a significant competitor of the company.

(Part II, p.5)

Examples of less specific definitions include the Viénot II Report (France), which simply states that “[a] director is independent of the corporation’s management when he or she has no relationship of any kind whatsoever with the corporation or its group that is such as to jeopardise exercise of his or her free judgement.” (p. 15) The German Panel Rules equate independence with directors “who have no current or former business association with the

Group” (§ III.1.b) And in the United Kingdom, the Cadbury Report simply describes independent directors as persons who are “free from any business or other relationship which could materially interfere with the exercise of their independent judgement, apart from their fees and shareholding.” (Code, ¶ 2.2) Note that this definition has been altered in the Combined Code; the last clause pertaining to fees and shareholdings has been dropped. (Code § 1, A.3.2) Ireland’s IAIM Guidelines reference the Combined Code and therefore also support this definition.

Treatment of significant shareholding for purposes of defining independence also varies. In the United Kingdom, where shareholding is relatively widely dispersed, shareholding is not generally viewed as impeding director independence (as indicated in the above quote from the Cadbury Report); some would argue that shareholding aligns directors’ interests with those of the entire shareholding body. Nonetheless, two codes issued by the investor community in the United Kingdom -- the PIRC Guidelines and the Hermes Statement -- would *not* treat as independent a representative of a significant shareholder. (Hermes Statement, ¶ 2.3; PIRC Guidelines, p. 5)

In Portugal, independence is solely defined as being distinct from dominant shareholders. “The inclusion on the board of one or more members who are independent in relation to the dominant shareholders is encouraged, so as to maximise the pursuit of corporate interests.” (Securities Market Commission Recommendations, § 15) In Spain, as noted above, the Olivencia Report defines independence as distinct from both the management team and dominant shareholders. (Olivencia Report, § II.2.1)

Finally, a number of codes, including the Cadbury Report, view the ultimate determination of appropriate board composition and just what constitutes “independence” to be an issue for the supervisory body itself to determine.

| TABLE U |
|--|
| DISCRETION RE: INDEPENDENCE |
| <p><i>Policy makers and regulators should encourage some degree of independence in the composition of corporate boards. Stock exchange listing requirements that address a minimal threshold for board independence . . . have proved useful, while not unduly restrictive or burdensome. However, . . . corporate governance -- including board structure and practice -- is not a “one-size-fits-all” proposition, and should be left, largely, to individual participants.”</i> Millstein Report (Perspective 15)</p> <p>“<i>[I]t is up to each board to determine the most appropriate balance in its membership.</i>” Viénot I Report (France) (pp. 11-12)</p> <p>“<i>[E]ach company should determine the number, experience and personal traits of its non-executive directors in relation to its size, the complexity and specific nature of its sector of activity, and the total membership of the board.</i>” Preda Report (Italy) (Code, § 2.2)</p> <p>“<i>The precise number of executive directors and non-executive directors for any company is for its board to determine with the approval of its shareholders.</i>” Hermes Statement (U.K.) (¶ 2.1)</p> <p>“<i>It is for the board to decide whether an independent director satisfies the definition of independence.</i>” Dual Code (Belgium) (§ I.B.2.2)</p> <p>“<i>It is for the board to decide in particular cases whether [the definition of independence] is met.</i>” Cadbury Report (U.K.) (Report ¶ 4.12)</p> |

Some of the codes recognise that independence is not simply a matter of absence of certain relationships, but also a matter of approach in fulfilling one’s responsibilities. For example,

the Director's Charter (Belgium) calls on directors to "act independently in all circumstances." (p. 2) The Charter (p. 3) explains:

"The Director undertakes to maintain, in all circumstances, his or her independence of analysis, of decision, and of action; and to reject any pressure, direct or indirect, which could be exercised upon him or her The Director undertakes not to seek or accept . . . any unreasonable advantages that could be considered as compromising his or her independence. In the event that the Director finds that a decision of the Board may harm the company, the Director undertakes to clearly express his or her opposition and to employ all methods to convince the Board of the pertinence of the Director's position."

The Peters Report (Netherlands) takes a similar view, stating that: "Neither hierarchic subordination within an interest group, cross bonds nor any other relations with persons under their supervision should prevent members of the Supervisory Board from performing their duties independently." (§ 2.11)

f. SUPERVISORY BODY LEADERSHIP

The role of the chair of the supervisory body is similar in unitary and two-tier board systems: Generally it is to lead and organise the work of the supervisory body. (As expressed succinctly by the draft Cromme Commission Report, "[t]he chairman of the supervisory board co-ordinates work within the supervisory board and chairs its meetings." (§ V.2))

In two-tier board systems, the distinct supervisory and management boards each have their own separate leadership. (However, it is not uncommon for a retired senior executive to become the chairman of the supervisory board, which may raise issues of independence.)

In unitary board systems, it is not unusual for the chairman of the board of directors to also serve simultaneously as an executive of the company, often the senior-most executive. Many commentators have viewed this leadership structure as impeding the supervisory ability of the unitary board: if the leader of the supervisory body is also the leader of the managerial body under supervision, he or she faces a significant conflict of interest. Therefore some codes advocate separation of the leadership roles to increase the distinction between the roles, and the independence of the unitary board, and to eliminate a source of conflicts.

Thus, the Dual Code (Belgium) emphasises the need for "a clear division of responsibilities at the head of a company to ensure a sound balance of power and authority." (§ I.B.1.3) In Sweden, the chairman of the unitary board is a non-executive director by law. The Swedish Shareholders Association Policy emphasises this separation. (§ 2.1) And the Mertzanis Report (Greece) supports separating the roles. (§ 5.5)

In the United Kingdom, it had been traditional to combine the Chairman and CEO positions in a single individual. However, in 1992, the Cadbury Report called for separating the roles to balance power and authority, and to ensure that no one individual had unfettered authority: "Given the importance and particular nature of the chairman's role, it should in principle be separate from that of the chief executive." (Cadbury Report, Report ¶ 4.9) Several years later, the Hampel Report reiterated (in Guideline 3.17) the importance in principle of separating the roles, but seemed to give more room for flexibility:

“We agree with Cadbury’s recommendation and reasoning, and we also note that in the largest companies these may be two full-time jobs. But a number of companies have combined the two roles successfully, either permanently or for a time. Our view is that, other things being equal, the roles of chairman and chief executive officer are better kept separate, in reality as well as in name. Where the roles are combined, the onus should be on the board to explain and justify the fact.”

The Combined Code, now linked to listing rules of the London Stock Exchange, advocates separation: “There are two key tasks at the top of every public company -- the running of the board and the executive responsibility for the running of the company’s business. There should be a clear division of responsibilities at the head of the company which will ensure a balance of power and authority, such that no one individual has unfettered powers of decision.” (Principle A.2) “A decision to combine the posts of chairman and chief executive officer in one person should be publicly justified.” (Code § 1, A.2.1)

The PIRC Guidelines go a step further and call for not only separation but for the chairman to be drawn from the non-executive directors. This would give the non-executive directors a formal leader to look to for authority on the board. (pp. 4 & 6)

In France, for decades the law applying to unitary boards has required that the leadership positions be combined. The Viénot II Report (France) suggested that the law be changed to allow greater flexibility in the unitary board system to allow corporations to choose between combining or separating the offices of chairman and chief executive officer. (p. 6) This suggestion has since been embodied in legislation promulgated in May 2001.

In contrast, the Preda Report (Italy) and the Olivencia Report (Spain) both state that the common practice in each country is for the roles to be combined, that measures are called for to balance the power of the chairman/CEO, but that separating the roles is not among them. (Preda Report, 5.2; Olivencia Report, 3.2)

Note that, in the U.K., the earlier Cadbury Report suggested that independent directors should be relied on more heavily if the roles of Chairman and CEO are combined: Specifically, it recommended that where the Chairman is also the CEO “it is essential that there should be a strong and independent element on the board.” (Code ¶ 1.2) However, the Combined Code does not make this distinction. It states (Code § 1, A.2.1):

“Whether the [chairman and CEO] posts are held by different people or by the same person, there should be a strong and independent non-executive element on the board, with a recognised senior member other than the chairman to whom concerns can be conveyed. The chairman, chief executive officer and senior independent director should be identified in the annual report.”

5. THE WORKING METHODS OF SUPERVISORY & MANAGERIAL BODIES.

a. BOARD MEETINGS & AGENDA

The frequency with which the supervisory body meets varies considerably among companies incorporated in the Member States. According to available data, on average, Italian boards appear to meet most frequently and German supervisory boards meet least frequently, as indicated in Table V.

| TABLE V | |
|--|------|
| AVERAGE NUMBER OF SUPERVISORY BODY MEETINGS* | |
| Nation | |
| Austria | n.a. |
| Belgium | 7.15 |
| Denmark | n.a. |
| Finland | n.a. |
| France | 6.8 |
| Germany | 4.97 |
| Greece | n.a. |
| Ireland | n.a. |
| Italy | 11.8 |
| Luxembourg | n.a. |
| Netherlands | 7.25 |
| Portugal | n.a. |
| Spain | 10.1 |
| Sweden | 8.2 |
| United Kingdom | 8.65 |
| Average 2001 | 8 |
| Average 1999 | 6.8 |
| * Heidrick & Struggles European Survey (2001). | |
| n.a. indicates that the information is not available from the sources cited. | |

A number of the codes address the need for supervisory bodies to meet regularly to discharge their responsibilities. However, a fairly wide variation in meeting frequency is apparent, with German supervisory bodies meeting about five times per year, and Italian supervisory bodies meeting almost twelve times per year. The European average is about eight meetings per year. (According to the Heidrick & Struggles 2001 European Survey, this represents an eighteen percent (18%) increase in the number of meetings since 1999.)

The EASD Principles & Recommendations (pan-European) state that the board must meet at least once every six months and preferably at least once every three months. (Recommendation V.5.a.i.) The Viénot I Report (France) notes that listed company boards meet three or four times per year (p. 16), and the subsequent Viénot II Report observes that the number of board meetings “seems to have increased substantially in recent years, though without reaching the level of . . . U.K. and U.S. listed corporations.” (p. 16) The Berlin Initiative Code notes that supervisory boards normally meet six times a year in Germany, but extraordinary events may require a greater number of meetings. (§ IV.5.1) The Mertzanis Report (Greece) calls for board meetings at least once a month, depending on the company’s size and business sector. (§ 5.1)

Generally, the role of the supervisory body chairman involves co-ordinating the board’s activities, setting agendas and calling and moderating meetings. As to setting the supervisory

body's agenda, a number of the codes indicate that the chairman has primary responsibility, but all directors should have an opportunity to propose agenda items. For example, the EASD Principles & Recommendations (pan-European) indicate that agenda setting is typically the role of the chairman, but every director should have the right to propose items, and the board itself should determine for itself appropriate subjects for the agenda: "The board should define the subjects that it must consider, as well as the decisions that require its approval, and set levels of materiality for them, subject to legal and statutory constraints." (Recommendation V.5.b) The Berlin Initiative Code similarly provides that the chairman of the supervisory board sets the agenda for individual meetings, based on "a schedule of supervision that stipulates the sequence and main focus of the topics . . . to be discussed in the individual meetings. . . ." (§ IV.5.4)

b. INFORMATION

In every EU Member State the supervisory body relies on the managerial body for the information it requires to perform its duties. Obtaining the requisite information is a key theme of the codes: Supervisory body members need to receive sufficient information in a timely fashion to be prepared for board discussions. (*e.g.*, Director's Charter (Belgium), p. 4)

According to the Olivencia Report (Spain), it is the role of the chairman to ensure that members receive necessary information. (§ II.3.2) Codes from Belgium, France, Italy and the United Kingdom agree. (Dual Code (Belgium), § I.B.1.7; Viénot I Report (France), p. 17; Preda Report (Italy), Report § 4.1; Combined Code (U.K.), Code § 1, A.4.1) The EASD Principles & Recommendations (pan-European) are also in accord, and add that background information should be provided in advance of board meetings and should be of a clear, sufficient, relevant and timely nature. (Recommendations V.3.1.iv & V.5.e.iii) This theme is reiterated in other codes.

The draft Cromme Commission Code (Germany) states that providing adequate information to the supervisory board is a joint responsibility of both the supervisory and managerial bodies. (§ III.4) However, it goes on to place heavy emphasis on the role of the supervisory body chairman in maintaining regular contact with the chairman or spokesperson of the management board. In addition to being consulted regularly on strategy, business development and risk management, the supervisory board chairman "will be informed by the chairman or spokesman of the management board without delay of unusual events which are of essential importance for the assessment of the situation and development as well as for the management of the enterprise. The chairman of the supervisory board shall then inform the supervisory board and, if required, convene an extraordinary meeting of the supervisory board." (§ V.2)

The Berlin Initiative Code emphasises that the management board has an obligation to render information and the supervisory board an obligation to collect or obtain the information it requires. "The main responsibility for this lies [with] the management board as a result of the asymmetry of knowledge of both organs." (Berlin Initiative Code, § II.2.1) However, some codes indicate that supervisory body members cannot be passive. "[W]hen directors believe that they have not been put in a position to make an informed judgement, it is their duty to say so at the board meeting and to demand the information they need." (Viénot I (France) p. 17; *accord*, Viénot II (France), p 16; Olivencia Report (Spain), § II.6.1; Combined Code (U.K.), Code § 1, A.4.1)

Finally, a number of codes discuss the need for supervisory board members to treat as confidential the information they receive as board members. For example, the Cardon Report, now part of the Dual Code in Belgium, states: “Directors cannot use the information obtained for other purposes than for the exercise of their mandate. They have an obligation of discretion relating to the confidential information received in their capacity as a director.” (Dual Code (Belgium), § I.B.1.7; *accord*, Director’s Charter (Belgium), p. 7; Preda Report (Italy), Code § 6.2)

c. SUPERVISORY BODY COMMITTEES

It is fairly well accepted in law that many supervisory body functions may be delegated, to at least some degree, to board committees. The codes reflect a trend toward reliance on board committees to help organise the work of the supervisory body, particularly in areas where the interests of management and the interests of the company may come into conflict, such as in areas of audit, remuneration and nomination. While recommendations concerning composition of these committees may vary, the codes generally recognise that non-executive and, in particular, independent directors have a special role to play on these committees. Properly composed committees are viewed as a means of providing an objective judgement on key issues in which members of management may have a personal interest, such as financial reporting and audit, nomination of supervisory body members and remuneration of executives.

The OECD Principles explain (in Annotation to OECD Principle V.E.1) the rationale for supervisory body committees that are at least partially comprised of non-executives:

“While the responsibility for financial reporting, remuneration and nomination are those of the board as a whole, independent non-executive board members can provide additional assurance to market participants that their interests are defended. Boards may also consider establishing specific committees to consider questions where there is a potential for conflict of interest. These committees may require a minimum number, or be composed entirely of, non-executive members.”

Similarly, the EASD Principles & Recommendations (pan-European) advocate that a majority of independent directors serve on board committees where there is a potential for conflicts of interest. (Recommendation VI.4.a)

The Dual Code (Belgium) calls for nomination and remuneration committees to include a majority of non-executive directors, and for the audit committee to consist of at least three non-executive directors. (§§ I.B.2.4, I.B.3.2 & I.B.4.3) The Viénot II Report (France) recommends that independent directors account for at least one third of the audit and nomination committees and make up a majority of the compensation committee. (p. 15) The Berlin Initiative Code (§ IV.3.4) and the German Panel Rules (§§ III.1.b & III.3) also favour the use of supervisory board committees for nominating, audit and remuneration functions -- and the German Panel Rules generally discuss the need to consider director independence in decisions on committee membership. They propose other committees as well.

The Securities Market Commission Recommendations (Portugal) (§ 17) supports the use of committees for issues involving potential conflicts -- including nomination, remuneration, and corporate governance. The Recommendations also contemplate an executive committee representing a balance of directors linked to dominant shareholders and minority

shareholders. (§ 16) The Olivencia Report (Spain) is similar, although it also calls for an audit committee, and it specifies that the audit, nomination, remuneration and governance committees should be made up solely of outside directors. (§§ III.7 & III.8)

Other codes are less explicit on committee composition. The Danish Shareholders Association Guidelines (§§ I & II) and the Ministry of Trade & Industry Guidelines (Finland) (§ 2.2.1), discuss the use of nomination, audit and remuneration committees but do not specify the use of non-executive or independent directors.

Note that the Swedish Shareholders Association advocates that the shareholders general meeting “take the initiative” for setting up nomination, audit and remuneration committees. (§ 1.2) It further specifies that the majority of the nomination committee should be representatives of the shareholders and that the chairman of the board should serve on the committee, while employees of the company should not. (§ 1.2.1) Moreover, like many other codes, it recommends that the audit committee should be made up of directors who are not employees, and it should have at least three members. (§ 1.2.2)

Note that the functioning and composition of the audit committee receives significant attention in most guideline and code documents because of the key role it plays in protecting shareholder interests and promoting investor confidence. (The audit function and internal/external control systems are discussed in greater length in Section III.D.7, below.)

6. REMUNERATION OF SUPERVISORY & MANAGERIAL BODIES.

a. EXECUTIVE REMUNERATION

Determining the compensation of senior executives is generally viewed as a key supervisory body function. A number of codes recommend that remuneration principles and their application should be transparent to shareholders.

As noted by the OECD Principles and other codes, executive remuneration is an issue in which the personal interests of members of management may diverge from the interests of the company and its shareholders. Therefore, most codes suggest a supervisory body committee including non-executives consider and make recommendations to the full board on this topic. (See discussion above in Section III.D.5.c)

The Combined Code (U.K.) advocates that companies establish a formal and transparent procedure for developing policy on executive remuneration and for fixing the remuneration packages of executives. (Principle B.2)

Many codes discuss the need to align executive remuneration with company performance, or the interests of the company and its shareholders. For example, the Combined Code (U.K.) advocates structuring a proportion of executive remuneration “so as to link rewards to corporate and individual performance.” (Principle B.1) The Dual Code (Belgium) states that it is good practice for part of the executive pay to be related to company performance or value. (§ I.B.3.1) The Danish Shareholders Association Guidelines agree: remuneration should “to a reasonable extent” depend on profitability and share price development. (§ II) The Preda Report (Italy) emphasises also that compensation should be linked if possible to achievements of specific objectives set by the board. (Code, § 8.2) The German Panel Rules call for management compensation to “include sufficient motivation to ensure long-term corporate value creation, . . . [including] share option programs and performance-related

incentives related to the share price development and the continuing success of the company.” (§ II.3.a)

The IAIM Guidelines (Ireland) recognise the benefits of share option and incentive schemes. The Guidelines note that when voting in favour of such schemes at companies held in their portfolios, institutional investors should consider whether enhanced corporate performance and return to their clients is likely to be achieved. (Introduction)

The Ministry of Trade & Industry Guidelines (Finland) recommend that the annual report include “[i]nformation on the principles followed when deciding on the salaries and other bonuses of company management.” (§ 2.2.2) France’s Hellebuyck Commission Recommendations also advocate disclosure of such information, including the existence of any stock options. (§ II.C.3)

b. NON-EXECUTIVE REMUNERATION

The general principles emphasised by the codes and discussed above generally apply as well to remuneration of non-executive supervisory body directors. Note that supervisory bodies usually determine -- or propose to the shareholders general meeting -- the compensation of non-executive directors. A number of codes recommend that such decisions be transparent to shareholders.

The major distinction between remuneration of executive and non-executive directors (aside from pay levels) is that a number of codes recommend against non-executive participation in stock option and pension plans out of concern that these may create improper incentives. For example, the EASD Principles & Recommendations (pan-European) state that “[i]t is not improper for independent board members to own some shares of the company, but they should not participate in stock option or pension plans. Nevertheless, stock options may be acceptable in early-stage companies, before they are listed.” (Recommendation VI.3.a - d)

Other codes agree that stock options for members of the supervisory body should not be granted. (*e.g.*, Recommendations of the Federation of Belgian Companies (Note to § 2.2); Dual Code (Belgium) (§ I.B.2.1)) The Berlin Initiative Code emphasises that stock options or other remuneration related to stock market value are not available to supervisory board members as a matter of German law. (§ VI.7.3)

The Peters Report (the Netherlands) disfavours stock options as a form of supervisory board compensation and states: “The remuneration of supervisory board members should not be dependent on the results of the company.” (§ 2.13) Likewise, the Swedish Shareholders Association Policy emphasises that incentive programmes should not extend to outside board members, since it is these board members who are charged with forwarding the proposals on incentive programmes to the shareholders for consideration. (§ 3.3.2)

The Olivencia Report (Spain) is less absolute, favouring incentive schemes generally, but “particularly those [for] executive directors. . . .” (§ II.7.3) The Combined Code (U.K.) expressly favours pay-for-performance for directors, but does not discuss pay-for-performance for non-executives, which may imply that it is not favoured. (Principle B.1) The Hermes Statement (U.K.) expressly disfavours participation in performance-related pay or incentive schemes such as stock options, but favours shareholding by directors -- as do a number of other codes. The Hermes Statement suggests paying non-executive directors

partly in shares, with a requirement that the shares be held while serving as a director. (Appendix 1, ¶ 1.4)

c. MANAGERIAL BODY EVALUATION

Many of the codes view CEO and management performance evaluation as central to the role of the supervisory body, often linked to remuneration decisions. Several codes indicate that to facilitate open discussion on sensitive issues involving management, the non-executive members of the supervisory body (or committees comprised of non-executive directors) should meet occasionally without members of management present. (See, *e.g.*, Ministry of Trade & Industry Guidelines (Finland), 2.2.1; Berlin Initiative Code, IV.5.3; Peters Report (Netherlands), Recommendation 3.5; Hermes Statement (U.K.), Appendix 2, ¶ 3; PIRC Guidelines (U.K.), Part 2: Directors, p. 5.)

The Berlin Initiative Code calls for the individual performance of the chairman of the management board and all other members of the management board “to be systematically evaluated annually by the [supervisory board’s] personnel committee.” In this evaluation, “the target-orientated development of the company and individual contributions made by management board members provide the scale for making the assessment.” (§ II.1.10) If “performance falls short of reasonable expectations contracts are not renewed. Serious deficiencies in performance and mistakes lead as compelling grounds to premature dismissal.” (§ II.1.11) In contrast, the German Panel Rules simply provide that “compensation elements shall be determined by systematic performance evaluation of the individual Management Board members [by the Supervisory Board’s personnel committee].” (§ III.3)

The IAIM Guidelines (Ireland) emphasise the role of the remuneration committee in selecting appropriate performance measures for evaluating and remunerating the CEO and other executive directors. It should “satisfy itself that relevant performance measures have been fully met.” (§ 1) The Preda Report (Italy) also indicates that evaluation of management is an issue for the remuneration committee in the first instance. (Code, § 8.1)

d. SUPERVISORY BODY EVALUATION

Several codes discuss evaluation of the supervisory body itself. As noted in the OECD Principles: “[T]o improve board practices and the performance of its members, some companies have found it useful to engage in . . . voluntary self-evaluation . . .” (Annotation to OECD Principle V.E.2) The EASD Principles & Recommendations (pan-European) suggest that boards establish evaluation procedures and disclose their existence. (Recommendation V.6) The Viénot I & II Reports and the Hellebuyck Commission Recommendations, all from France, are in accord. As the Viénot II Report (pp. 14-15) explains:

“It is . . . fundamental for the proper practice of corporate governance that the board should evaluate its ability to meet the expectations of the shareholders having appointed it to manage the corporation, by reviewing periodically its membership, its organisation, and its operation (implying an identical review of the board committees). The committee considers that this review should be reported to the shareholders in the annual report.”

The Berlin Initiatives Code is similar: “The supervisory board subjects its activities to systematic evaluation at regular intervals in order to continually improve them.” (§ IV.2.6) Moreover, “[i]f the work of a member of the supervisory board displays serious flaws, it is the supervisory board that causes him to be removed.” (§ IV.4.3) It emphasises that “[r]egular evaluation promotes continuous improvement in the corporate governance of a company.” (Thesis 10)

Other codes discussing issues of evaluation include the Preda Report (Italy) (Report § 5.1), the Peters Report (the Netherlands) (§§ 2.7 & 2.8), the Olivencia Report (Spain) (§ III.10 & Report §§ II.4.5 & II.5.4), the Swedish Shareholders Association Guidelines (§§ 2.2 & 2.3), and the Hampel Report (U.K.) (Guideline 3.13).

7. THE ORGANISATION & SUPERVISION OF INTERNAL CONTROL SYSTEMS

In recent years, the organisation and supervision of internal control systems relating to financial reporting and risk assessment and control has gained considerable attention.

Codes issuing in (or relevant to) EU Member States tend to place heavy emphasis on the financial reporting obligations of the company, as well as on board oversight of the audit function. This is because these are key to investor confidence and the integrity of markets. Indeed several of the codes were drafted out of concern about financial reporting. (*e.g.*, Cadbury Report (U.K.) & Turnbull Report (U.K.)) Also, in the United Kingdom the Combined Code and the Turnbull Report have placed special emphasis on the board’s role in assessing and controlling risk, including ensuring that appropriate internal control systems are in place.

The Combined Code and the Cadbury and Hampel Reports contain lengthy and significant discussion on the issue of financial reporting and internal control systems, as does the Turnbull Report, which gives further guidance on how to comply with the Combined Code. According to Principle D.2 of the Combined Code, “[t]he board should maintain a sound system of internal control to safeguard shareholders’ investment and the company’s assets.” This requires that directors review the effectiveness of internal controls -- including financial, operational and compliance controls, and risk management -- at least annually and report to shareholders. The Turnbull Report (¶ 12) further explains:

“Effective financial controls include the maintenance of proper accounting records. They help prevent exposure to avoidable financial risks and ensure that financial information both within and without the business is reliable. They also help safeguard assets, including the prevention and detection of fraud.”

The Turnbull Report emphasises that the board is responsible for the system of internal control and management is responsible for implementing board policies on risk and control. (¶¶16, 18) The AUTIF Code (U.K.) encourages its member firms, who are investors, to pay close attention to the way companies held in their portfolios comply with these recommendations. (Note on Key Principle 5).

The Preda Report (Italy) (Code, §§ 9.2 & 9.3) notes that the internal control system is charged with the actual tasks of ensuring compliance and identifying financial and operational risks. Those running the internal control system report directly to supervisory

body members who have been delegated the oversight responsibility, as well as to the members of the board of auditors.

The Peters Report (the Netherlands) emphasises that, at minimum, the management board should report to the supervisory board on its assessment of the functioning and structure of the internal control systems that are designed to reasonably assure financial information reliability. (§ 4.3) The Ministry of Trade & Industry Guidelines (Finland) advocate disclosure in the annual report about the resources available to the internal auditing system and how it is operating. (§ 2.1.2)

As discussed in Section III.D.5 above, the use of audit committees comprised of at least some non-executive -- often including independent -- directors are heavily emphasised by codes as a means of reducing the potential for management conflict in issues of financial reporting and external controls.

Many codes discuss the need for integrity in financial reports and for high quality audit and accounting standards to be applied. They also discuss the related need for an annual audit by an independent auditor, as a means of ensuring the accuracy of financial reports and disclosure. In most instances this is viewed as a supervisory body task. For example, the EASD Principles & Recommendations (pan-European) discuss the supervisory body's role in ensuring that financial disclosure be performed under high-quality internationally accepted accounting and audit standards. (Recommendations VIII.4, VIII.5 and VIII.6) The OECD Principles are consistent (OECD Principles IV.B & IV.C and Annotation), as is the Dual Code (Belgium), which notes: "Integrity demands that the financial reports and other information disseminated by the company present an accurate and complete picture of the company's position. . . . [T]he responsibility of the board of directors chiefly relates to the quality of the information it provides to shareholders." (Part I: A.7)

The Mertzanis Report (Greece) provides: "The Board of Directors has the responsibility . . . for . . . [t]he consistency of disclosed accounting and financial statements, including the report of the (independent) certified accountants, the existence of risk evaluation procedures, supervision, and the degree of compliance of the corporation's activities to existing legislation." (§ 5.3.4)

France's Viénot I Report (pp. 18-19) agrees that ensuring financial statement reliability is a key component of the supervisory body's duties:

"The Committee recommends that each [supervisory body] should appoint an advisory committee principally charged with ensuring the appropriateness and consistency of accounting policies applied in consolidated and company financial statements, and with verifying that internal procedures for collecting and checking information are such that they guarantee its accuracy. The advisory committee's task is not so much to examine the details of financial statements as to assess the reliability of procedures for their establishment and the validity of decisions taken concerning significant transactions."

The Euroshareholders Guidelines (pan-European) (Recommendation 6) and the Danish Shareholders Association Guidelines (§ I) both call for independent auditors to be elected by the shareholders. (Such a requirement is embedded in law in many nations.)

IV. CODE ENFORCEMENT & COMPLIANCE

A. ENFORCEMENT MECHANISMS

As has been observed time and again, one size does not fit all when it comes to effective corporate governance practices. How a company applies fundamental principles of good governance can and should vary according to company size and organisational complexity, shareholding structure, corporate life cycle maturity and myriad other factors. Moreover, ideas about just what constitutes good corporate governance are continually evolving, as evidenced by the changes in the past ten years. Therefore, policy makers need to provide corporations with a range of flexibility for determining appropriate governance practices, within a legal framework that mandates minimum requirements. It has been suggested that this legal framework for corporate governance is most effective if aimed primarily at ensuring: fair and equitable treatment of shareholders; managerial and supervisory body accountability; transparency as to corporate performance, ownership structure and governance; and corporate responsibility. (This is the regulatory perspective expressed in the Millstein Report (1998) and the subsequent OECD Principles of Corporate Governance (1999).) As suggested by Goldschmidt (2000), to at least some extent, one can equate the regulatory approach for corporate governance in a market system to the subsidiarity principle applicable in the European Union: regulate only that which is necessary and do so at the most local level possible.

The “soft regulation” of codes is in keeping with this regulatory philosophy. By definition, the codes analysed in this Study attempt to establish standards for improved corporate governance largely through entreaty. Code prescriptions supplement -- and complement -- the mandatory prescriptions provided by company and securities laws and listing rules. However, they are non-imperative, lacking mandatory compliance authority as to their prescriptions regarding specific governance structures and practices.

This does not mean, however, that these codes lack force and effect. Even though compliance with substantive code provisions is wholly voluntary, reputational and market forces, together with heightened disclosure, can result in significant compliance pressures, depending on the status of the issuing body, and the degree of information on compliance available to the market. Moreover, the exercise of establishing a code helps focus the attention of companies and investors on governance issues. Codes have proven highly effective in stimulating discussion of corporate governance issues. They help educate the general public and investors about governance-related legal requirements and common corporate governance practices. They may also assist to prepare the ground for changes in securities regulation and company law, where such changes are deemed necessary. Moreover, codes are increasingly being used by investors and market analysts and commentators to benchmark supervisory and management bodies. All of this works to encourage companies to adopt widely-accepted governance standards.

1. VOLUNTARY DISCLOSURE & THE MARKETS

The vast majority of codes call on companies to provide greater disclosure -- voluntarily -- of corporate governance practices, including in some instances, disclosure about the extent of compliance with a particular code. This focus on disclosure is generally designed to provide the market with more information to enable investors to assess governance along with other criteria in their buy, sell, hold and voting decisions.

Invariably, the codes rely on the market as an important mechanism for encouraging code compliance. This may be especially (but not solely) true as to codes emanating from the investor community. Many of these codes indicate that compliance with code recommendations will be considered by investors affiliated with the issuing body in investment and shareholder voting decisions. But even as to codes issuing from non-investor related bodies, market forces may provide impetus for compliance, especially where compliance efforts are broadly and widely disclosed or surveyed.

In theory at least, companies that do not respond to expectations both as to increased disclosure and reform of actual governance practices may become less attractive to investors. While the theory has yet to be definitively proven, in many Member States shareholder monitoring groups and rating agencies are benchmarking companies, and publicising corporate governance successes and failures. Moreover, as discussed below, surveys that have been conducted on the application of existing codes indicate that companies are changing their practices, albeit at varying paces.

2. DISCLOSURE ON A “COMPLY OR EXPLAIN” BASIS

Several codes rely on a mandatory disclosure requirement to encourage compliance, usually through linkage of the code to listing rules. Listed companies are required to disclose whether they comply with the specified code and explain any deviations. Linking codes to a disclosure requirement on a “comply or explain” basis is a means of encouraging adoption of specific corporate governance practices without mandating actual practices. Yet it recognises that disclosure alone has a significant coercive effect. To avoid lengthy explanation, many companies may consider compliance except as to those few points on which they believe they have strong justification for deviation. (Disclosure provides information to the market. Companies that do not comply with some provisions may well assess whether the market is likely to agree with the justification.)

The Cadbury Report was the first code to suggest disclosure on a “comply or explain” basis as a means of encouraging companies to follow best practice recommendations. The London Stock Exchange required listed companies to include a statement of compliance with the Cadbury Code of Best Practice in reports and accounts for reporting periods ending after June 30, 1993. In 1998, the London Stock Exchange Committee on Corporate Governance combined elements of the Cadbury Report with recommendations from the Greenbury Commission and the Hampel Commission in the Combined Code. Section 1 of the Combined Code was introduced into the listing rules of the London Stock Exchange on a disclosure basis in June 1998.

A company listed on the London Stock Exchange (and incorporated in the U.K.) is now required to include in its annual report and accounts a narrative statement of how it applies the principles set out in Section 1, with sufficient explanation to enable shareholders to evaluate how the principles have been applied. Pursuant to London Stock Exchange Rule § 12.43.A(b), it must also state:

“whether or not it has complied throughout the accounting period with the Code provisions set out in Section 1 of the Combined Code. A company that has not complied with the Code provisions, or complied with only some of the Code provisions or (in the case of provisions whose requirements are of a continuing nature) complied for only part of an accounting

period, must specify the Code provisions with which it has not complied, and (where relevant) for what part of the period such non-compliance continued, and give reasons for any non-compliance. . . .”

The company’s statement must be reviewed by the auditors before publication as it relates to certain provisions of the Combined Code. The auditors’ report on the financial statements must also cover certain of the required disclosures.

Even with the “official” status of the Combined Code in the U.K. due to its relation to Listing Rules, there is still impetus for other types of codes in the U.K. For example, the investor codes that have been issued in the U.K. -- in particular the PIRC Shareholder Voting Guidelines and the Hermes Statement -- urge companies to adopt best practices in addition to, and frequently more rigorous than, those advocated by the Combined Code. (For example, the PIRC Shareholder Voting Guidelines contain a definition of director “independence” that is considerably stricter than the Combined Code’s definition.)

The only other code currently connected to a mandatory disclosure requirement concerning code compliance is the Preda Report (Italy). However, the IAIM Guidelines (Ireland) recommended a mandatory disclosure requirement and such a requirement has been adopted by the Irish Stock Exchange (essentially requiring disclosure against the Combined Code). In addition, it is anticipated that the Cromme Commission Code (Germany) -- now in draft form but expected in final form in February 2002 -- will be linked to a mandatory compliance disclosure requirement through the Transparency and Disclosure bill (to become law in August 2002). Note that several codes that recommended mandatory disclosure or were at one time linked to such a requirement are not currently linked to a compliance disclosure requirement. In addition to the several U.K. codes that have been superceded by the Combined Code, these include the Mertzanis Report (Greece), and the EASD Principles and Recommendations.

B. EVIDENCE OF COMPLIANCE

Efforts have been made to varying degrees in Member States to determine to what extent companies comply with code recommendations. This information would appear easier to collect where disclosure about compliance with a code mandated. However, a number of reports have been issued based on wholly voluntary disclosure. Whether disclosure of compliance is mandated or not, companies tend to respond to code recommendations, albeit to varying degrees.

The United Kingdom has among the longest experiences with codes, and certainly with mandated disclosure on code compliance. A number of reports have been issued analysing the way the Cadbury Report and later, the Combined Code, are applied in practice. In May 1995, the Committee on the Financial Aspects of Corporate Governance issued a report entitled “Compliance with the Code of Best Practice.” This review of disclosures from the top 500 listed companies, plus a one in five random sample of other listed companies, found that every company report contained the required compliance statement. (In only one case did an auditor find the statement inadequate for not specifying areas of non-compliance.)

The Committee concluded:

- “All listed companies whose accounts have been examined are complying with the London Stock Exchange listing requirement to make a statement in their report and

accounts on the extent of their compliance with the Code of Best Practice. Statements of full compliance are most likely to be made by companies in the top 500, whilst the smaller the company the higher the percentage of statements disclosing limited compliance.”

- “Although not a requirement of the Code, the majority of companies have split the roles of Chairman and Chief Executive, and where the roles are combined, there is more often than not an independent element of non-executive directors on the board, as recommended in the Report. There is a relationship between the size of a company and the number of non-executives on the board, with the larger companies most likely to have three or more. There has been a marked increase in the disclosure of Audit, Nomination and Remuneration Committees since the publication of the Code. The larger the company, the more likely it is to have three or more non-executive directors on the Audit Committee, but there has also been an increase in the disclosure of Audit Committees comprising two-non-executives, particularly in smaller companies.”
- “The majority of companies of all sizes have boards on which all or the majority of non-executive directors are independent. The larger the company, the more likely it is to have three or more independent non-executives on the board.”
- “While larger companies have disclosed compliance with the requirement to have formal terms of appointment for non-executive directors, such disclosure decreases in relation to company size. However, high levels of compliance with both the requirement to have a schedule of matters reserved to the board and to have an agreed procedure for independent advice were found in companies of all sizes. There is a higher incidence in all the sample groups of rolling as opposed to fixed-term three-year contracts. The incidence of contracts in excess of three years (either rolling or fixed-term) is very low.”

(Report of the Committee on the Financial Aspects of Corporate Governance (Cadbury Committee), “Compliance with the Code of Best Practice,” p. 13 (May 24, 1995))

According to the Financial Services Authority (“FSA”), which is charged with ensuring Listing Rule Compliance, the extent to which listed companies make required disclosures in line with the Combined Code is one of the items that is regularly reviewed on a sample basis. Although the quality of the information provided can vary from company to company, the FSA views the quality of disclosure as generally high. As to sanctions for non-compliance, companies are subject to public censure or a fine. It appears, however, that the FSA addresses the few instances of substandard disclosure through private exhortation to remit the required information.

In Italy, another Member State with a mandatory disclosure requirement, the Stock Exchange has recently announced that it will post company disclosures on compliance with the Preda Report on the Internet. The Exchange is reportedly studying such disclosures to determine whether to update the Report.

The Peters Report (the Netherlands) requested that listed companies disclose compliance with its recommendations in their annual reports. However, it does not have a mechanism to mandate compliance with its disclosure request. According to an official monitoring survey, “Monitoring Corporate Governance in Nederland,” published by the Tilburg Economic Institute in 1998 (the year following issuance of the Peters Report), only fifty-five percent (55%) of companies fully disclosed the requested information. Another thirty-six percent (36%) selectively provided the information. The Tilburg survey indicated that companies

generally complied more readily with provisions relating to supervisory board processes than with provisions relating to shareholder rights.

The Belgian Banking & Finance Commission has also conducted surveys of compliance with its recommendations. Its 1998 survey -- *Etudes et Documents No. 5* (October 1998) -- concluded that corporate governance disclosure was noticeably improved. Approximately fifty-five percent (55%) of companies introduced in their 1997 annual report, a special section on corporate governance. Disclosure about corporate governance was noticeably more prevalent among the BEL-20. A full eighty percent (80%) of these companies included such a section in their 1997 annual reports. Note, however, that only six percent (6%) of companies provided more than twenty specific items of corporate governance information out of a possible thirty. Thirty-six percent (36%) provided information on fewer than six elements. According to the 1999 follow-up survey -- *Etudes et Documents No. 10* (November 1999) -- corporate governance disclosure increased further in 1998 annual reports. Eighty-seven percent (87%) of companies included a section on corporate governance. This included ninety-five percent (95%) of BEL-20 companies. The amount of information disclosed was expanded as well. The survey found that just over twenty-seven percent (27.5%) of listed companies providing a fairly substantial amount of information.

In a review of Portuguese listed corporations' annual accounts and reports for 2000, the *Commiss•o do Mercado de Valores Mobiliários* ("CMVM") found that seventy percent (70%) of the companies listed on the Market with Official Quotations voluntarily disclosed (as recommended) information on compliance. However, less than thirty-two percent (31.7%) of the companies providing disclosure (or just over twenty-three percent (23.2%) overall) "categorically state" that they comply with the CMVM Recommendations as to corporate governance structure and practice. In a similar review for 2001, the CMVM found continued improvement in both disclosure and the stated extent of compliance.

In Spain, the regulatory authority (*Comisión Nacional del Mercado de Valores*) reviewed 1998 compliance with the *Olivencia Report* and determined that compliance was considerable given that the recommendations are wholly voluntary. ("*Análisis de los Resultados del Cuestionario sobre el Código de Buen Gobierno Relativo al Ejercicio*," 1999) Note that in Spain, many listed companies have issued their own corporate governance guidelines, and often include them in the annual report.

Similarly, in France, the *Commission des Opérations de Bourse* has issued several reports about corporate governance compliance, including *Bulletin COB n° 352* (December 2000) and *Bulletin COB n° 338* (September 1999).

In addition to these official surveys of compliance, in some EU Member States, various entities -- on their own initiative -- have conducted unofficial surveys to track compliance in reference to a code. For example:

- In the United Kingdom, the National Association of Pension Funds ("NAPF") has a Voting Issues Service (available to subscribers) that tracks compliance with the Combined Code by the 350 largest listed U.K. companies. According to its most recent study, compliance with the disclosure requirement is high and compliance with substantive provisions of the Combined Code is increasing in many areas. Nevertheless, listed companies remain free to deviate from the Combined Code's substantive recommendations, and many companies have decided to do so, at least in some respect.

- Pensions & Investment Research Consultants (“PIRC”) also publishes an annual survey of compliance with the Combined Code. Recently it observed that some listed companies have not separated the roles of chairman and chief executive and that a number of companies have less than the recommended number of independent non-executive directors (according to PIRC’s own rigorous definition of independence).
- According to Company Reporting (U.K.), an Edinburgh-based accounts analyst with a significant electronic database, in January 2000, only nine percent (9%) of the U.K. listed companies represented on its database fully complied with the substantive recommendations of the Combined Code. The remaining ninety-one percent (91%) tend to cite at least some exception to the recommended practices.
- The Irish Association of Investment Managers (“IAIM”) is reported to be working on a survey of Irish companies to determine whether the independence requirements of the Combined Code are being followed by companies listed on the Irish Stock Exchange.
- In Germany, a survey of the DAX 100 carried out at the end of 2000 found that, although corporate governance is the subject of intense interest, large German listed companies were not yet implementing corporate governance reforms on a wide-scale. (Pellens, Hillebrandt & Ulmer, 2001)

As the monitoring evidence indicates, companies in Member States appear to be responding to varying degrees to code recommendations. It is important to note, however, that the codes tend to express aspirations or ideals. Translation into actual practice can be slow, especially if the aspirations are significantly different from common practice. In such instances, a code may help communicate the need for reform and the benefits that may be associated with reform. Institutional investor support for code recommendations does appear to wear away resistance over time.

V. CONCLUSION

In virtually every EU Member State, interest in articulating generally accepted standards and best practices of corporate governance is evident. Even in the two Member States in which codes have not yet been issued (Austria and Luxembourg), interest is apparent. In one (Austria) code efforts are reported to be underway. One can infer from this broad interest that the quality of corporate governance is viewed as important to the national economies of Member States and to their domestic companies.

The growing interest in corporate governance codes among EU Member States may reflect an understanding that equity investors, whether foreign or domestic, are considering the quality of corporate governance along with financial performance and other factors when deciding whether to invest in a company. An oft-quoted McKinsey survey of investor perception indicates that investors report that they are willing to pay more for a company that is well-governed, all other things being equal. Moreover, the reported size of the premium is greatest in countries perceived to have weakest shareholder protections. (McKinsey Investor Opinion Survey, June 2000) In addition, recent research by Pagano, Röell and Zechner suggests that European markets having the highest trading costs, lowest accounting standards and poorest shareholder protection fare worst in attracting and retaining cross-border listings. In addition, companies from such countries are more likely to seek a foreign listing. (Pagano, Röell & Zechner, 2001)

The corporate governance codes analysed for this Study emanate from nations with diverse cultures, financing traditions, ownership structures and legal origins. Given their distinct origins, the codes are remarkable in their similarities, especially in terms of the attitudes they express about the key roles and responsibilities of the supervisory body and the recommendations they make concerning its composition and practices, as described in more detail below.

A. DIVERGENCE & CONVERGENCE

The greatest distinctions between corporate governance practices in EU Member States appear to result from differences in law and not from differences in recommendations that emanate from the types of codes analysed in this Study. Although a significant degree of company law standardisation has been achieved throughout the European Union, some commentators suggest that the remaining legal differences are the ones most deeply grounded in national attitudes, and hence, the most difficult to change. While substantively there may be different points of emphasis and some Member States may embed more governance requirements in law than do others, the end result is that within all Member States it is recognised that good governance practices are beneficial to listed companies and the markets themselves, as well as to shareholders and other stakeholders. Note also that in each Member State the legal framework provides companies a degree of flexibility to experiment with improving corporate governance practices.

The trends toward convergence in corporate governance practices in EU Member States appear to be both more numerous and more powerful than any trends toward differentiation. The codes -- together with market pressures -- may serve as a converging force, by focusing attention and discussion on governance issues, articulating best practice recommendations and encouraging companies to adopt them.

It is important to note that *the codes tend to express notions of “best practice” -- but translation of best practice ideals into actual practice may take time to achieve*. If the ideals expressed in codes reflect a significant difference from common practice, and the potential benefits of reform efforts are not well communicated and understood, codes may meet with resistance. Investor interest in the codes and investor support for the practices the codes recommend appear to wear away resistance over time.

1. EMPLOYEE REPRESENTATION (CO-DETERMINATION)

The greatest difference among EU Member States relates to the role of employees in corporate governance, a difference that is usually embedded in law. In Austria, Denmark, Germany, Luxembourg and Sweden, employees of companies of a certain size have the right to elect some members of the supervisory body. In Finland and France, company articles *may* provide employees with such a right. In addition, when employee shareholding reaches a certain threshold in France (3%), employees are given the right to appoint one or two directors, subject to certain exceptions. In other EU Member States, it is the shareholders who elect all members of the supervisory body. This results in a fundamental difference among EU Member States in the strength of shareholder influence in the corporation.

Under the law of some Member States, works councils may also have an advisory voice on certain issues addressed by the supervisory body, as in the Netherlands and France. Giving employees an advisory voice in certain issues is one means of engaging employees in governance issues without diluting shareholder influence. Encouraging employee stock ownership is another means of giving employees participatory rights in corporate governance, but without diluting shareholder influence, and is favoured by some codes. Ownership through employee pension funds and other employee stock ownership vehicles could give trade unions, works councils and employees greater involvement in corporate governance as shareholders.

Legislation has been proposed in the Netherlands that would give employees a role in nominating (but not electing) supervisory board members in large companies currently subject to the Structure Act of 1971. This new legislation would give shareholders of structure regime companies the right to elect the supervisory body, a body that is currently self-selecting.

2. SOCIAL/STAKEHOLDER ISSUES

Corporate governance is viewed increasingly as a means of ensuring that the exercise of economic power by the corporate sector is grounded in accountability. Different EU Member States tend to articulate the purpose of corporate governance in different ways: some emphasise broad stakeholder interests and others emphasise ownership rights of shareholders. Although the comparative corporate governance literature and popular discussion tend to emphasise “fundamental” differences between stakeholder and shareholder interests, the extent to which these interests are different can be debated. The majority of the codes expressly recognise that corporate success, shareholder profit, employee security and well being, and the interests of other stakeholders are intertwined and co-dependent. This co-dependency is emphasised even in codes issued by the investor community.

Note that the number of -- and interest in -- social responsibility rankings and indices is growing, bringing direct capital market pressure to bear on corporations for responsible stakeholder relations. Increasingly, investor-related groups are emphasising to portfolio

companies that investors view social responsibility as intertwined with corporate success. For example, the Association of British Insurers, whose members hold approximately 25% of outstanding equity in U.K. companies, has announced that it expects boards to assess risks and opportunities in social, environmental and ethical matters. The Association has reminded that failure to do so may damage corporate reputation and financial well-being. In a related vein, in April 2001, U. K. fund manager Morley announced it would vote against FTSE 100 managements that fail to disclose “comprehensive” reports on environmental records and policies. Similarly, the AFG-ASFFI, the professional association of French fund managers, is asking corporate boards to consider “the concept of sustainable development, social responsibility and the environment.”

Interest in both mandatory and voluntary social issue reporting is growing throughout the EU. In July 2000, a new U.K. regulation was issued requiring investment fund companies to disclose whether they have policies on social investment. The U.K. company law review effort also recommended that boards disclose the impact of major decisions on communities, employees and suppliers. French corporate law was recently amended to require listed companies to disclose in their annual reports how they take into account the social and environmental consequences of their activities, including how they adhere to principles set forth by the International Labour Organisation.

3. SHAREHOLDER RIGHTS & MECHANICS OF SHAREHOLDER PARTICIPATION

The laws and regulations relating to the equitable treatment of shareholders, including minority rights in take-overs, squeeze-outs and other transactions controlled by the company or the majority shareholders, vary significantly among EU Member States. Notice of and participation in shareholder general meetings, and procedures for proxy voting and shareholder resolutions also vary significantly among EU Member States. Such variations in laws and regulations, especially as relates to shareholder participation rights, likely pose barriers to cross-border investment, and may cause a not-insignificant impediment to a single unified capital market in the European Union. (These issues are on the agenda of the High Level Group of Company Law Experts appointed by the European Commission on September 4, 2001.)

To the extent that codes address these issues, they generally call for shareholders to be treated equitably; for disproportional voting rights to be avoided or at least fully disclosed to all shareholders; and for removal of barriers to shareholder participation in general meetings, whether in person or by proxy.

4. BOARD STRUCTURE, ROLES & RESPONSIBILITIES

Another major difference embedded in law relates to board structure -- the use of a unitary versus a two-tier board. In Austria, Germany, the Netherlands, and, it can be argued, Denmark, the two-tier structure is predominant -- with a supervisory board and a distinct executive board of management required for certain types of corporations or corporations of a certain size. In all other EU Member States, the unitary board structure predominates (although in at least five of these countries, the two-tier structure is also available). Note that in several EU Member States, including Finland and Sweden, a board of directors and a separate general manager or managing director may be required. In addition, several Member States have a unitary board of directors and a separate board of auditors. For

purposes of this Study, such variations are categorised as falling under a unitary system (although other commentators may categorise such variations as two-tier).

Notwithstanding formal structural differences between two-tier and unitary board systems, the similarities in actual board practices are significant. Generally, both the unitary board of directors and the supervisory board (in the two-tier structure) are elected by shareholders although, as explained, in some countries employees may elect some supervisory body members as well. Under both types of systems, there is usually a supervisory function and a managerial function, although this distinction may be more formalised in the two-tier structure. And both the unitary board and the supervisory board have similar functions. The unitary board and the supervisory board usually appoint the members of the managerial body -- either the management board in the two-tier system, or a group of managers to whom the unitary board delegates authority in the unitary system. In addition, both bodies usually have responsibility for ensuring that financial reporting and control systems are functioning appropriately and for ensuring that the corporation is in compliance with law.

Each system has been perceived to have unique benefits. The one-tier system may result in a closer relation and better information flow between the supervisory and managerial bodies; the two-tier system encompasses a clearer, formal separation between the supervisory body and those being “supervised.” However, with the influence of the corporate governance best practice movement, the distinct perceived benefits traditionally attributed to each system appear to be lessening as practices converge. The codes express remarkable consensus on issues relating to board structure, roles and responsibilities; many suggest practices designed to enhance the distinction between the roles of the supervisory and managerial bodies, including supervisory body independence, separation of the chairman and CEO roles, and reliance on board committees.

5. SUPERVISORY BODY INDEPENDENCE & LEADERSHIP

Notwithstanding the diversity in board structures among EU Member States, all codes place significant emphasis on the need for a supervisory body that is distinct from management in its decisional capacity for objectivity to ensure accountability and provide strategic guidance.

Codes that relate to unitary boards emphasise the need for some compositional distinction between the unitary board and members of the senior management team. These codes invariably urge companies to appoint outside (or non-executive) directors to the supervisory body -- and also frequently urge that some of these outsiders be “independent” directors. “Independence” is defined in a variety of ways but generally involves an absence of close family ties or business relationships with company management and the controlling shareholder(s). Codes that relate to unitary boards also frequently call for the positions of the chairman of the board and the CEO (or managing director) to be held by different individuals. (This is already usually the case in two-tier board systems.)

Codes that relate to two-tier boards also emphasise the need for independence between the supervisory and managerial bodies. For example, like the unitary board codes, they tend to warn against the practice of naming (more than one or two) retired managers to the supervisory board, because it may undermine supervisory board independence.

6. BOARD COMMITTEES

It is fairly well accepted in the company law of Member States that some supervisory body functions may be delegated, to at least some degree, to board committees. The codes reflect a trend toward reliance on board committees to help organise the work of the supervisory body, particularly in areas where the interests of management and the interests of the company may come into conflict, such as in areas of audit, remuneration and nomination. For example, a nominating committee, an audit committee and a remuneration committee are recommended in Belgium, France, the Netherlands, Spain, Sweden, the United Kingdom and other EU Member States. While recommendations concerning composition of these committees may vary, the codes generally recognise that non-executive and, in particular, independent directors have a special role to play on these committees.

7. DISCLOSURE

Disclosure requirements continue to differ among EU Member States, and the variation in information available to investors likely poses some impediment to a single European equity market. However, across EU Member States, disclosure is becoming more similar, in no small part because of efforts to promote better regulation of securities markets and broad use of International Accounting Standards. Consolidation and co-ordination among listing bodies may encourage further convergence.

Note that a “hardening of norms” concerning disclosure of individual executive and director remuneration is slowly developing across the EU Member States, following the U.K. example. In the past three years, listing rules or legislation relating to increased remuneration disclosure have passed or have been proposed to require greater transparency in Ireland, France, the Netherlands, and Belgium.

Interest in both mandatory and voluntary social issue reporting is growing throughout the EU. In July 2000, a new U.K. regulation was issued requiring investment fund companies to disclose whether they have policies on social investment. The U.K. company law review effort also recommended that boards disclose the impact of major decisions on communities, employees and suppliers. French corporate law was amended in May 2001 to require listed companies to disclose in their annual reports how they take into account the social and environmental consequences of their activities.

Most codes call for enhanced disclosure of information to enable shareholders to judge the qualifications and independence of directors. Undoubtedly, corporate governance codes are playing a converging force, both increasing the amount of information disclosed and encouraging disclosure of similar types of information. Through “comply or explain” mandates, several codes require companies to disclose considerably more information about their corporate governance structures and practices.

As to wholly voluntary disclosure, the codes tend to favour greater transparency on all aspects of corporate governance and, in particular, executive and director compensation and director independence. They also encourage greater transparency as to share ownership and, in many instances, issues of broader social concern.

B. OTHER TRENDS & EXPECTED DEVELOPMENTS

In addition to the general convergence on views about governance best practices as evidenced in the codes, a number of trends and developments related to corporate governance are apparent in EU Member States.

- Contestability of Corporate Control:

The rise in take-over activity indicates that the control of corporations in EU Member States has become more “contestable.” Similarly, management power is also becoming increasingly “contestable”; management entrenchment is being reduced, as boards are less hesitant to remove managers for poor performance.

- Corporate Governance Information:

In many EU Member States there is a growth in information and analysis available to shareholders about corporate performance and governance. There is also a trend toward greater disclosure by pension funds and intermediaries about their voting policies.

In addition to heightened disclosure being required by regulatory bodies, companies are disclosing more information voluntarily. Moreover, a growing number of advisory firms and ratings agencies are also providing information through corporate governance ratings of firms and of nations, as well as other types of analyses.

- Electronic Shareholder Communication & Participation:

Institutional investors and other shareholders are increasing their communication with one another. The Internet is proving to be a powerful tool for enabling communication between shareholders and for co-ordinating shareholder activities. It is also proving useful for disseminating information -- including companies’ annual reports and other company information. Eventually, the Internet may facilitate the exercise of shareholder rights to participate in and vote at general meetings. The ability to participate and vote by electronic means in general meetings is increasing with technological breakthroughs and the removal of legal barriers:

- In the United Kingdom, the Electronic Communications Bill passed in 2000 recognises electronic signatures and allows electronic dissemination of company information.
- In Germany, the NaStraG legislation passed in 2000 allows proxy voting via fax, phone and e-mail, and eases the ability of companies to communicate with holders of bearer shares.
- In France, electronic signature is now recognised by law and should enable voting by electronic means -- such as over the Internet -- for companies that provide for such voting in their bylaws.
- In 2001, J.P. Morgan Investor Services asked that companies, custodians, vendors and investors work together through the SWIFT system to agree on a single global transmission protocol for agenda notices and proxy forms.
- Efforts are underway to build electronic share voting systems for casting, tracking and verifying ballots (Manifest, CREST); a system for electronic voting (NetVote) is being tested in the Netherlands, and may be marketed in the United Kingdom and Germany.

- Remuneration Concerns:

Shareholder and public concern appears to be growing in EU Member States about the use of golden parachutes and bonus payments to managers in mergers, acquisitions and take-over transactions. Such payments are viewed as potentially creating incentives inconsistent with the creation of corporate value and the interests of domestic labour.

Heightened shareholder scrutiny of executive pay levels can be expected, as more detailed information becomes available about executive and director remuneration in several EU Member States. (Also note that in the United Kingdom, under pressure from leading shareholder advocates, legislation has been proposed that would give shareholders of listed companies a non-binding vote on pay policies.)

C. VIEW FROM THE PRIVATE SECTOR

On September 10, 2001, a roundtable was held with high-level private sector participants from major companies in the European Union to discuss whether, in their experience, differences in corporate governance codes and the variety of codes pose impediments to an integrated European financial market. The consensus view was that the most important differences in corporate governance emanate from company law and securities regulation rather than from codes.

Participants expressed little concern about variation among the “soft law” requirements of codes; code variation is not perceived by these private sector participants to raise barriers to company efforts to attract investment capital. According to participants, most European companies continue to consider their domestic capital market as their primary source for equity capital. Therefore, the European company’s primary listing is usually in the EU Member State in which the company is incorporated. Participants explained that corporate decisions regarding which capital markets to access are influenced primarily by liquidity and company law considerations, and very little by the existence of corporate governance codes. As to cross-border listings, the corporate governance requirements of listing rules for most European exchanges are minimal; moreover, corporate governance requirements generally may be waived for non-domestic issuers under principles of mutual recognition. And, finally, even compliance with codes linked to exchanges is wholly voluntary: codes tend to be flexible and non-binding. At most, they might require disclosure of non-conforming practices. Moreover, many participants opined that it is the track record of individual companies’ governance practices that investors look at, rather than the codes that might exist in a country.

Participants agreed that the multiplicity of codes neither confuses nor poses difficulties for companies. Companies can consider codes as supplemental to company law and simply choose from among the codes that emanate from the EU Member State of incorporation. Alternatively, so long as there is no inconsistency with the company law in the State of incorporation, companies can seek guidance from one, or even more than one, code from any jurisdiction.

The majority of participants strongly opined that the Commission should not create a mandatory “Euro-code.” Best practice recommendations are better developed by the business and investment communities over time through the impact of market forces. Although some participants suggested that a voluntary Euro-wide code might encourage

greater commonality, other participants expressed concern that even aspirational recommendations might eventually lead to regulation.

This is not to say that there are no perceived impediments to a single market in the European Union resulting from corporate governance differences. As discussed above, variations in laws and securities regulations continue to pose difficulties to cross-border proxy voting. (A recent survey by the International Corporate Governance Network (2002) found that short ballot deadlines and rules that block share trading for a period prior to the annual meeting are two of the primary obstacles to cross-border proxy voting.)

Note that the French investor's association, AFG-ASFFI, has recommended that discussion of corporate governance issues be had at the European level "so that its recommendations constitute minimum corporate governance guidelines for all listed companies in the Euro zone." (Hellebuyck Commission Report, Introduction) However, as set forth in more detail below, harmonisation of laws and securities regulations in the areas of disclosure and shareholder participation should take priority if the goal is to provide impetus to a single European market.

D. FINAL THOUGHTS

Neither detailed study of the codes or the private sector sounding that was conducted indicate that code variation poses an impediment to a single European equity market. The various codes emanating from the Member States are fairly similar and appear to support a convergence of governance practices. This, taken together with the need for corporations to retain a degree of flexibility in governance so as to be able to continuously adjust to changing circumstances, leads us to conclude that *there does not appear to be a need for a European Union-wide code*. Guidance about corporate governance best practice is already plentiful in Member States, and we agree with the prevailing private sector opinion expressed in our private sector consultation that ideas about best practice should be allowed to develop further under the influence of market forces.

Although development of a voluntary European Union-wide code might add to general awareness and understanding of governance issues throughout the European Union, given the continued variation among the Member States' legal frameworks, we believe a code agreed to by all Member States would be likely to focus more on basic principles of good governance than on detailed recommendations of best practice. The OECD Principles of Corporate Governance (which issued in 1999 after considerable consultation with, and participation from, every European Member State) already set forth a coherent, thoughtful and agreed set of basic corporate governance principles. Achieving broad agreement on a more detailed set of best practices that fit the varying legal frameworks of the Member States will be difficult and may succeed only in expressing the "lowest common denominator."

Future European Union-wide efforts on corporate governance will be most valuable if, rather than focused at the code (and best practice) level, they focus on:

- Reducing participation barriers that currently make it difficult for shareholders to engage in cross-border voting; and
- Reducing information barriers to the ability of shareholders (and potential investors) to evaluate the governance of corporations, both at the Member State level and the level of individual companies.

Law and regulation set the minimum requirements for corporate governance participation and disclosure. Agreement and harmonisation on the minimum requirements -- for example concerning the mechanics of cross-border voting and shareholder participation in general meetings -- take logical priority over harmonisation of best practice. (The recently announced panel of experts convened by the Winters High Level Group of Company Law Experts is expected to provide recommendations with respect to issues of shareholder participation such as share blocking and registration.)

Disclosure requirements are critical to the ability of shareholders to exercise participation rights and to make value judgements about the corporation. Disclosure requirements are also critical to the ability of capital markets to help convert the value judgements of market participants into appropriate financial incentives. The European Commission consultation on transparency obligations of listed companies is an important move towards improving the quality and comparability of corporate disclosure in Member States, as is the move to International Accounting Standards. The European Commission may wish to explore other ways to encourage greater corporate governance disclosure by listed companies within EU Member States. For example, how can fuller use of available electronic communication technologies be made by Member States, to enable electronic filing of company disclosures; by listed companies, for disclosure to shareholders and the public; and for participation in general meetings? (The Winters High Level Group of Company Law Experts is expected to make recommendations in this area.)

The Commission may also wish to consider whether there is an appropriate European Union vehicle for encouraging listed companies to provide more information about internal governance, such as:

- Corporate ownership structure (including identity of controlling shareholders; existence of special voting rights or agreements; existence significant cross shareholding relationships)
- Identity, age, length of board tenure, and main affiliation (primary employment position) of supervisory body members;
- Stock ownership by supervisory body members;
- Close family relationships between supervisory body members and senior members of management or controlling shareholders;
- Transactions between the company and supervisory body members, or business entities they are affiliated with;
- Whether individual supervisory body members are considered “independent” and what definition is used;
- Individual director remuneration and basis for remuneration (including any performance-based elements);
- Identity and composition of board committees;
- Number of board meetings per year;
- Number of committee meetings per year;
- How many board and committee meetings each supervisory body member attended in the past year; and

- Whether the company follows a specific code and, if so, its identity.

(This list is merely illustrative -- it is neither complete, nor necessarily at the appropriate level of detail.) This is *not* meant to suggest that disclosure against a European Union-wide code on a comply or explain basis be used. In addition to the concerns expressed above about a European Union-wide code, codes express normative values and on a European Union-wide basis, we believe that simply seeking greater disclosure of what companies are doing would be sufficient.

Finally, we note that a number of Member States are engaged in various aspects of company law review and reform. It may be useful to create a forum in which the national policy makers involved on such issues could come together and discuss common issues and approaches. The European Commission may wish to consider how it might act to convene or support such a forum.

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ANNEX I

LIST OF CORPORATE GOVERNANCE CODES RELEVANT TO THE EUROPEAN UNION AND ITS MEMBER STATES

For the purpose of this Comparative Study, a “corporate governance code” is defined as a non-binding set of principles, standards or best practices, issued by a collective body that is neither governmental nor regulatory in nature, and relating to the internal governance of corporations.

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ANNEX II

CONSULTATION:

A. REPRESENTATIVES OF THE FEDERATION OF EUROPEAN STOCK EXCHANGES (FESE)

AUSTRIA

Wiener Börse AG (Mr. Erich Obersteiner)

BELGIUM

Euronext Brussels (Mr. Luk Delboo)

DENMARK

Copenhagen Stock Exchange Ltd (Mr. Hans Ejvind Hansen)

FINLAND

Helsinki Exchanges (Mr. Jukka Ruuska)

FRANCE

Euronext (Mr. Jean-François Théodore)

GERMANY

Deutsche Börse AG (Mr. Werner G. Seifert)

GREECE

Athens Stock Exchange (Mr. Panayotis Alexakis)

IRELAND

Irish Stock Exchange (Mr. David Kingston)

ITALY

Borsa Italiana SpA (Mr. Massimo Capuano)

LUXEMBOURG

Luxembourg Stock Exchange (Mr. Remy Kremer)

THE NETHERLANDS

Euronext (Mr. George Möller)

PORTUGAL

BVLP - Lisbon & Oporto Exchange (Mr. Ricardo Silva)

SPAIN

Bolsa de Madrid (Mr. Antonio J. Zoido)

SWEDEN

OM Stockholm Exchange (Mr. Carl Johan Högbom)

UNITED KINGDOM

London Stock Exchange (Mr. Don Cruickshank)

ANNEX II

CONSULTATION:

B. REPRESENTATIVES OF THE FORUM OF EUROPEAN SECURITIES COMMISSIONS (FESCO)

AUSTRIA

Austrian Securities Authority (Mrs. Andrea Kuras-Eder)

BELGIUM

Commission Bancaire et Financière/Commissie voor Bank- en Financiewezen (Mr. Michel Cardon de Lichtbuer)

DENMARK

Finanstilsynet (Mrs. Marianne Knudsen)

FINLAND

Rahoitustakastus (Ms. Anneli Tuominen)

FRANCE

Commission des Opérations de Bourse (Mr. Xavier Tessier)

GERMANY

Bundesaufsichtsamt für den Wertpapierhandel (Ms. Sigrid Langner)

GREECE

Capital Market Commission (Ms. Eleftheria Apostolidou)

IRELAND

Central Bank of Ireland (Mr. Patrick Neary)

ITALY

Commissione Nazionale per le Società e la Borsa (Mr. Carlo Biancheri)

LUXEMBOURG

Commission de Surveillance du Secteur Financier (Mr. Charles Kieffer)

THE NETHERLANDS

Stichting Toezicht Effectenverkeer (Mr. Bert Canneman)

PORTUGAL

Comissão do Mercado de Valores (Mr. Gonçalo Castilho Santos)

SPAIN

Comisión Nacional del Mercado de Valores (Mr. Rafael Sanchez De La Peña)

SWEDEN

Finansinspektionen (Mr. Håkan Klahr)

UNITED KINGDOM

Financial Services Authority (Mr. Nigel Phipps)

ANNEX II

CONSULTATION:

C. PARTICIPANTS IN 10 SEPTEMBER 2001 PRIVATE SECTOR ROUNDTABLE

| | |
|---------------------------|--|
| Stelios Argyros | <i>Chairman</i> STET Hellas Telecommunications SA (Greece) |
| Marco Becht | <i>Executive Coordinator</i> European Corporate Governance Network (Europe) |
| Antonio Borges | <i>Vice Chairman & Managing Director</i> Goldman Sachs International (United Kingdom) |
| Philippe Bougon | <i>Secretary of the Board</i> Schneider Electrics SA (France) |
| Willy Breesch | <i>Chairman of the Board of Directors</i> KBC Bank and Insurance Holding Company (Belgium) |
| Alan Buchanan | <i>Company Secretary</i> British Airways PLC (United Kingdom) |
| Javier Chércoles Blázquez | <i>Director of Corporate Responsibility</i> Inditex SA (Spain) |
| Renato Conti | <i>Vice President and General Counsel</i> Telespazio SpA (Italy) |
| Guido De Clercq | <i>Deputy General Counsel</i> Tractebel SA (Belgium) |
| Graham Dransfield | <i>Legal Director</i> Hanson PLC (United Kingdom) |
| Hans Duijn | <i>Corporate Secretary</i> ABN AMRO (The Netherlands) |

| | |
|------------------------|--|
| Léo Goldschmidt | <i>Director</i> European Association of Securities Dealers (Europe) |
| Richard Grayson | <i>Senior Manager Corporate Support Services</i> British American Tobacco (United Kingdom) |
| Gian Maria Gros-Pietro | <i>Chairman</i> ENI SpA (Italy) |
| Sherry Jacobs | <i>Director</i> Guilford Mills (United States) |
| Joachim Kaffanke | <i>General Counsel</i> Celanese AG (Germany) |
| Jacques Lévy-Morelle | <i>Corporate Counsel</i> Solvay SA (Belgium) |
| Jules Muis | <i>Director General (Internal Audit)</i> European Commission (Europe) |
| Lasse Skovby Rasmusson | <i>Vice President</i> Danisco A/S (Denmark) |
| Henrik-Michael Ringleb | <i>General Counsel</i> ThyssenKrupp AG (Germany) |
| Dominique Thienpont | <i>Administrator (Internal Market)</i> European Commission (Europe) |
| Karel Van Hulle | <i>Head of Unit (Internal Market)</i> European Commission (Europe) |
| Michel Van Pée | <i>General Counsel</i> Fortis (Belgium) |
| Arie Westerlaken | <i>General Counsel</i> Royal Philips Electronics (The Netherlands) |

WEIL, GOTSHAL & MANGES LLP PARTICIPANTS:

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Roman Rewald

Robert T. Simmelkjaer, II

R. Josef Tobien

ANNEX II

CONSULTATION:

D. ISSUES FOR DISCUSSION

CORPORATE GOVERNANCE AND THE SINGLE EUROPEAN MARKET

CONSULTATIVE ROUNDTABLE FOR EUROPEAN COMMISSION'S COMPARATIVE STUDY OF CORPORATE GOVERNANCE CODES RELEVANT TO THE EUROPEAN UNION AND ITS MEMBER STATES

Hosted by Weil, Gotshal & Manges LLP

**The Conrad International Hotel
71 Avenue Louise
1050 Brussels, Belgium**

10 September 2001

DISCUSSION THEMES

Does the variety of governance practices in the EU pose an impediment to the creation of a single unified European market?

Theme 1.

Do differences in corporate governance practices and recommendations impede companies in an EU member state from raising equity capital in markets outside their own national jurisdiction?

Question 1.1: As companies seek to raise external finance in equity markets and maintain a liquid market for corporate shares internationally, they face pressures to conform to capital market expectations about their corporate governance practices. Does the variety of governance practices among EU member states -- as evidenced by the variety of codes -- confuse investors about a company's corporate governance standards and procedures and thereby impair investment?

Question 1.2 : Several EU member states have governance codes that apply to domestic issuers listed on the domestic market but, under principles of mutual recognition, not to issuers from other countries listed on that market or to a domestic issuer listing on an exchange located in another member state, but not on the domestic market. Are problems created when different companies quoted on the same market are not subject to the same corporate governance code? (For example, a U.K. company and a Germany company both listed on the London Exchange; only the U.K. company is subject to the disclosure requirements of the Combined Code.) Would it be more efficient for the same code to apply for companies based on the company law regime that applies, *i.e.* should the Viénot code apply to all French issuers even when they are only listed on Xetra and not on Euronext? Or for the same rules to apply to all listed companies on the same market as is the case, for example, for Nasdaq-Europe and the EASD code?

Theme 2.

Do different concepts, across EU member states, of the place and purpose of the corporation in society pose any impediments to the creation of a unified market?

Question 2.1: Throughout the EU, nations have differing conceptions of the interests for which the corporate is governed. Do these differences impact the ability of publicly-traded companies to attract and retain capital? to attract and retain labour? to compete in product and service markets? other?

Question 2.2: In some EU member states, employees select some members of the supervisory board.* What impact does this have on the ability of a publicly-traded company to attract and retain capital? to attract and retain labour? to compete in product and service markets? other?

Theme 3.

What difficulties, if any, arise from specific differences in corporate governance practices and recommendations?

Question 3.1: Does the current diversity of proxy solicitation, voting rights (one share one vote, multiple voting rights, voting caps, voting agreements and voting methods) pose any difficulties to companies seeking to attract capital? Would market efficiency be enhanced by some form of harmonisation?

Question 3.2: Do recommendations to increase diversity and independence in the composition of supervisory boards* pose any difficulties?

Question 3.3: The level of disclosure, and the ease and timeliness of access to disclosed information, varies widely across EU member states. Does this pose any problems for companies? For example, disclosure of board and executive remuneration is sought by many activist investors. What are the disadvantages and advantages to the company that are perceived to follow from such disclosure?

* Throughout this discussion, “supervisory board” is used to refer to the top tier board in a two-tier system and the board of directors in a unitary board system.

Question 3.4: Does the variety of rules and practices relating to conflict of interest situations pose any difficulties for companies?

Theme 4.

Should the EC play a role in promoting convergence of corporate governance practices throughout the EU?

Question 4.1: The rich variety of governance codes within the EU has encouraged discussion about corporate governance practices and continual efforts at governance improvement. At the same time there appear to be some market pressures for convergence. Is market driven convergence of corporate governance practices sufficient for the EU goal of a single market? Or is there a need for something stronger?

Question 4.2: Would a single set of EU-recognised corporate governance standards be beneficial? Is it necessary? If so, should such standards be aspirational (like the OECD Principles) or should they set a mandatory minimum standard (through an EU Directive or Regulation) for all listed companies? Or should flexibility be given in a disclosure based model, *e.g.*, in the form of “comply or explain”?

ANNEX III

COUNTRY CORRESPONDENTS

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Discussion Of Individual Corporate Governance Codes Relevant To The European Union And Its Member States

ANNEX IV



In consultation with

**EASD - EUROPEAN ASSOCIATION OF SECURITIES DEALERS &
ECGN - EUROPEAN CORPORATE GOVERNANCE NETWORK**

January 2002

DISCUSSION OF INDIVIDUAL CORPORATE GOVERNANCE CODES RELEVANT TO THE EUROPEAN UNION AND ITS MEMBER STATES

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This Discussion of Individual Corporate Governance Codes is part of a larger Comparative Study of Corporate Governance Codes Relevant to the European Union and its Member States, undertaken by Weil, Gotshal & Manges LLP, in consultation with the European Association of Securities Dealers (EASD) and the European Corporate Governance Network (ECGN). Although a number of people contributed to the Study and, specifically, to this Discussion of Individual Corporate Governance Codes, Holly J. Gregory and Robert T. Simmelkjaer, II of Weil, Gotshal & Manges LLP bear sole responsibility for inaccuracies in its content.

The information and views expressed herein do not constitute a legal opinion, and should not be relied upon without independent verification and professional advice. Caution in relying on the information herein is especially called for given the rapid changes that are taking place in relevant laws and governance codes.

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A. AUSTRIA

1. LEGAL SYSTEM OVERVIEW

| CIVIL LAW SYSTEM | |
|---|--|
| LEGAL/REGULATORY FRAMEWORK | ENFORCEMENT/ REGULATORY BODIES |
| <p>COMPANY LAW FRAMEWORK</p> <ul style="list-style-type: none"> • <i>Allgemeines Bürgerliches Gesetzbuch</i> (“ABGB”) -- General Civil Code • <i>Bundesgesetz über das internationale Privatrecht</i> (“IPR-Gesetz”) -- Federal Act on the Law of Conflicts • <i>Firmenbuchgesetz</i> (“FBG”) -- Company Register Act (plus amending acts) • <i>Aktiengesetz</i> (“AktG”) -- Stock Corporation Act • <i>Gesetz über Gesellschaften mit beschränkter Haftung</i> (GmbH-Gesetz / GmbHG) -- Limited Liability Companies Act | <ul style="list-style-type: none"> • Commercial Courts |
| <p>SECURITIES LAWS/REGULATIONS</p> <ul style="list-style-type: none"> • <i>Wertpapieraufsichtsgesetz</i> (“WAG”) -- Securities Supervision Act • <i>Börsengesetz</i> -- Stock Exchange Act • <i>Kapitalmarktgesetz</i> -- Capital Market Act | <ul style="list-style-type: none"> • <i>Bundes-Wertpapieraufsicht</i> (“BWA”) -- Austrian Securities Authority (“ASA”) |
| <p>STOCK EXCHANGE LISTING RULES</p> <ul style="list-style-type: none"> • <i>Allgemeine Geschäftsbedingungen des Börseunternehmens Wiener Börse AG für die Wiener Börse als Wertpapier -- und allgemeine Warenbörse</i> -- General Terms by the exchange undertaking Wiener Börse AG pertaining to the Vienna Exchange • Listing Rules of regional stock exchanges in Vienna, Graz, and Linz-Wels | <ul style="list-style-type: none"> • <i>Bundes-Wertpapieraufsicht</i> (“BWA”) -- Austrian Securities Authority (“ASA”) • <i>Wiener Börse AG</i> -- Vienna Stock Exchange |

a. GENERAL

In 1997, a report by the European Corporate Governance Network (“ECGN”) observed that “the structure of Austrian corporate governance has remained largely unexplored. This is partly due to the complex structure of the system and partly due to the difficulty in obtaining data.” (ECGN 1997 Preliminary Report, p. 2) Austrian corporate governance remains an area that is largely unexplored from a comparative law perspective to date. However, in many respects Austrian corporate governance is modelled on, and is similar to, the German system, including its emphasis on balancing and reconciling the interests of shareholders and employees. (The Austrian *Sozialpartnerschaft* (Social Partnership) model is similar to the German *Soziale Marktwirtschaft* (Social Market Economy) model.)

To date, interest in corporate governance reform has been limited in Austria, due to a number of factors: Most companies in Austria are still owner-controlled and not listed on Austria’s stock market and this has limited the ability of outside shareholders to influence Austrian companies’ governance practices. In addition, many of the largest Austrian companies remain state-controlled, although there has been some gradual privatisation. Banks, which tend to be conservative and generally support the

status quo in governance, also continue to play an important role in corporate financing (as both lenders and shareholders, and as custodians often controlling voting of large blocks of shares). Bank executives often sit on supervisory boards of the companies they finance. Other types of institutional investors typically associated with greater shareholder activism elsewhere have not yet emerged as a powerful force. Note however that share ownership by individuals is growing -- although slowly -- and the Austrian Association for Share Promotion (*Aktienforum*) has been formed by the financial and business communities to encourage greater stock ownership by both Austria and foreign investors. Finally, the transparency of Austrian companies, and the reliability of financial reporting, is perceived by foreign investors and commentators to lag that of companies in other EU Member States, due in part to the smaller number of Austrian companies that follow International Accounting Standards under listing rules or on a voluntary basis.

Possibly as a result of the factors discussed above, foreign investment, although increasing, has yet to become a significant source of capital for Austrian companies. However, Austria has modernised a number of its laws in connection with becoming a member of the European Union in 1995, and recent efforts have been made to increase the independence of auditors. (Recent amendments to the Austrian Commercial Code (*Handelsgesetzbuch*) by the *Finanzmarktaufsichtsgesetz* introduced a requirement that auditors rotate after six years, and also increased the maximum amount for liability of auditors.) The ongoing process of privatisation and growing reliance on equity capital markets for finance may exert pressure for further improvement in Austrian corporate governance, especially as concerns transparency, disclosure and shareholder rights.

b. ROLE AND RESPONSIBILITY OF SUPERVISORY BODY

(1) Type of board system: *Two-tier*.

Among the several types of companies in Austria (including several combinations of types of companies), the most notable is the stock corporation (*Aktiengesellschaft* or “AG”). An AG having more than 300 employees and share capital of at least ATS 1 million is required to have four institutional bodies: a management board (*Vorstand*), a supervisory board (*Aufsichtsrat*), a shareholders’ meeting, and auditors.

(2) Role, make-up and powers of the supervisory body.

The supervisory board of the Austrian AG is analogous to the supervisory board of the German AG. As in Germany, both shareholders and employees elect the supervisory board. Shareholders elect two-thirds of the supervisory board. Under Austria’s co-determination laws (*Arbeitsverfassungsgesetz* or “ArbVG”), a works council made up of employee representatives has the right to select one-third of the members of the supervisory board (as opposed to one-half in the larger companies under the German system).

The supervisory board must have at least three members but it is frequently larger, pursuant to requirements in a company’s articles. The supervisory board is separate from the management board: current members of the management board may not serve on the supervisory board, although retired management members may and frequently do. It is typical for the supervisory board to include persons from other

entities that do business with or are otherwise related to the company. However, there is no requirement that such affiliations be disclosed to shareholders. Supervisory board members may sit on no more than ten such boards. They typically serve four-year terms in staggered elections.

The supervisory board has responsibility for:

Hiring and firing top managers: The supervisory board is responsible for appointing and dismissing members of the management board. It appoints the members of the management board for a term not to exceed five years. It may revoke the appointment of a management board member (or the appointment of the chairman of the management board) for cause. Cause includes gross breach of duties, inability to manage the company properly, or a vote of no-confidence by the general meeting of shareholders. (Stock Corporation Act, § 75)

Ensuring the company's compliance with applicable laws and regulations: The management board has direct responsibility for the management of the company, but it is the supervisory board's task to advise the management board. (Stock Corporation Act, §§ 75, 95) In order to facilitate supervision, the supervisory board may inspect and examine the books and records of the company as well as its assets including, *inter alia*, cash, securities, and commodities. The supervisory board also proposes the auditors for election by the shareholders general meeting. Management responsibilities may not be conferred on the supervisory board, but law requires that the supervisory board approve the following types of transactions:

- Acquisition and sale of participations in enterprises;
- Acquisition, sale and winding-up of enterprises and businesses;
- Purchase, sale and encumbrance of real estate;
- Certain investments;
- Lending and borrowing money (certain loans); and
- General business policies.

(Stock Corporation Act, § 95, ¶ 5)

In addition, the supervisory board or the articles of association may require that other types of transactions be entered only with the supervisory board's consent.

Ensuring the integrity of the corporation's accounting, audit and financial reporting systems: The management board is responsible for preparing annual accounts, consisting of a balance sheet and a profit and loss account as well as an annual business analysis, and must submit these to the supervisory board. (Stock Corporation Act, § 125) The supervisory board is responsible to ensure that these accounts have been prepared in accordance with proper accounting principles. (Stock Corporation Act, § 125) The supervisory board must declare within two months after presentation whether the accounts are approved; if so, this approval is binding, unless the management and the supervisory board refer the approval to the general meeting of shareholders. If the supervisory board refuses the approval, the accounts must be adopted by resolution of the general meeting.

(3) Duties of the supervisory body.

As in the German model, there is no legal requirement that the Austrian supervisory board as a whole represent the interests of any particular constituency. The supervisory board operates within a more general legal framework; its duties and efforts are merely directed at the oversight of the management board. In fulfilling its duties, the supervisory board indirectly serves the interests of all constituencies.

Members of the supervisory board who violate their duties are liable to the company for any resulting damages. In the event of a dispute, they bear the burden of proof as to whether or not they exercised the care of a diligent and conscientious board member. The supervisory board's fiduciary duties run exclusively to the company. Shareholders therefore cannot file a legal action against supervisory board members in an effort to obtain recourse for poor management of the company. They can only file an action against the company generally. (Creditors of the company can enter a claim against members of the supervisory board when their claim is not entirely satisfied by the company.) In fulfilling its duties (*i.e.*, in monitoring the management board), the supervisory board is required by law to employ the care of a diligent and conscientious supervisor and shall not disclose confidential information which has become known as a result of service on the supervisory board. (Stock Corporation Act, §§ 84, 95)

c. ROLE AND RESPONSIBILITY OF MANAGEMENT

(1) Role, make-up and powers of the managerial body.

The management board has direct responsibility for the management of the company. The management board as a whole is responsible for the proper management of the corporation. In doing so, the management board is required to act in the best interests of the company, taking into consideration the interests of the shareholders, the employees, and the general public. (Stock Corporation Act, § 70) It represents the company in and out of court. (Stock Corporation Act, § 71) Internally, its members may decide on divisions of tasks among themselves and the exercise of the management board's duties. The management board also represents the company vis-à-vis third parties. In principle, the members of the management board only together have the full power to represent and bind the corporation. However, individual members can be authorised to act alone.

Members of the management board may be granted a right to participate in the company's profits; such participation consists of a participation in the company's annual profits. (Stock Corporation Act, § 77) The aggregate remuneration is to bear a reasonable relationship to the duties of the member and the condition of the company. (Stock Corporation Act, § 78) Companies are required to disclose the aggregate fees paid to management members (and to supervisory members) in the annual reports. They are not required to disclose the compensation of each individual member.

Absent the consent of the supervisory board, members of the management board may not engage in any trade nor enter into any transaction in the company's line of business, either on their own behalf or on behalf of others; absent such consent, they may not be a member of the management board, or a manager or a general partner, of

another commercial enterprise. (Stock Corporation Act, § 79) The management board reports to the supervisory board at least quarterly. (Stock Corporation Act, § 81)

(2) Duties of management members.

As in the case of supervisory board members, members of Austrian management boards do not owe fiduciary duties directly to shareholders. Rather, their duties run exclusively to the company, and shareholders' recourse for management failure is limited to suits brought against the company.

d. SHAREHOLDER RIGHTS

The Austrian Stock Corporation Act (*Aktiengesetz*) and the company's articles determine shareholder rights in large listed companies. While the Stock Corporation Act provides for some mandatory shareholder rights, it provides significant discretion for shareholders' relations with the corporation to be modified through the corporate articles.

Most Austrian companies issue shares in freely-transferable bearer form. However, state-owned companies sometimes issue registered shares. The transfer of registered shares may be restricted by corporate articles to require management board approval. Companies generally require that shareholders deposit bearer shares with a custodian to participate in the general meeting (seven days prior to meeting). Although different classes of voting shares with different voting strengths are prohibited, non-voting stock and voting caps are allowed (if provided in the articles).

Although shareholders may submit proposals for the agenda of the general meeting, shareholder proposals are rarely submitted.

(1) Decisions reserved to shareholders and the General Meeting.

Under law, shareholders must approve the actions of both the supervisory and management boards every year at the general meeting. Although this provides shareholders an opportunity to express their views, votes disapproving the actions of the boards are highly unusual. Votes in support of the actions taken only express the confidence of the shareholders; they do not release the supervisory and management boards from liability for their actions.

The authority of the shareholders meeting (general assembly) is expressly stated in the Stock Corporation Act and articles of association (Stock Corporation Act, § 103, I). The shareholder's meeting may decide on matters concerning the management of the company only if required either by the management board or by the supervisory board (Stock Corporation Act, § 103, II). The shareholders meeting generally may decide the following:

- Appointment of the first supervisory board and appointment of auditors for the first annual financial statements (Stock Corporation Act, § 30, IV);
- Resolution on the incorporation of the company (Stock Corporation Act, § 30, VI);
- Amendment of the articles of association (Stock Corporation Act, § 145, I);

- Consent to waiving of company claims against founding shareholders and board members (Stock Corporation Act, § 43, I); resolve that such claims be made (Stock Corporation Act, § 122, I);
- Waiving of claims of the company against the members of the management board (Stock Corporation Act, § 84, IV);
- Consent to material agreements with founders under the post-formation rules (Stock Corporation Act, § 45, I);
- Stock repurchase for the purpose of offering such stock to non-managing, and managing employees, and to members of both the supervisory and managerial boards (Stock Corporation Act, § 65, I.5);
- Stock repurchase for the purpose of a capital decrease (Stock Corporation Act, § 65, I.7);
- Stock repurchase for the purpose of trading in securities, if the stock corporation is a banking institution (Stock Corporation Act, § 65, I.8);
- Stock repurchase purchase of own stock if the stock is traded on a stock exchange (Stock Corporation Act, § 65, I.9);
- Vote of no-confidence in the management board (Stock Corporation Act, § 75, IV);
- Election and dismissal of the members of the supervisory board (Stock Corporation Act, § 87, I);
- Annual ratification of the acts of the members of the management board and of the supervisory board (Stock Corporation Act, § 104, II);
- Issuance of convertible bonds (*Wandelschuldverschreibungen*), dividend bonds (*Gewinnschuldverschreibungen*), and participation rights (*Genußrechten*) (Stock Corporation Act, § 174, I);
- Distribution of profits (Stock Corporation Act, § 126, I);
- Dissolution of the company (Stock Corporation Act, § 203, I) and decisions related to its liquidation (*e.g.*, Stock Corporation Act, §§ 206, 210, 211 & 215).

(2) Shareholders' legal recourse.

The most important judicial relief available to shareholders in Austria is, both in fact and in law, legal action to rescind resolutions passed in a shareholders' general assembly. An action to set aside a shareholders' resolution must be brought against the company and instituted within one month after adoption of the resolution. A shareholder who was present at a shareholders meeting and whose objection to a resolution failed or who was unjustifiably refused admittance to the meeting may file a suit to nullify the resolution under certain conditions. These include: (i) proper procedure for adopting the resolution was not duly followed; (ii) the resolution's contents violate mandatory provisions of the law; or (iii) the resolution is inconsistent with the articles of association. Managers and members of the management and supervisory boards are also entitled to file suit to nullify a resolution if they could be

held individually liable for damages or criminally liable as a result of the resolution. All such suits must be filed with the commercial courts.

Shareholder rights are primarily protected through the courts. The shareholders' right to financial disclosure is also partially governed by the Austrian Securities Authority.

(3) Duties of controlling shareholders.

A shareholder may not vote on a matter of direct personal concern. Other than a general obligation to maintain loyalty to the company in exercising majority voting rights, majority shareholders are not held to owe particular duties to the company or to minority shareholders.

2. CORPORATE GOVERNANCE CODES

Austria is one of two EU nations in which it appears that no codes of corporate governance, as defined for purposes of this Study, have been published to date. Two representatives of the Austrian Securities Authority have confirmed this conclusion after making their own inquiries.

Although there are no published corporate governance codes in Austria to date, the *Institut Osterreichischer Wirtschaftsprüfer* ("IWP") has set up an interdisciplinary working group on corporate governance to draft a code addressing the roles of management board members, supervisory board members, and auditors. A draft is expected to be published by the end of 2001. It has been reported that Austrian companies will be asked to voluntarily abide by the code and that auditors may be asked to check compliance with the code.

Note that at the 2001 annual general meeting of the IWP, participants expressed concern over the widening gap between what the auditor is required to do under statutory law and what the capital markets expect from the auditor. This may indicate a particular focus of the draft. Also at that meeting, there was considerable discussion of the perceived failure of the German code effort to date to pay attention to the international dimension of corporate governance, and there was criticism of the perceived "top-down" procedure by which German codes have developed. This indicates some pressures in Austria to understand the broader international aspects of the issue and for any codes to emanate from consultation with the private sector.

B. BELGIUM

1. LEGAL SYSTEM OVERVIEW

| CIVIL LAW SYSTEM | |
|---|--|
| LEGAL/REGULATORY FRAMEWORK | ENFORCEMENT / REGULATORY BODIES |
| <p>COMPANY LAW FRAMEWORK</p> <ul style="list-style-type: none"> Code of companies, announced in law of May 7, 1999, published in Belgian Official Gazette of August 6, 1999 (the “Company Code”) | <ul style="list-style-type: none"> Civil Courts |
| <p>SECURITIES LAWS/REGULATIONS</p> <p>Concerning information requirements:</p> <ul style="list-style-type: none"> Royal Decree of May 10, 1989 on the declaration of significant shareholdings in the capital of listed companies Royal Decree of July 3, 1996 on periodic information to be disclosed by issuers whose financial instruments are listed on the first market and the new market of a stock exchange Royal Decree of July 3, 1996 on occasional information to be disclosed by issuers whose financial instruments are listed on the first market and the new market of a stock exchange <p>Concerning public offerings, change of control and equal treatment of shareholders:</p> <ul style="list-style-type: none"> Royal Decree of July 9, 1935 (as modified) concerning the Banking and Finance Commission Royal Decree of November 8, 1989 (as modified) relating to public offerings and change of control Royal Decree of July 7, 1999 relating to the public nature of financial operations | <ul style="list-style-type: none"> Banking and Finance Commission (“CBF”) |
| <p>STOCK EXCHANGE LISTING RULES</p> <ul style="list-style-type: none"> Euronext Brussels Rule Book, announced in the Royal Decree of May 28, 2001, published in the Belgian Official Gazette of June 8, 2001 Nasdaq Europe Rule Book, issued on May 11, 2001 (as modified) | <ul style="list-style-type: none"> Euronext Brussels/CBF Nasdaq Europe/CBF |
| <p>OTHER</p> <ul style="list-style-type: none"> Works Council Act of 1950 (amended 1971) | <ul style="list-style-type: none"> Ministry of Labour & Labour Courts |

a. GENERAL

Corporate governance has been the subject of much activity in Belgium over the last few years, although some individuals contacted during this inquiry opined that this activity is slowing. Belgium undertook a number of legal and market reforms in the 1990’s designed to prepare for the economic and monetary union of Europe and some of these reforms related to corporate governance.

In the mid to late 1990s, the Belgian Commission on Corporate Governance (established by the Brussels Stock Exchange and the Belgian Banking & Finance Commission (“CBF”)) and the Company Managers Group on Corporate Governance (established by the Federation of Belgian Companies (“VBO/FEB”)) carried out

significant analyses of Belgian corporate governance. The primary focus of these efforts has been to improve the perceived attractiveness of Belgian companies, particularly listed companies, in the international investment community.

The discussion of corporate governance in Belgium is complicated by the variety of forms under which businesses can organise. There are nearly 10 different forms that businesses can adopt in Belgium, ranging from the standard *société anonyme* (joint stock company) to partnerships with or without limited partners. An exhaustive description of these forms is beyond the scope of this Study, all the more since existing codes focus primarily on the governance of the *société anonyme*.

b. ROLE AND RESPONSIBILITY OF THE SUPERVISORY BODY

(1) Type of board system: *Predominantly one-tier.*

Belgian companies generally adhere to a one-tier board structure, with companies being managed by a board of directors that may delegate duties to managers.

(2) Role, make-up and powers of the supervisory body.

The board of directors is responsible for management and supervision of the operation of the company. “The board of directors is empowered to perform whatever shall be necessary or useful for the realisation of the object of the company . . . etc.” (Company Code, Art. 552, § 1) The board can entrust the day-to-day management of the company and the representation of the company to one or more directors, managers, or other persons who act jointly or severally. (Company Code, Art. 525) The board makes final decisions regarding the hiring and dismissal of managers.

In practice, the board of directors often appoints an executive committee or management committee (*comité de direction*), which may comprise executive directors and also managers who are not members of the board. Such a committee is generally entrusted with -- and in practice actually carries out -- the day-to-day management of the company. At present, this organ is not foreseen under the law; the board delegates authority to the committee and the responsibility for the executive committee’s actions rests with the board. (Parliament is considering a draft law that would require the executive committee and define its responsibilities.)

(3) Duties of the supervisory body.

The board of directors is empowered to undertake whatever actions are necessary or useful to realise the objective(s) of the company. (Company Code, Art. 522, § 1) As a general principle, the board of directors must act in the best interests of the company: this general principle is one of the cornerstones of Belgian company law. In practice board members elected by the general meeting of shareholders tend to act in the interest of the (majority) shareholders who elected them; however, they are required by law to represent the interests of the company. This distinction becomes important in situations where the interests of some shareholders and the company might diverge.

The board is responsible for ensuring the integrity of the company’s accounting, audit and financial reporting systems. (Company Code, Art. 92) The board is also

responsible for ensuring that the company follows applicable laws and regulations. The concept of a fiduciary duty to shareholders does not translate into Belgian civil law. However, pursuant to general tort law, every director must act with prudence and diligence in the interest of the company. A claim for negligence in management can only be asserted by the company (acting through a decision of the general meeting of shareholders) and not by third parties. Liability for negligence in management is a liability that directors incur only towards the company. (Company Code, Art. 527) Thus, only the shareholders (in a general meeting) can initiate such action against the directors. (Company Code, Arts. 527 & 528) (Note also that the Civil Code, Arts. 1382 & 1383, implies a general duty of care.) Directors may be individually liable towards the company and third parties for certain violations of the Company Code and the articles of association. (Company Code, Art. 528)

Articles 523 and 529 of the Company Code provide a conflict of interest procedure in the event one or more directors have an opposing interest in a decision or an action to be taken by the board of directors. A special conflict provision applies to listed companies. (Company Code, Art. 524).

c. ROLE AND RESPONSIBILITY OF THE MANAGERIAL BODY

(1) Role, make-up and powers of the managerial body.

The legal responsibility of the managers is based on Article 525 of the Company Code, which empowers the board of directors to appoint one or more day-to-day managers (see above). The degree of responsibility assumed by the manager depends on the nature and content of the contract.

(2) Duties of management members.

The managers, under supervision of the board of directors, can be held liable towards the company for negligence in the execution of the agency or employment contract. The managers will also be held liable towards third parties for any breach of the general duty of care (see above). (Civil Code, Arts. 1382 & 1383) The company can be held liable for actions taken by its officers. (Civil Code, Art. 1384) The employer will be liable in tort for the damage caused by their employees: when (i) the employee has committed a wrongful act; (ii) which has caused damage to a third party; and (iii) the wrongful act has been committed during, and on the occasion of, the exercise of his functions as an employee. (Civil Code, Art. 1384)

When these conditions are met, third parties who have suffered damage from a wrongful or negligent act committed by the officer in the scope of his functions will have an action against the officer and against the company which will entitle them to be indemnified for the damage that they have suffered. The officer and the company will be held liable towards the plaintiff. If the company has indemnified the plaintiff, it has the right of recourse against the officer.

d. SHAREHOLDER RIGHTS

There are various types of shares in Belgian companies, which are either in registered or bearer form:

- Common shares may take the form of either bearer or registered shares. The vast majority of shares in Belgian listed companies are bearer common shares.
- AFV shares (*avantage fiscal*) are shares with certain tax advantages. The tax benefits of AFV shares have expired by government decree, but Belgian companies are now issuing VVPR Shares (*verminderde voorheffing/précompte réduit*), which also have tax advantages. These two share types are generally more difficult to trade than common shares.
- Preferred shares receive higher dividends than common shares and have priority over the interests of common shares in case of liquidation. Voting rights of preferred shares are set forth in a company's bylaws; the bylaws may provide for either non-voting preferred shares or for voting preferred shares on a one share/one vote basis.
- Dividend rights certificates, as the name implies, usually carry the right to receive dividends only. However, dividend rights certificates may have voting rights if provided in the bylaws.
- Subscription rights give the holder an option to subscribe to a future stock issue.

All Belgian companies are required to hold annual general meetings within six months of the conclusion of the accounting year. One of the primary purposes of such meetings is approval of the annual accounts. Belgian companies are required to take steps to give notice to holders of both bearer shares (by newspaper advertisement) and registered shares (by personal mail). Belgian companies generally adhere to the one share/one vote principle for common shares. However, as noted above, certain types of shares may not have a vote -- and therefore disproportionate voting rights are possible.

Note that the Rule Book of Euronext Brussels also provides rules relating to the rights attached to shares of listed companies. The Rule Book requires that shares of the same class of listed companies must have identical rights. (B-3302/1) It also states that the application for listing on Euronext Brussels must relate to all shares of the same class that are issued or proposed to be issued. (B-3302/2) These rules apply to all issues on Euronext Brussels, foreign and domestic.

(1) Decisions reserved to shareholders.

Pursuant to company law, a number of key corporate decisions are reserved to shareholders. Note that routine resolutions require a majority of votes cast by shareholders. Article amendments and certain extraordinary measures require a supermajority of the votes cast, usually seventy-five percent (75%). Belgian company law provides that the holder of one share is entitled to:

- Request that the board of directors convene the general shareholders meeting to deliberate on the appointment of a statutory auditor (Art. 165);
- Investigate the company in the absence of a statutory auditor (Art. 166);
- Sign the minutes of a general shareholders meeting (Art. 546);
- Examine and receive certain corporate documents;

- Ask questions of directors and top managers at the general shareholders meeting; and
- Request the judicial winding-up of the company if the net assets of the company fall below the minimum legally required capital (Art. 646).

Article 63 of the Company Code defines “ordinary decisions” of the company for which a simple majority of votes cast is required for the measure to pass. These include:

- Election of supervisory body members;
- Appointment of statutory auditors;
- Approval of auditors’ fees;
- Approval of financial statements;
- Allocation of company profits and setting of dividends; and
- Approval of dividend reinvestment plan.

Other corporate decisions reserved to shareholders that require a supermajority of votes cast to pass include:

- Simple amendments to the company’s bylaws;
- Resolutions for a winding up of the company;
- Merger or split of the company;
- Amendments to the rights of different classes of shares or securities;
- Capital increase or decrease;
- Issuance of corporate bonds;
- Amendment of the corporate objective(s) clause;
- Resolution for the conversion of the company into another form of company; and
- Shareholder squeeze-outs.

(2) **Shareholders’ legal recourse.**

Shareholders can initiate a judicial investigation of the company or its auditors. They can initiate a legal action for damages against the management of a company either in their own name or in the name of the company. Additionally, the public prosecutor can bring action in cases of criminal offences.

Abuse of rights of minority shareholders is one of the most frequent grounds for action against the controlling shareholders. Many of the legal recourses listed above can be grounded on abuse of rights (*e.g.*, annulment of resolution of the meeting of shareholders, action in view of the appointment of an expert, etc.). Minority shareholders can also request a whole series of preliminary measures from the court (*e.g.*, suspension of resolutions of the meeting of shareholders or of the board of directors; designation of a provisional administrator, etc.).

(3) Duties of controlling shareholders.

Shareholder conduct is limited by the general case law principle forbidding abuse of rights. Majority shareholders may not act solely to the detriment of the minority shareholders (and vice versa). Abuse of rights (abuse of majority) is one of the most frequent grounds for action against the controlling shareholders. The principle of *affectio societatis*, based upon the fact that each shareholder contributes to the share capital of the company (Company Code, Art. 19), makes the relationship between shareholders something of a contractual relationship and requires that each shareholder act as a shareholder in good faith. (Civil Code, Art. 1134)

2. CORPORATE GOVERNANCE CODES

Four codes of corporate governance have been issued in Belgium, although two of these have been combined. (These two codes are analysed separately herein, and are treated separately in the tables in Section II of this Final Report.) This total does not include the EASD Code. Although the EASD is based in Brussels, the EASD Code is covered in the discussion of pan-European and international codes, below.

A new corporate governance code was issued in Belgium by the Federation of Belgian companies (FEB/VBO) in September 2001. This code is specifically aimed at non-listed companies and aims to improve the corporate governance practices of mid-sized companies. Due to the very late date at which it was published and the fact that it differs in aim from the vast majority of the codes this Report discusses, it is not included.

In 2000, the Brussels Stock Exchange integrated in part with the Paris and Amsterdam exchanges to form Euronext. Euronext launched a common trading platform in September 2001. The exact extent of regulatory and other integration is still in flux. The corporate governance codes, so far, have not been affected by the integration. Corporate governance policy remains local. Note also that the Euronext Brussels Rule Book was announced in Royal Decree of 28 May 2001, and was published in Belgian Official Gazette of June 8, 2001. Rule 3302/6 of the Euronext Brussels Rule Book states: "Euronext Brussels may by notice impose corporate governance conditions or substitute disclosure obligations (comply or explain)." So far, no such notice has issued.

In 1998 and 1999, the Belgian Banking & Finance Commission conducted surveys of the extent to which listed companies complied with its recommendations. The surveys concluded that corporate governance disclosure was noticeably improved over 1997. Note that the Banking and Finance Commission and the Market Authority of Euronext Brussels may comment from time to time on major corporate governance achievements in their annual reports. In addition, a number of legal scholars have published articles evaluating corporate governance achievements in Belgium. See, e.g., De Wulf, H. and Van Der Elst, C., *Corporate governance en beursgenoteerde vennootschappen: eerste analyse van de jaarverslagen 1997*, Bank Fin., 6/1998, 335-342; Wymeersch, E., *Institutionele beleggers en Corporate Governance*, Bank. Fin., 1998, 213-222; Nothomb, P., *Les OPC et Corporate Governance*, Bank Fin., 1998, 223-228, etc.

a. RECOMMENDATIONS OF THE FEDERATION OF BELGIAN COMPANIES (VBO/FEB)

Code: Corporate Governance: Recommendations of the Federation of Belgian Companies (VBO/FEB)
Issuing Body: The Federation of Belgian Companies (VBO/FEB)
Date Issued: January 1998
Official Languages: Dutch, French and English

(1) Background.

(a) Issuing Body: *Business, industry and/or academic association or committee.*

The Federation of Belgian Companies (VBO/FEB) is the largest employers' organisation in Belgium, representing more than 30,000 companies in a wide range of industries and services. The VBO/FEB formed a "Company Managers Group" in June 1997, chaired by Baron Daniel Janssen, Honorary President of the VBO/FEB and Chairman of the Executive Committee of Solvay, to "study the principal aspects of governing and administering companies" and "to make recommendations for the benefit of companies." The group included managers from eight different Belgian companies.

(b) Legal Basis and Compliance: *Voluntary (disclosure encouraged).*

Similarly to the Cadbury Report upon which it is modelled, the VBO/FEB Recommendations do not attempt to create a mandatory set of governance requirements. However, listed companies are recommended to indicate in their Annual Report which measures they are applying in the area of corporate governance.

The VBO/FEB, like the Cadbury Committee, also states that the Recommendations should be adapted "in accordance with the specific characteristics of each company, and it must be possible to ignore them if they are not appropriate to the company, particularly if it is small." It therefore asks companies to be guided "by those recommendations which they consider to be most suitable to their specific situation." (Introduction)

(c) Consultations.

The Code does not indicate whether any formal consultative process was undertaken. However, the CBF website refers to consultations that took place between the VBO/FEB, the Belgian Commission on Corporate Governance and the CBF running up to the initial publication of their respective codes to ensure coherence.

(d) Contributions.

VBO/FEB Recommendations expressly state that the Company Managers Group used as a basis for its activities the work of the Cadbury Committee in the United Kingdom and the "Code of Best Practice" (Cadbury Report) which it produced. The VBO/FEB "investigated the adoption of each recommendation [of the Cadbury Report] in line with the Belgian economic and legal context."

(e) Definition of Corporate Governance.

The VBO/FEB defines the term corporate governance as “[t]he organisation of the administration and management of companies.” It states that corporate governance “has to meet the expectations of the shareholders and the requirements of the economic process.” (Foreword)

(f) Objective: *Improve companies’ performance, competitiveness and/or access to capital.*

“The organisation of the administration and management of companies, which is better known under the term ‘corporate governance,’ has to meet the expectations of the shareholders and the requirements of the economic process. The VBO/FEB has recently ratified recommendations within this framework . . . Just as Molière’s *bourgeois gentilhomme* used to speak in prose without even knowing it, companies already apply principles of corporate governance in their daily existence. However, systematising or improving them can help business work more efficiently and promote their development.” (Foreword)

The VBO/FEB Code sets out to improve the performance and board functions of Belgian companies. The VBO/FEB considers that “corporate governance lends itself to self-regulation by the business circles involved, rather than legislative intervention which is unable, due to its inflexibility, to cover the diverse range of situations and developments which necessarily take place in this area.” The Recommendations “emphasise the best possible rules and structures in relation to corporate governance: the composition and functioning of the board of directors, the role of directors to be presented, etc.” (Introduction)

These Recommendations begin from the proposition that “companies already apply principles of corporate governance in their daily existence” but that “systematising or improving them can help business to work more efficiently and promote their development.” (Foreword)

(g) Scope: *All companies.*

While the “VBO/FEB has not made any distinction between the different categories of companies,” it acknowledges that “some of its recommendations are more specifically intended for large and particularly for listed companies” while “others could have a very helpful influence on the administration of all companies.” However, it does not specify which fall into either of these categories, but instead leaves this determination to companies themselves. (Introduction)

Note that Federation of Belgian Companies recently issued a publication entitled “Corporate Governance in Companies Not Listed on the Stock Exchange (September 2001),” which discusses governance of privately held companies. This document can be found on the website of the FEB/VBO (www.vbo.be).

(2) Supervisory and Managerial Bodies.

(a) Rules/recommendations regarding the separate roles and responsibilities of supervisory and managerial bodies (including lines of responsibility).

The Code advocates a clear definition of, and distinction between, the responsibilities of the board of directors and the managerial body. If the chairman of the board is also the chief executive, it further advocates that the board include “prominent individuals” who can “counterbalance” the chairman’s influence. (§ 1.2)

The Code states that “[a] number of decisions must belong to the exclusive competence of the board of directors so that the administration and control of the company remain clearly in the hands of that board.” (§ 1.4) The Code explains: “It is the task of the board of directors, on a proposal from the executive directors, to determine the strategic objectives of the company and the general policy plan, to appoint the management and to develop structures which will make it possible to achieve these objectives, to supervise the execution of the policy plan and the control of the company, and to give the necessary information to the partners. The board of directors also defines the procedures which have to be followed for transactions which are binding on the company, and it defines the cases when the signature of directors is required. It also defines the procedures which have to be followed if decisions have to be taken between two meetings of the board of directors.” (Note to § 1.4)

(b) Rules/recommendations regarding the accountability of supervisory and managerial bodies (including conflicts of interest).

The Code does not discuss the accountability of the supervisory and managerial bodies at any length. It does, however, state that it is the responsibility of the board of directors to produce a “comprehensive and objective annual report on the situation of the company each year.” (§ 4.1) The Code expects that the report be both clear and balanced (referring to both successes and failures).

The Code also notes that the audit committee is accountable to the board of directors. (Note to § 4.3)

(c) Rules/recommendations regarding the size, composition, independence and other selection criteria and procedures of supervisory and managerial bodies.

The Code states that the board of directors must include non-executive directors, *i.e.*, directors who do not exercise any managerial role in the company. (§ 1.3) They must be sufficiently capable, influential and numerous to assert their point of view and make it count in decisions taken by the board. The Code states that “the non-executive directors must be sufficiently numerous in comparison with the executive directors.” (§ 2.2) Non-executive directors are appointed by the general meeting of shareholders on a proposal from the board of directors. (§ 2.3) According to the Code, some of the non-executive directors may represent the dominant shareholders of the company.” Finally, certain non-executive directors must be independent of the dominant shareholders and also of the management. They are called independent directors. (§ 2.2)

The Code also states that “the non-executive directors must be able to make an independent judgement on the company’s strategy, performance and resources. A recommendation from them is also required for appointments to certain key posts and for the standards of conduct which the company imposes on itself.” (§ 2.1)

The Code recommends that the mandate of directors must be for a limited period of time and should not be automatically extended. (§ 1.6) This is consistent with Belgian company law, which requires that directors’ terms may not exceed six years and may only be renewed via election by shareholders.

(d) Rules/recommendations regarding the working methods of supervisory and managerial bodies (including information flows).

The Code states that the board of directors, which is a “collegiate body,” must meet at regular intervals to exercise effective control over the company and the activities of its executive directors. (§ 1.1)

Furthermore, the Code states that “if there is a secretary of the board of directors, the directors must be able to consult with him and call upon his services. The secretary must ensure that the procedures in relation to the functioning of the board and the regulations which apply to it are complied with. If there is no secretary, the board shall take the necessary action so that a person is given the task of monitoring compliance with the procedures in connection with the functioning of the board and the applicable regulations.” (§ 1.5)

(e) Rules/recommendations regarding remuneration of members of supervisory and managerial bodies (including evaluation procedures).

Regarding remuneration, the Code emphasises that “non-executive directors should not take part in plans in relation to the granting of share options and should not receive pensions by virtue of their mandate. The reason for this is to ensure their independence.” (Note to § 2.2) The annual report must state the method of remuneration of the directors (fixed amounts, bonuses, variable results-linked part etc.). Large companies in the sense of accounting law are obliged to provide information in the notes to the annual accounts on the total remuneration of the directors. (§ 1.7)

Furthermore, the Code states that “if there is a remuneration committee, it should be exclusively composed of non-executive directors and the remuneration of executive directors should be submitted to that committee for an opinion. If there is no remuneration committee, the remuneration of executive directors should be submitted to the non-executive directors.” (§ 3.1)

(f) Rules/recommendations regarding the organisation and supervision of internal control systems and relations between supervisory bodies, managerial bodies and internal/external auditors.

The Code states that the board of directors must ensure that an efficient system of internal control is established. The Code makes specific recommendations regarding audit committees:

- The board should set up the audit committee, and hold it accountable; the audit committee should regularly give an account to the board of its mandate;
- The audit committee meet at least twice each year;
- Composition of the audit committee should be determined by the board of directors; it should include non-executive directors and independent directors;
- The company auditors and, if applicable, the person responsible for the internal audit and the financial director should attend the meetings of the audit committee;
- Audit committee meetings should be accessible to all directors who wish to attend;
- The audit committee should receive a report from the company auditors at least each year without the executive directors present;
- The audit committee should have wide investigative powers; by a majority decision, it should be able to call upon professionals from outside the company and allow them to attend its meetings; and
- The composition of the audit committee should be disclosed in the annual report and the committee chairman should reply to the questions asked at the general meeting about the committee's activities.

(§ 4.3)

(3) Rights of Shareholders/Stakeholders.

(a) Rules/recommendations regarding protection of the rights of shareholders.

The Code does not address this topic.

(b) Rules/recommendations regarding equal/fair treatment of shareholders.

The Code does not address this topic.

(c) Rules/recommendations regarding the rights of stakeholders.

The Code does not address this topic.

Additional information about the Recommendations of the Federation of Belgian Companies is included in the Comparative Matrix appended to this Report as Annex V.

b. THE DUAL CODE OF THE BRUSSELS STOCK EXCHANGE AND THE BELGIAN BANKING & FINANCE COMMISSION

The Dual Code, also entitled “Corporate Governance for Belgian Listed Companies” is the combination of the two codes that follow, the Report of the Belgian Commission on Corporate Governance (the “Cardon Report”) and the Recommendations of the Belgian Banking & Finance Commission. The combination took place in December 1998. Note that in November 1999, the Brussels Stock Exchange and the CBF jointly issued a practical guide to help companies implement the recommendations contained in the Dual Code under the title “Guidelines on Corporate Governance Reporting.”

b.1 Recommendations of the Belgian Banking & Finance Commission

Code: Recommendations of the Belgian Banking & Finance Commission with regard to the information to be disclosed by Belgian listed companies on the organisation of their administration and management

Issuing Body: The Belgian Banking and Finance Commission

Date Issued: January 1998

Official Languages: Dutch, French and English

(1) Background.

(a) Issuing Body: *Governmental/quasi-governmental equity.*

The Belgian Banking & Finance Commission (CBF) is an autonomous public institution created by law in 1935 to provide bank supervision and enact and oversee the rules governing issuance of securities. The Commission is responsible for supervision of credit institutions and investment firms; investment advice offices and exchange offices; financial information and the markets for financial instruments; and undertakings for collective investment.

(b) Legal Basis and Compliance: *Voluntary (disclosure encouraged).*

As evident in its full title, the CBF’s Recommendations are aimed at providing companies with a format for disclosure of how they go about instituting their corporate governance practices. Such disclosure is voluntary. The Recommendations themselves are aspirational in nature and “do not aim to enforce organisational rules on the listed companies.” The CBF has stated that both it and the Brussels Stock Exchange are convinced “that the goals relating to corporate governance are sooner to be met by the internal conviction of the companies involved, sanctioned by the market, then by statutory provisions.”

(c) Consultations.

The Recommendations do not indicate that any formal consultative process was undertaken. However, the CBF consulted the Institute of Company Auditors, the Brussels Stock Exchange, EASDAQ, interested professional organisations, as well as knowledgeable persons concerned. In addition, the CBF website refers to consultations that took place between the VBO/FEB, the Belgian Commission on

Corporate Governance and the CBF running up to the initial publication of their respective codes, to ensure coherence.

(d) Contributions.

As indicated above, in December 1998, these Recommendations were joined with the Cardon Report of the Brussels Stock Exchange and now are published jointly on the CBF website in a document entitled “Corporate Governance for Belgian Listed Companies.” The CBF states that these two sets of recommendations are “complementary”; the Cardon Report relates to “provisions on corporate governance proper” while the CBF Recommendations “relate to the information on corporate governance to be disclosed in the annual report.”

(e) Definition of Corporate Governance.

The introduction to the CBF Recommendations refers to corporate governance as the “organisation of the administration and management of limited companies.”

(f) Objective: Improve quality of governance-related information available to equity markets.

“The recommendations serve a double purpose: on the one hand, they aim to provide listed companies with a framework in which they can consider their corporate governance, and, on the other hand, they aim to enhance the understanding of the situation of Belgian listed companies by the international investors’ community.” (Introduction)

The Banking and Finance Commission, which “must ensure that listed companies provide sufficient periodic information to their shareholders and to the public in general,” uses this code to “take an initiative with regard to the information which these companies should provide on the organisation of their ‘corporate governance.’”

The Recommendations disavow any attempt to regulate the specific form and presentation of the information to be disclosed. The CBF does, however, state that “this information should be included in the brochure containing the annual accounts, more particularly, in such a way that it is clearly identifiable and comparable from one year to another.”

(g) Scope: Listed companies.

These Recommendations are aimed at companies listed on the Brussels Stock Exchange, now Euronext Brussels.

(2) Supervisory and Managerial Bodies.

(a) Rules/recommendations regarding the separate roles and responsibilities of supervisory and managerial bodies (including lines of responsibility).

According to the Recommendations, if the chairman of the board is also entrusted with the company’s daily management, the company should disclose what measures are taken by the board to address the potential for conflict between the two roles. In addition, all companies are urged to disclose information about the manner in which

the board is organised to supervise the daily management, including a list of information provided by management to the board.

- (b) Rules/recommendations regarding the accountability of supervisory and managerial bodies (including conflicts of interest).

The Recommendations do not address this topic.

- (c) Rules/recommendations regarding the size, composition, independence and other selection criteria and procedures of supervisory and managerial bodies.

The Recommendations suggest that companies disclose the following information, *inter alia*, regarding the composition of the board of directors:

- A list of directors who de facto represent the dominant shareholders, the directors in charge of the daily management, and the directors considered by the company as being independent from the dominant shareholders and the management;
- When the function exercised by a director in the company is not his main function, an indication of his main function outside the company;
- The dates upon which the mandates of the directors expire; and
- The age limit, if any, to serve on the board of directors.

(§ II.B.1)

- (d) Rules/recommendations regarding the working methods of supervisory and managerial bodies (including information flows).

Companies are urged to disclose the following information, *inter alia*, about the “functioning of the board of directors:”

- The number of meetings held by the board per year;
- A description of the most significant types of subjects discussed by the board;
- A description of the specific rules, if any, whether statutory or otherwise, that govern the board’s decision-making process;
- A description of the manner in which the board is organised to follow the activities of subsidiaries and participating interests;
- A list of committees created by the board, their powers, composition, mode of operation and meeting frequency.

(§ II.B.2)

- (e) Rules/recommendations regarding remuneration of members of supervisory and managerial bodies (including evaluation procedures).

The Recommendations require companies to disclose information regarding its rules and procedures for determination of the total emoluments, annual fees, benefits in kind and share options granted to directors, as well as loans and advances which may have been granted to them. (§ II.B.2)

- (f) Rules/recommendations regarding the organisation and supervision of internal control systems and relations between supervisory bodies, managerial bodies and internal/external auditors.

The Recommendations do not address this topic.

(3) Rights of Shareholders/Stakeholders.

- (a) Rules/recommendations regarding protection of the rights of shareholders.

The Recommendations do not address this topic.

- (b) Rules/recommendations regarding equal/fair treatment of shareholders.

Section 6 of the Recommendations recommends disclosure about arrangements between the company and controlling and dominant shareholders, including:

“If the company to which these recommendations apply, is controlled or significantly influenced by one or more dominant shareholders, indication -- if the company has knowledge thereof (otherwise, it should be disclosed that, to its knowledge, there are none) -- of any arrangements between these shareholders and of the contents of such agreements, and of any committees of shareholders or directors which would have been established irrespective of whether they were established in application of these agreements or not; where such a case arises, the role played by these committees; the indication of any specific provisions made with regard to the other shareholders.”
(§ II.B.6)

- (c) Rules/recommendations regarding the rights of stakeholders.

The Recommendations do not address this topic.

Additional information about the Recommendations of the Belgian Banking & Finance Commission is included in the Comparative Matrix appended to this Report as Annex V (see column on Dual Code).

b.2 THE CARDON REPORT

Code: Report of the Belgian Commission on Corporate Governance
Issuing Body: The Brussels Stock Exchange (now Euronext Brussels) Market Authority
Date Issued: Preliminary - January 1998; Final - December 1998
Official Languages: Dutch, French and English

(1) Background.

(a) Issuing Body: *Committee related to a stock exchange.*

The Belgian Commission on Corporate Governance was established by the Brussels Stock Exchange “to promote improved standards of corporate governance within Belgian companies, chiefly with a view towards enhancing their competitiveness on the capital markets.” The Commission “takes the view that the powers vested in the various bodies involved in corporate governance should be clearly defined and the rules on financial reporting should be strengthened.”

During the year 2000 the Brussels Stock Exchange merged with the Amsterdam and Paris Exchanges to form Euronext. Belgian companies listing on Euronext Brussels are subject to the specific market authority of Euronext Brussels.

(b) Legal Basis and Compliance: *Voluntary (disclosure encouraged).*

The Commission’s Recommendations are voluntary and do not have statutory authority. The Commission states that it considers it preferable not to resort to statutory provisions to enforce corporate governance in Belgium, because a mandatory system “would have resulted in reduced flexibility and might have been deleterious to the image of certain categories of companies” and “could in many cases result in compliance with the letter of the legislation without respect for its spirit.”

The Cardon Commission had stated that its Recommendations should be re-evaluated after two years to take account of further developments in governance practice in Belgium and internationally. However, according to the Stock Exchange, the Cardon Commission has been disbanded and there is no current effort underway to re-evaluate its Recommendations.

(c) Consultations.

The Commission published a preliminary Report in January 1998, solicited comments from Belgian companies and the “international financial community” and according to the CBF website held “many hearings that have resulted in these recommendations, based on a broad consensus.” In addition, the CBF website refers to consultations that took place between the VBO/FEB, the Belgian Commission on Corporate Governance and the CBF running up to the initial publication of their respective codes, to ensure coherence.

(d) Contributions.

The Chairman of the Belgian Commission on Corporate Governance was Daniel Cardon de Lichtbuer, Honorary Chairman of Banque Bruxelles Lambert. The other members were chairpersons and executives of various Belgian companies (as well as the Brussels Stock Exchange) and academics. (Dual Code, p. 10)

(e) Definition of Corporate Governance.

The Report states that corporate governance refers to “the set of rules applicable to the direction and control of a company.” It goes on to state that “[i]t is the duty of the board of directors to manage the company’s affairs exclusively in the interests of the company and all its shareholders, within the framework of the laws, regulations and conventions under which the company operates.”

(f) Objective: Improve companies’ performance, competitiveness and/or access to capital.

“To operate on a larger market, Belgian companies will need to improve transparency with respect not only to their shareholders but also to local and international institutional investors. The size of the market for goods and services will also be affected by European integration, the globalisation of the economy and advances in technology. In many sectors, the changes will involve repositioning of the companies operating in them. If Belgium is to remain their decision-making centre, Belgian companies will have to broaden their shareholder base and comply as closely as possible with international standards of corporate governance.” (Part I. Objectives, Approach and Methodology, ¶ 1)

The Cardon Report aims to improve the competitiveness, performance and access to capital of Belgian companies by encouraging them to bring their standards of transparency and other governance practices in line with those expected in the international capital marketplace.

(g) Scope: Listed companies; encouraged to all companies.

The Cardon Report seeks to promote improved standards of corporate governance for all Belgian companies, but is aimed specifically at companies listed on the Brussels Stock Exchange (now Euronext Brussels).

(2) Supervisory and Managerial Bodies.

(a) Rules/recommendations regarding the separate roles and responsibilities of supervisory and managerial bodies (including lines of responsibility).

The Cardon Report begins with the statement that the board of directors is the highest authority within the company. In addition to its decision-making duties, the board must exercise full and effective control over the company. To that end, it must meet regularly and must be capable of monitoring the executive management. Without prejudice to its statutory duties, the board of directors is responsible for defining the

strategic objectives and establishing general policy on the basis of proposals submitted by the executive management, appointing the executive management and approving the structures designed to facilitate the achievement of these objectives. It is also the board of directors' task to supervise the implementation of policy and the control of the company and to report to the shareholders.

The Commission recommends that there should be a clear division of responsibilities at the head of a company which will ensure a balance of power and authority. Where the chairman is also the chief executive, the Commission states that it is essential that there should be a strong and independent element on the board whose authority is acknowledged. (§ I.B.1.3)

- (b) Rules/recommendations regarding the accountability of supervisory and managerial bodies (including conflicts of interest).

The Report does not address this topic directly.

- (c) Rules/recommendations regarding the size, composition, independence and other selection criteria and procedures of supervisory and managerial bodies.

The Commission takes the view that, in most cases, the board of directors should not consist of more than twelve members. The board should consist of a majority of non-executive directors of sufficient calibre and number for their views to carry significant weight in the board's decisions. Non-executive directors are directors who do not perform a management function within the company or its subsidiaries. They should bring an independent judgement to bear on issues relating to the company's strategy, performance and resources, including key appointments and standards of conduct.

A number of non-executive directors should be independent of the executive management and the dominant shareholders and free from any business or other relationship with the company which could interfere with their independent judgement, apart from their remuneration and shareholdings in the company. The number of independent directors should be sufficient for their views to carry significant weight in the board's decisions. The Commission takes the view that a director may be considered independent if:

- He/she is not a member of the executive management of the board of associated companies (subsidiaries etc.) and has not held any such appointment for the past year
- He/she has no family ties with any of the executive directors which might interfere with the exercise of his/her independent judgement;
- He/she is not a member of the executive management or board of directors of one of the dominant shareholders and has not been nominated by, and has no business, financial or other relationship, with the latter;
- He/she is not a supplier of goods or services of a nature which might interfere with the exercise of his/her independent judgement, and nor is he/she a member of a firm of which the company's adviser or consultant is a part;

- He/she has no other relationship with the company which, in the opinion of the board of directors, is of a nature which might interfere with the exercise of his/her judgement (no such influence is deemed to arise from the remuneration he/she receives or his/her restricted shareholding in the company).

(§ I.B.1.9)

- (d) Rules/recommendations regarding the working methods of supervisory and managerial bodies (including information flows).

The Report states that the board should operate on the principle of collective responsibility, with no one category of directors exerting greater influence than any other. Certain directors -- whether executive or non-executive -- may be given special responsibility for certain areas, on which they report to the full board. Irrespective of the special powers vested in individual directors, the board of directors as a whole retains responsibility for fulfilling its obligations. (§ I.B.1.5)

The board should lay down rules to determine materiality for different categories of transactions, establishing clearly which transactions require multiple board signatures. The board should also establish the procedures to be followed when, exceptionally, decisions are required between board meetings. (§ I.B.1.5)

The Commission recommends that, particularly in the case of boards consisting of a large number of directors, an audit committee should be established consisting of at least three non-executive directors whose authority and duties are clearly stated at the time of their appointment. (§ I.B.4.3)

The Report contains a number of recommendations on audit committees:

- Audit committees should be formally constituted as sub-committees of the main board, to whom they are answerable and should report regularly; they should be given written terms of reference which deal adequately with their membership, authority and duties; they should meet at least twice per year.
- Membership should be confined to the non-executive directors and there should be a majority of independent directors as defined.
- The audit committee should have a discussion with internal and external auditors at least once a year, from which the executive directors may be excluded, to ensure that there are no unresolved issues of concern.
- The audit committee should have explicit authority to investigate any matters within its terms of reference, to have available the resources which it needs to do so and have full access to information. The committee should be able to obtain outside professional advice and, if necessary, to invite outsiders with relevant experience to attend meetings.
- The membership of the committee should be disclosed in the directors' report.

(§ I.B.4.3)

The Commission also regards it as good practice for a nomination committee, where such exists, to carry out the selection process and to make recommendations to the board for the nomination of both executive and non-executive directors, singling out

the non-executive directors. The nomination committee should have a majority of non-executive directors and should be chaired by the chairman of the board or a non-executive director. (§ I.B.2.4)

- (e) Rules/recommendations regarding remuneration of members of supervisory and managerial bodies (including evaluation procedures).

The Report states that the Commission regards it as good practice for part of the executive management's pay to be related to the company's performance and/or value. The Commission also recommends that the principles underlying the calculation of pay should be disclosed. (§ I.B.3.1)

The executive management's pay should be subject to the recommendations of a remuneration committee made up of a majority of non-executive directors. The membership of the remuneration committee should be disclosed in the directors' report. (§ I.B.3.2)

The Report recommends that the remuneration of non-executive directors be detailed separately in the annual report and reflect the time that they commit to the company. Non-executive director remuneration should not be performance-related, but it may be related to movements in the value of the company. (§ I.B.2.1)

- (f) Rules/recommendations regarding the organisation and supervision of internal control systems and relations between supervisory bodies, managerial bodies and internal/external auditors.

The Commission recommends that the board's annual report to shareholders include a report by the directors on the effectiveness of the company's system of internal control. (§ I.A.7)

The Report states that the necessary procedures and resources must be developed in order to create adequate and efficient internal supervision. If necessary, advice can be obtained from independent experts. (§ I.B.4.3)

In addition, the Report states that the auditors must not be allowed to have any direct or indirect relationship with the company outside its auditing relationship. (§ I.B.4.2)

(3) Rights of Shareholders/Stakeholders.

- (a) Rules/recommendations regarding protection of the rights of shareholders.

The Report emphasises that:

“the board has a duty to present a clear and accurate evaluation of the company's situation to the general meeting of shareholders. The report and accounts should contain a coherent narrative of the company's financial position, supported by information on the company's performance and prospects. Depending on the nature of the company, it should contain the information needed to enable investors and their investment advisers to form a view of the company's financial position and performance. It should also deal with the prospects, as far as possible. Balance requires that setbacks should be dealt with as well as

successes. The need for the report to be readily understood emphasises that words are as important as figures.” (§ I.B.4.1)

(b) Rules/recommendations regarding equal/fair treatment of shareholders.

The Report does not address this topic.

(c) Rules/recommendations regarding the rights of stakeholders.

The Commission advises that directors should ensure that the company’s management is aware of the interests, views, and expectations of its stakeholders; that procedures are implemented to manage these relationships; and that proper and periodic communication is exchanged with these stakeholders.

Additional information about the Cardon Report is included in the Comparative Matrix appended to this Report as Annex V. (See column on Dual Code.)

c. THE DIRECTOR'S CHARTER

Code: The Director's Charter (La Charte de l'Administrateur)
Issuing Body: La Fondation des Administrateurs ("FDA")
Date Issued: January 2000
Official Languages: French and English

(1) **Background.**

(a) Issuing Body: *Directors association.*

La Fondation des Administrateurs ("The Directors Foundation") is an association of Belgian corporate directors. The Foundation has no legal or contractual authority for establishing rules of corporate governance. It serves solely as a resource for corporate directors who have a "commitment to develop their professional capacities in respect of the rules of independence, integrity and ethics advocated by the Foundation."

(b) Legal Basis and Compliance: *Voluntary (association members encouraged to comply).*

Compliance is wholly voluntary. The Director's Charter is aspirational in nature, describing best practice principles for its members. It is not linked to any listing rules or other legal or contractual requirements.

(c) Consultations.

The Charter does not indicate whether any formal consultative process was undertaken.

(d) Contributions.

There is no record of any contributions by parties outside the Foundation in the preparation of the Charter.

(e) Definition of Corporate Governance.

The Charter does not offer a definition of corporate governance. In fact, the term "corporate governance" does not appear anywhere within the document.

(f) Objective: *Improve quality of board (supervisory) governance.*

"The objective of this Charter is to help company directors fulfil their mission, while respecting the rules of independence, competence, ethics and integrity that are expected of them." (Introduction)

The Charter states that it "expects its members, *i.e.*, company directors, to explicitly adhere to the principles of this Charter insofar as they do not contradict other statutory rules to which they may be held" as a sign of their commitment to the Foundation's ethical goals.

(g) Scope: *All companies*.

The Director's Charter states that it is applicable "to executive directors and other directors" of "any company . . . whether it be large or small." It also states that its principles are valid "for other types of organisations, such as associations, non-profit organisations, establishments of public utility, and so forth."

(2) Supervisory and Managerial Bodies.

(a) Rules/recommendations regarding the separate roles and responsibilities of supervisory and managerial bodies (including lines of responsibility).

According to the Director's Charter, a director should verify that the powers and responsibilities of the board of directors and of the management are clearly established and, specifically, that the powers of management granted to the management are clearly defined. According to the Charter, an effective director recognises that it is the role of the board, upon proposals made by the management, to define the company's missions and values, to lay down its strategic objectives, to appoint the management, to implement permanent structures allowing for the attainment of its objectives, to ensure the implementation of an operational plan and control of the company, and to furnish the necessary explanations to shareholders.

(p. 4)

The Charter states that, in the exercise of director responsibilities, a director should:

- Act independently in all circumstances;
- Actively protect the company's interests;
- Ensure the effective functioning of the board of directors;
- Protect the interests of all shareholders;
- Take into account the legitimate expectations of all of the company's "partners" or stakeholders (the community, clients, executives, employees, suppliers, and creditors);
- Ensure that the company respects its obligations and commitments, and the laws, regulations and codes of good practice;
- Avoid any conflict between direct personal interests and those of the company;
- Avoid any improper use of information or insider trading;
- Permanently develop his or her professional capacities; and
- Adhere to the spirit of the Charter.

(p. 2)

The Charter also states that a director should verify that the company's decisions are taken solely in its interests. It emphasises that the role of a director includes actively protecting the company's interests. This requires recognising that the role of a director is as much individual as collective in the proper functioning of the company.

(p. 5)

According to the Charter, a director should employ influence, action, and capacity of judgement to lead the company to “optimise” its value in a sustainable, responsible, and fair manner. (p. 4)

(b) Rules/recommendations regarding the accountability of supervisory and managerial bodies (including conflicts of interest).

The Charter urges directors to ensure that the interests of the company and the collective body of shareholders prevail over direct or indirect personal interests. According to the Charter, this requires informing the board of any conflict of interest in which the director could directly or indirectly be implicated prior to any such potential conflict occurring, and abstaining from participation in any discussions or decision-making on the matters involved. (p. 6)

If a director who represents a third party within the board faces a possible conflict between the interests of this party and those of the company, he or she should inform the board. The board should then decide if the director may participate in the discussion and decision-making on the matters involved. (p. 6)

Further, directors are encouraged to neither buy nor sell, directly or indirectly, shares of the company or any related company, whether listed or not, on the basis of any confidential information acquired as a result of service as a director. (p. 6)

(c) Rules/recommendations regarding the size, composition, independence and selection criteria and procedures of supervisory and managerial bodies.

The Charter states that the director should undertake to maintain, in all circumstances, independence of analysis, of decision, and of action, and to reject any pressure, direct or indirect, that might emanate from directors or the company’s management, from specific groups of shareholders, creditors, suppliers, or anyone else. (p. 3)

In addition, the director should not seek or accept from the company or any related companies, directly or indirectly, any unreasonable advantages that could be considered as compromising his or her independence. (p. 3)

If a director believes that a board decision may harm the company, the director should clearly express opposition and attempt to convince the board of the director’s position. Resignation is the ultimate expression of opposition. Short of resignation, a director should consider:

- Explaining the reasons for opposition and the negative consequences that would arise for the company if the board pursued its decision;
- Obtaining, if necessary, professional advice;
- Requesting that the decision be postponed, if possible, so that the director’s position may be examined;
- Requesting that the director’s written position be annexed to the minutes of the board meeting;
- Requesting a special meeting of the board to discuss this point.

(p. 3)

In the event of resignation, a director should inform the other directors, the auditor, the controlling public authority if there is one, and the shareholders general meeting of the reasons for resignation, while avoiding rendering public any confidential information. (p. 3)

- (d) Rules/recommendations regarding the working methods of supervisory and managerial bodies (including information flows).

The Charter states that directors should ensure that the board meets at regular intervals and that directors receive sufficient and timely information. All directors should regularly attend board meeting. (p. 4)

- (e) Rules/recommendations regarding remuneration of members of supervisory and managerial bodies (including evaluation procedures).

The Charter does not address this topic.

- (f) Rules/recommendations regarding the organisation and supervision of internal control systems and relations between supervisory bodies, managerial bodies and internal/external auditors.

The Charter recommends that it is up to directors to verify that the board effectively controls the company and the activity of the management. In particular, directors should ensure that:

- No one person exercises unlimited discretionary power within the company;
- If the board creates an internal auditing committee, it is composed of a majority of non-executive directors, who are in direct and permanent contact with the company's auditors, and periodically reports to the board;
- The company's internal controlling body functions efficiently and that it be regularly controlled by the auditors;
- Management co-operates fully and without reticence in the board's control.

(p. 4)

If the company is listed on the Stock Exchange, directors should ensure strict observance of regulations concerning the disclosure of information. (p. 6)

(3) Rights of Shareholders/Stakeholders.

- (a) Rules/recommendations regarding protection of the rights of shareholders.

The Charter recommends that directors verify that accurate information is given to shareholders (within limits compatible with commercial and competitive necessities) concerning the company's strategy in general on all subjects of importance affecting the company, and specifically in times of crisis. (p. 5)

- (b) Rules/recommendations regarding equal/fair treatment of shareholders.

The Charter states that "the director undertakes to verify that the company's decisions do not favour one party or class of shareholders to the detriment of another." (p. 5)

(c) Rules/recommendations regarding the rights of stakeholders.

The Charter states that directors should acquire a sufficient understanding of the company and its economic, social, and legal context, and encourage the board to take into account in its decisions, in view of the long-term interests of the company, the impact of these decisions on the environment, on social relations, on rules of competition, and on consumer protection. (p. 5)

Directors are also encouraged to recognise that the company and its various stakeholders or “partners” have, beyond their contractual engagements, formed relationships of trust and contracted reciprocal moral obligations, and that, if the director must first and foremost protect the interests of the company and its shareholders, the director cannot ignore that it is in the company’s interests to maintain these relationships, and take reciprocal moral obligations into account. (p. 5)

A director should ensure that the company’s management is aware of the interests, views, and expectations of its stakeholders, and that procedures are implemented to manage these relationships. Proper and periodic communication should also be exchanged with stakeholders. (p. 5)

Additional information about the Director’s Charter is included in the Comparative Matrix appended to this Report as Annex V.

C. DENMARK

1. LEGAL SYSTEM OVERVIEW

| CIVIL LAW SYSTEM | |
|---|---|
| LEGAL/REGULATORY FRAMEWORK | ENFORCEMENT / REGULATORY BODIES |
| COMPANY LAW FRAMEWORK <ul style="list-style-type: none">Act No. 370 of 13 June 1973 on Joint Stock Companies ("AJSC"), as amended in Act No. 324 f 7 May 2000 and 449 f 7 June 2001 | <ul style="list-style-type: none">The Danish Commerce and Companies Agency (<i>Erhvervs-og Selskabsstyrelsen</i>) |
| SECURITIES LAWS/REGULATIONS <ul style="list-style-type: none">The Danish Securities Trading Consolidated Act No. 725 f 25 July 2000 | <ul style="list-style-type: none">The Danish Supervisory Authority of Financial Affairs (<i>Finanstilsynet</i>) |
| STOCK EXCHANGE LISTING RULES <ul style="list-style-type: none">Listing Rules of the Copenhagen Stock Exchange, LLC | <ul style="list-style-type: none">The Copenhagen Stock Exchange (<i>Fondsbørsen</i>) |

a. GENERAL

A large proportion of Danish companies are closely held by family members or small numbers of partners, and, therefore, the public investment market has traditionally represented only a small portion of the nation's overall equity. More than half of the companies listed on the Copenhagen Stock Exchange are majority owned, and one-third are held by individuals. However, with the privatisation of state-owned companies, which began in the 1980s, market capitalisation has increased markedly. The Copenhagen Stock Exchange has attempted to increase ownership of Danish stocks by increasing access to smaller corporations.

Data from April 2000 indicates more than 31,000 joint stock companies (*aktieselskaber*) in Denmark, of which only 232 are listed on the Copenhagen Stock Exchange. However, listed companies represent an increasingly significant component of the economy. In 1990, the market cap of domestic listed companies was twenty-nine percent (29%) of gross domestic product; in 2000, it was sixty-nine percent (69%).

In May of 2001, the Copenhagen Stock Exchange itself became a limited liability company. It is owned by banks, companies, brokerage houses and other Danish economic organisations. Previously, the Copenhagen Stock Exchange had a legal monopoly on the trading of stocks and bonds in Denmark. That law has been changed to allow competition.

b. ROLE AND RESPONSIBILITY OF THE SUPERVISORY BODY

(1) Type of board system: Two-tier.

In Danish joint stock companies, shareholders elect a board of directors (*bestyrelsen*), which in turn appoints a managing director or a management board made up of several managers (*direktion*). The managing director or management board is viewed by company law as a distinct legal organ.

Categorisation of the Danish board system as one-tier or two-tier is difficult given that a single management director can serve as the managing organ. However, according to the Danish Commerce and Companies Agency, the Danish system is best described as two-tier.¹ Given the position of the Commerce and Companies Agency, we categorise the Danish system as having a two-tier board system. Absent their position however, and given that the managing organ can be an individual and members of the managing body may also serve on the supervisory body, we would categorise the Danish system as closer to a one-tier system. Despite having two recognised governance organs, functionally it appears closer to the unitary model than to the two-tier structure.

Companies with more than thirty employees usually set up a workers council for their employees and, as discussed below, in larger companies employees gain rights to elect some directors. The works council may not have as much power as in some other EU Member States; however, it does have the right to meet with the board of directors to discuss matters concerning employees.

(2) Role, make-up and powers of the supervisory body.

In Danish joint stock companies, the board of directors must consist of at least three members. Generally, board members are appointed by the general meeting of shareholders. However, the articles of association of some Danish companies call for

¹ This position was explained in an e-mail dated January 10, 2002 from Sanne Dahl-Laursen, Ministry of Economic and Business Affairs, Danish Commerce and Companies Agency, as follows:

“It is the official opinion of the Commerce and Companies Agency, who is the relevant authority on this matter, that the Danish system is a two-tier system. However, the system can be described as somewhat in between the pure unitary board concept and the two-tier structure.

It is our official opinion that the system is a two-tier system because we have two separate company organs with separate tasks, which are described in AJSC § 54. The relationship between the board of directors and the management board is described in §§ 54 (1) and (2). It is clear that the management board is in charge of the day-to-day business of the company, and it is also clear that it has to follow the directions and guidelines from the board of directors. Only the board of directors can authorise actions which are unusual or of great significance in consideration of the position of the company.

However, we can in fact be described as somewhat in between the two systems. The reason for this is that managing director can be a member of the board of directors and that AJSC does not clearly specify what lies in day-to-day business and the overall business.

Most academics in Denmark agree that we are a two-tier system with the above-mentioned modifications.”

a shareholders committee to be elected by the general meeting. In these companies, if the articles of association so provide, the shareholders committee will appoint the members of the board. (AJSC, §§ 49(1) & (7), 51(2), 52(2), 56(1) & (4), 59(3))

A majority of directors must be non-executives, and at least half must be residents of Denmark or nationals of an EU/EØS State (unless an exemption is granted). The chairman of the board is generally elected by the board members. Danish company law prohibits a company executive from serving as chairman of the board. (AJSC, §§ 49(1) & (7), 51(2), 52(2), 56(1) & (4), 59(3))

When a corporation has employed on average more than 35 workers for three years, the employees gain the right to elect at least two members of the board of directors. These board members have the same rights and duties as those board members elected by the shareholders. They are elected for a four-year period, and Danish law provides detailed rules regarding the process by which employees elect board members. (At least fifty percent (50%) of the employees must vote in favour of a candidate's appointment.) (AJSC, §§ 49(2) & (7), 177, 178)

The management of the company lies jointly with the board of directors and the managing director or board of management. The board is responsible for controlling the company, providing the managing director or management board with directions and guidance, determining the company's general policy and strategy, and making decisions and authorising transactions of an unusual nature or of great significance. The board of directors, as a collegial body, and the individual members of the board as well as the managing director (or management board) represent the company against third parties. The articles of association may state that the representation must be carried out jointly by one or more members of the board of directors, or define the persons who can bind the company personally or jointly. Other restrictions of the representation powers cannot be registered.

(3) Duties of the supervisory body.

The board of directors holds a position of trust and has a duty to act in what it reasonably considers the best interests of the company. The Companies Act does not impose fiduciary duties *per se* upon board members. Members of the board, representing the company according to the law or the articles of association, may not undertake any action that will evidently give a shareholder or a third party an undue advantage to the detriment of the company or other shareholders. Furthermore, the members of the board may not follow a decision by the general meeting or another company body, if contrary to the Companies Act or the articles of association. (AJSC, § 63)

c. ROLE AND RESPONSIBILITY OF THE MANAGERIAL BODY

(1) Role, make-up and powers of the managerial body.

The board of directors must appoint a managing director or a board of management consisting of up to three members (unless the articles of association provides for a larger management body). Members of the board of directors may also serve as members of the managing body. (As noted above, however, the majority of the members of the board of directors must not be members of management.) Generally,

members of the management body must be Danish residents or nationals of an EU/EØS State (unless an exemption is granted). (AJSC, §§ 51(1) & (2), 52(2))

As stated above, the management of the company lies jointly with the board of directors and the managing director or management body. The managing director or management board is responsible for the day-to-day affairs of the company and may act to bind the company. In general, managers may not, without the approval of the board, make decisions that affect the fundamental business or standing of the company. (AJSC, §§ 54(1), 60(1)-(3)) However, management may take actions outside the scope of the general day to day business in cases of imminent danger. In such cases, the board of directors must be informed without undue delay.

(2) Duties of management members.

Like members of the board of directors, a managing director or board of managers is considered to hold a position of trust and have a duty to always act in the best interests of the company. The Companies Act does not impose fiduciary duties upon managers.

As is the case with the members of the board of directors, a managing director or board of managers must represent the company according to the law or the articles of association, and may not undertake any action that will evidently give a shareholder or a third party an undue advantage to the detriment of the company or other shareholders. Furthermore, a managing director or board of managers may not follow a decision by the general meeting or another company body, if the decision is contrary to the Companies Act or the articles of association. (AJSC, § 63)

d. SHAREHOLDER RIGHTS

All shares in Danish companies must carry voting rights. It is permissible for Danish companies to issue different classes of shares, such as common and preferred shares, but no share may carry more than ten times the voting power of any other share of the same par value. A company may limit the number of votes that can be cast by any one shareholder, regardless of his shareholding. (AJSC, § 67(1))

Danish shares may be in either registered or bearer form. The AJSC provides that all shares are freely transferable unless otherwise provided in the articles of association. Restrictions on transferability are only allowable for registered shares.

(1) Decisions reserved to shareholders and the general meeting.

The following decisions must be made at the annual general meeting:

- Election of members of the board of directors (unless this power has been delegated to a shareholders committee);
- Approval of the annual accounts;
- Allocation of profits (losses) and setting of dividends;
- Appointment of auditors (listed companies must have two appointed auditors, one of which is a certified public accountant) (A new law will allow listed

companies to have only one auditor, who must be a certified public accountant.);

- Authorisation of share repurchase;
- Approval of financial statements;
- Ratification of acts of directors and management;
- Increase of authorised capital;
- Issuance of convertible debt instruments; and
- Other business referred to the company in general meeting pursuant to the articles of association.

(2) Shareholders' legal recourse.

Shareholders have the right to bring actions against directors on behalf of the company alleging damages to the company. In addition, founders, directors and members of management may be liable directly toward shareholders for damages due to negligent violation of the Companies Act or the articles of association.

(3) Duties of controlling shareholders.

Danish company law directly addresses the rights of minority shareholders, giving every shareholder the right to propose at the general meeting the appointment of an independent expert to examine the founding of the company, an action of management or certain issues in bookkeeping. If the general meeting rejects the proposal by a simple majority, but a minority representing twenty-five percent (25%) of the capital has voted in favour, the competent court can be asked to appoint an expert. If a minority of the shareholders, representing at least ten percent (10%) of the share capital have voted in favour of an appointment of an additional auditor at the general meeting, the High Commercial Board may be asked to appoint an additional auditor.

When majority control of the company changes hands, the law provides minority shareholders with the opportunity to sell their shares at a price corresponding to the price paid for the controlling interest. The Companies Act contains a general right for minority shareholders to request to be bought out when one shareholder controls ninety percent (90%) of the share capital and the corresponding amount of votes. The same right may be invoked by shareholders, who at the general meeting have voted against changes of the articles of association that reduce the shareholders' rights to dividends, change the transferability of shares, or introduce a mandatory withdrawal of shares, or voting caps. Those decisions require the approval of ninety percent (90%) of the capital represented at the general meeting and ninety percent (90%) of the votes cast. (AJSC, § 20(d), 81(a))

2. CORPORATE GOVERNANCE CODES

Within the past two years, two corporate governance codes have issued in Denmark. In 2000, the Danish Shareholders Association issued Guidelines, discussed below. More recently, the Danish Ministry for Business and Industry undertook a project to

determine whether a need exists for a comprehensive corporate governance code in Denmark. In March 2001, it set up a four person committee chaired by Lars Nørby Johansen, which issued its report at the end of 2001, along with a full set of recommended corporate governance guidelines.

There do not yet appear to be any official reports analysing the way the codes are applied in practice.

a. DANISH SHAREHOLDERS ASSOCIATION GUIDELINES

Code: Guidelines on Good Management of a Listed Company
Issuing Body: The Association of Danish Shareholders
Date Issued: February 2000
Official Languages: Danish and English

(1) **Background.**

(a) Issuing Body: *Investors association.*

The Danish Shareholders Association is the leading association of individual shareholders in Denmark. It is striving to promote shareholding among private investors and to become an active policy-maker and lobbyist regarding stock market issues.

(b) Legal Basis and Compliance: *Voluntary (disclosure encouraged).*

Compliance with the Guidelines is purely voluntary, and there is no requirement vis-à-vis listing rules or otherwise that companies must disclose whether they are complying with the Guidelines' recommendations. However, the Guidelines specifically recommend that companies disclose certain governance-related information to shareholders, such as remuneration principles and incentive schemes.

(c) Consultations.

The Guidelines do not indicate whether any formal consultative process was undertaken.

(d) Contributions.

There is no record of any contributions by parties outside the Association in the preparation of the Guidelines.

(e) Definition of Corporate Governance.

These Guidelines do not offer any specific definition of the term "corporate governance."

(f) Objective: *Improve accountability to shareholders and/or maximise shareholder value.*

Although these Guidelines do not specifically state their objective, they are clearly drafted from a shareholder's point of view. They focus on the practices and procedures of the board of directors that will both protect shareholder rights and maximise shareholder value. The Guidelines cover issues such as scheduling and notice of the annual general meeting of shareholders, shareholder voting rights, board membership, board independence, incentive schemes, take-over bids and corporate disclosure.

(g) Scope: Listed companies.

These Guidelines are applicable to listed Danish companies.

(2) Supervisory and Managerial Bodies.

(a) Rules/recommendations regarding the separate roles and responsibilities of supervisory and managerial bodies (including lines of responsibility).

The Guidelines state that “management should try to maximise the company’s long-term profitability and share price development.” (§ II)

(b) Rules/recommendations regarding the accountability of supervisory and managerial bodies (including conflicts of interest).

The Guidelines do not address this topic.

(c) Rules/recommendations regarding the size, composition, independence and selection criteria and procedures of supervisory and managerial bodies.

The Guidelines recommend that “candidates’ identity and profile should be presented prior to the [annual general] meeting, and more candidates than seats available should be proposed -- elections should take place directly at the AGM and for a period of one year only.” (§ I) In addition to recommending one year terms, they advocate that no board member should be re-elected for a total period of more than twelve years. (§§ I & II)

The Guidelines also state that the board “should have 4 members independent of day-to-day management” and that no more than “one present or past [executive] of the company should be a member of the board.” (§ II)

The Guidelines make a specific point about cross-directorship, stating that no individual should serve as a board member in more than six listed companies at one time. (§ I)

(d) Rules/recommendations regarding the working methods of supervisory and managerial bodies (including information flows).

The Guidelines recommend that committees responsible for the proposal of candidates for the board and auditors be established. (§ I) They also state that a board or special committee should decide upon the remuneration of company executives. (§ II)

(e) Rules/recommendations regarding remuneration of members of supervisory and managerial bodies (including evaluation procedures).

The Guidelines recommend that the remuneration of board members “should, to a reasonable extent, depend on the company’s profitability and share price development.” (§ II)

Regarding executive compensation, the Guidelines state that executives’ dismissal compensation “should normally not exceed 2 years payment. The compensation

should not be paid if the [executive] severely mismanages his/her job, or if he/she resigns on his/her own initiative. The dismissal compensation should not include any kind of bonuses.” (§ II)

Finally, the Guidelines state that “remuneration principles should be published in the annual report.” (§ II)

- (f) Rules/recommendations regarding the organisation and supervision of internal control systems and relations between supervisory bodies, managerial bodies and internal/external auditors.

The Guidelines stress that the auditors should be independent of the management, and that “they should be elected by the shareholders for a total period of maximum 7 years.” (§ I) Further, it emphasises the auditor’s role in overseeing compensation schemes, stating that the auditors “should carefully evaluate [employee motivation] programmes and answer all questions at the shareholder meeting.” (§ III)

(3) Rights of Shareholders/Stakeholders.

- (a) Rules/recommendations regarding protection of the rights of shareholders.

The Guidelines are concerned primarily with the protection of shareholder rights.

Regarding voting rights, the Guidelines emphasise that shareholder voting is a critical component of shareholder rights and limitations on such rights should be avoided, for example, by allowing shareholders to vote easily *in absentia*. (§ I)

Regarding the specifics of shareholders meetings and proxy voting, the Guidelines state that:

- Notice should be sent out at least three weeks in advance and should include an agenda with detailed proposals and recommended decisions to be taken;
- All strategic decisions of fundamental importance to the company should be approved at a shareholders’ meeting; and
- Statements from minority board members or shareholders should be registered in the minutes.

(§ I)

The Guidelines also advocate that all shareholders should receive the same information about the company, all listed companies should have an investor relations function, e-mail should be used to communicate more effectively with shareholders, and representatives from the press and from the Danish Shareholders Association should be invited to participate in investor meetings. (§ V)

The Guidelines recommend that any news having “more than marginal influence on the share price should immediately be communicated -- including an evaluation of the consequences for the company.” They also advocate that “[a]ll listed companies should publish quarterly reports and inform when insiders . . . have been trading shares in the company.” (§ V)

(b) Rules/recommendations regarding equal/fair treatment of shareholders.

The Guidelines urge companies to abolish shares with disproportional voting rights. As stated above, the Association also recommends that all shareholders should receive the same information about the company. (§ I)

(c) Rules/recommendations regarding the rights of stakeholders.

The Guidelines state that while management should attempt to maximise the company's long-term profitability and share price development, it should also engage in reasonable treatment of other stakeholders. (§ II) The code also discusses the merit of "Motivating Programs" for employees, stating that:

- Such programs should not dilute share capital by more than five percent (5%);
- Only employees presently working in the company should profit;
- Shareholders should be well informed about such projects prior to the shareholders' meeting deciding upon them;
- The auditors should carefully evaluate such programs and answer all questions at the shareholders' meeting; and
- Other motivating programs may also be of a nature to be voted upon at a shareholders' meeting.

(§ V)

Additional information about the Danish Shareholders Association Guidelines is included in the Comparative Matrix appended to this Report as Annex V.

b. NØRBY REPORT & RECOMMENDATIONS

Code: Recommendations for Good Corporate Governance in Denmark
Issuing Body: The Nørby Committee, established by Ole Stavad, Minister for Business and Industry
Date Issued: December, 2001
Official Languages: Danish (English summary available)

(1) Background

(a) Issuing Body: *Committee (commission) organised by government*

In a mandate of March 2, 2001, the former Danish Minister for Business and Industry, Ole Stavad, requested that a four-person committee, chaired by Lars Nørby Johansen (CEO of Group4 Falck), determine whether there is a need for a set of corporate governance recommendations in Denmark, and if so, provide such recommendations. (Other members were Jørgen Lindegaard (CEO of SAS), Waldemar Schmidt (former CEO of ISS) and Mads Øvlisen (former CEO of Novo Nordisk).) On December 6, 2001, the Committee issued its Report and included a set of governance recommendations.

The Report is organised in four sections. Section I addresses the definition of corporate governance and why it is important to deal with it in a Danish context. Section II contains corporate governance recommendations for Danish companies. Section III contains practical examples of implementation. Section IV contains various appendices and a review of literature.

(b) Legal Basis and Compliance. *Voluntary (disclosure encouraged).*

The Committee's Report expressly states that "[t]he recommendations are not binding and cannot be enforced by any court of law." (Introduction) However, the Copenhagen Stock Exchange has recommended that listed companies explain (on a voluntary basis) the extent they are in compliance with the recommendations in its "Rules for current disclosure requirements for issuers of shares," effective January 1, 2002.

Two members of the Nørby Committee, Lars Nørby Johansen and Mads Øvlisen will serve on a committee, established by the Copenhagen Stock Exchange, charged with reviewing the impact of the recommendations and determining whether mandatory disclosure of compliance should be required.

(c) Consultations.

The Nørby Committee's Report does not indicate whether any formal consultative process was undertaken.

(d) Contributions.

The Nørby Committee conducted a thorough review of the corporate governance literature, and considered the recommendations made in other code documents, including the OECD Principles.

(e) Definition of Corporate Governance.

The Nørby Committee observed that the term “corporate governance” is difficult to translate into Danish, but can be defined as follows:

“The goals, according to which a company is managed, and the major principles and frameworks which regulate the interaction between the company’s managerial bodies, the owners as well as other parties, who are directly influenced by the company’s dispositions and business (in this context jointly referred to as the company’s stakeholders). Stakeholders include employees, creditors, suppliers, customers and the local community.” (Introduction)

(f) Objective. *Improve companies’ performance, competitiveness and/or access to capital.*

The Nørby Committee articulates three objectives to be served by its recommendations for “good corporate governance”:

- “To make it more attractive to invest in Danish listed companies and to improve Danish companies’ access to funds by attracting foreign investments among others;”
- “To inspire Danish companies, as well as their directors and managers, to tackle the strategic challenges resulting from globalisation, and in doing so strengthen companies’ competitiveness;”
- “To promote good corporate governance in Danish companies by stimulating the debate about corporate governance.”

(Introduction)

The Committee also noted its hope that the recommendations will support changes in Danish share culture, and encourage more individuals to own shares by creating increased confidence in Danish companies. (Introduction)

(g) Scope. *Listed companies; encouraged to all companies.*

The Report & Recommendations are primarily focused on listed companies.

(2) Supervisory and Managerial Bodies.

(a) Rules/recommendations regarding the separate roles and responsibilities of supervisory and managerial bodies (including lines of responsibility).

The Report & Recommendations emphasise that the board of directors is responsible for the overall management of the company, including supervising the management’s work and developing and establishing appropriate strategies. (IV) The board’s most essential tasks include:

- Establishing the overall goals and strategies and following up on them;

- Ensuring clear guidelines for responsibility, distribution of responsibilities, planning and follow-up, as well as risk management;
- Appointing a qualified management and establishing the conditions of employment including levels and forms of remuneration;
- Ensuring that the company maintains positive and constructive relations with its stakeholders.

(VI.1)

The Report & Recommendations speak directly to the tasks of the board's chairman, stating that the chairman must ensure that the board functions satisfactorily and that the tasks of the board are handled in the best possible way. (VI.2)

(b) Rules/recommendations regarding the accountability of supervisory and managerial bodies (including conflicts of interest).

According to the Report & Recommendations, "openness and transparency are essential conditions for ensuring that the company's shareholders and other stakeholders are able to continuously evaluate and relate to the company and its prospects. . . ." (III) Thus, it is recommended that the board adopt an information and communication policy and procedures to ensure that all essential information is published immediately. Furthermore, it is recommended that the board consider applying International Accounting Standards. (III.1)

(c) Rules/recommendations regarding the size, composition, independence and selection criteria and procedures of supervisory and managerial bodies.

The Nørby Committee recommends that a board's existing directors ensure that candidates for the board, who are nominated by the directors, have the "relevant and necessary knowledge and experience in relation to the requirements of the company." (V.1) It further recommends that:

- The board should consist of no more than six directors elected by the general meeting (V.3);
- The majority of the directors should be independent (V.4);
- Members of management should not also serve as directors (V.4);
- The board should be evaluated regularly (V.10); and
- A director ought not to be elected or re-elected for a period of more than nine years (V.8).

(d) Rules/recommendations regarding the working methods of supervisory and managerial bodies (including information flows).

According to the Nørby Committee, board procedures must be efficient and functional tools for meeting the board's tasks. It recommends that board procedures be continuously adjusted to the requirements of the individual company, and that all the directors engage in a review of procedures at least once per year. (IV.3)

Regarding the flow of information, the Committee recommends that the board establish procedures for how the management reports to the board and for any other communication between the board and management. This will ensure that the board is provided with the information about the company's business that the board requires on a continuous basis. The Committee emphasises that "[i]n all circumstances the management must ensure that the board is provided with essential information, whether the board has requested it or not." (IV.4)

- (e) Rules/recommendations regarding remuneration of members of supervisory and managerial bodies (including evaluation procedures).

According to the Nørby Committee, "a competitive remuneration is a prerequisite for attracting and keeping competent directors and managers." (VI) It recommends that the remuneration of directors and managers should be "reasonable in connection with the assigned tasks and the responsibilities which are connected with solving these tasks." (*Id.*)

The Report & Recommendations caution that "performance-related pay may result in conflicting interests between the shareholders and the managers, but may also lead to managers focusing on increasing the value creation of the company." (*Id.*) They emphasise the importance of openness about all important issues regarding incentive schemes. (VI.2)

- (f) Rules/recommendations regarding the organisation and supervision of internal control systems and relations between supervisory bodies, managerial bodies and internal/external auditors.

The Report & Recommendations address risk management, stating that "[e]fficient risk management is a prerequisite for the board being able to perform the tasks for which it is responsible in the best possible way." Thus, "it is important that the board ensures that such systems meet the requirements of the company at any time." (VII)

(3) Rights of Shareholders/Stakeholders.

- (a) Rules/recommendations regarding protection of the rights of shareholders.

The Report & Recommendations contain a section entitled "The role of shareholders and their interaction with the management of the company." It states that "[t]he shareholders, the owners of the companies, and society have a joint interest in the companies always being capable of adjusting to changing demands, which allows the companies to be competitive and continue to create value." (I) It emphasises that "[g]ood corporate governance implies that the board and the management understand that interaction between the management and the shareholders is of vital importance to the company" and that "as owners of the company, the shareholders can actively exercise their rights and use their influence resulting in the management protecting the interests of the shareholders as best as possible." (*Id.*) Therefore, companies should create governance frameworks that encourage the shareholders to enter into a dialogue with the management of the company and each other. (*Id.*)

Specifically, the Nørby Committee recommends that companies:

- Explore ways in which information technology can be used to improve the communication between the company and the shareholders, and between the individual shareholders in the company (I.1);
- Avoid utilising provisions which contain voting rights differentiation, restrict the number of votes which the individual shareholder can cast, or restrict the number of shares which the individual shareholder may own in the company (I.2);
- Call the annual shareholders meeting with sufficient notice to allow shareholders to adequately prepare and decide upon the issues which will be dealt with (I.3); and
- In the event of an attempted take-over, give shareholders the opportunity to decide whether they wish to surrender their shares in the company on the conditions offered (I.4).

(b) Rules/recommendations regarding equal/fair treatment of shareholders.

See above.

(c) Rules/recommendations regarding the rights of stakeholders.

The Report & Recommendations contain a section entitled “The role of stakeholders and their importance to the company,” which states that “[i]t is decisive for a company’s prosperity and future possibilities that the company has a good relationship with its stakeholders . . . [I]t is desirable that the company’s management runs and develops the company with due consideration of its stakeholders, and that management provides an incentive for a dialogue with these.” (II) Stakeholders include “everyone who [is] directly affected by the company’s decisions and business.” (*Id.*)

Additional information about the Nørby Report & Recommendations is included in the Comparative Matrix appended to this Report as Annex V.

D. FINLAND

1. LEGAL SYSTEM OVERVIEW

| CIVIL LAW SYSTEM | |
|--|--|
| LEGAL/REGULATORY FRAMEWORK | ENFORCEMENT / REGULATORY BODIES |
| COMPANY LAW FRAMEWORK <ul style="list-style-type: none">• The Companies Act (1978/734) | <ul style="list-style-type: none">• Commercial Courts• The Ministry of Trade and Industry |
| SECURITIES LAWS/REGULATIONS <ul style="list-style-type: none">• The Securities Markets Act (1989/495)• Guideline by the Financial Supervisory Authority on Securities Offering and Obligation to Provide Information under the Securities Markets Act (No. 204.1) | <ul style="list-style-type: none">• The Ministry of Finance and the Financial Supervision Authority (FSA) |
| STOCK EXCHANGE LISTING RULES <ul style="list-style-type: none">• The Decision of the Ministry of Finance on the Mutual Recognition of Listing Particulars and Prospectuses Approved in the European Economic Area (1999/389)• The Decision of the Ministry of Finance on the Information to be Disclosed in Connection with the Disclosure and Publication on Holdings (1999/391)• The Decision of the Ministry of Finance on Listing Particulars (1998/197)• The Decision of the Ministry of Finance on Prospectus (1994/905)• The Decision of the Ministry of Finance on the Regular Duty of Disclosure of the Issuer of Securities (1999/390)• The Decision of the Ministry of Finance on the Conditions for the Admission of Securities to Stock Exchange Listing (1994/906) | <ul style="list-style-type: none">• The Financial Supervision Authority• The Helsinki Stock Exchanges |

a. GENERAL

Finland's economy has transformed in the past decade, since joining the European Union, as the State has reduced its ownership stake in listed companies and made efforts to attract both domestic and foreign equity investors. (According to a recent study by the World Economic Forum (2001), Finland ranks first out of 75 countries on global competitiveness, based half on technology level, and half on the quality of institutions and macroeconomic conditions.)

To comply with EU requirements, Finland undertook company law revisions, effective in 1997, and has also revised its accounting practices. The revisions to the Finnish Companies Act distinguish between private limited ("Oy") and public limited ("Oyj") companies, and heighten corporate reporting requirements. They also extend the notice requirement for the shareholders general meeting. However, many Finnish companies continue to rely on a dual-class share structure and the use of multiple voting stock. (Major revisions have also been made to the Securities Markets Act.)

b. ROLE AND RESPONSIBILITY OF THE SUPERVISORY BODY

(1) Type of board system: *Predominantly one-tier.*

The unitary board system is the predominant supervisory body structure for Finnish joint stock companies. (Only about 15 of the more than 150 companies listed on the Helsinki Stock Exchange have a two-tier board system. These tend to be large companies with significant state ownership.)

Companies with share capital of Euro 80,000 or more must have a board of at least three directors and also have a managing director. The managing director is appointed by the board of directors and does not have to be a member of the board of directors. Smaller companies have one or two (or more) directors and *may* have a managing director.

(2) Role, make-up and powers of the supervisory body.

The Companies Act generally provides that the board of directors is responsible for the management and proper arrangement of the operations of the company. It is responsible for the proper supervision of financial record keeping and for the control of the company's financial matters. In addition, it represents the company and has the right to act on its behalf. According to Finnish law, the company may employ internal rules and codes to determine the division of managerial duties.

However, if a managing director is required, the board of directors supervises the management of the company which is carried out by the managing director. The board of directors is charged with issuing a report on the annual accounts and the audit report to the annual general meeting of the shareholders.

Most Finnish boards of directors are composed of a majority of directors who represent substantial shareholders. Usually, at least one member of the board is an independent non-executive.

One or more members of the board of directors may be appointed by the government or elected by employees under certain conditions. In state controlled companies, the Ministry of Trade & Industry may appoint some directors. A company's articles of association may provide that employees elect one or more, but no more than half, of the members of the supervisory body.

(3) Duties of the supervisory body.

Supervisory body members owe a broad fiduciary duty and duty of loyalty towards the company and its shareholders. The Companies Act includes a general duty of care and prudence, which applies to the members of the board of directors and the managing director of the company. According to this provision, these parties have to take all the necessary precautions which an objectively prudent individual would take when managing his or her own affairs.

The fiduciary duty of directors and managers runs to the company. According to the Companies Act, the board of directors, individual directors or the managing director or other representative of the company may not undertake an act or a measure which

is likely to cause undue advantage to a particular shareholder or a third person at a cost to the company or another shareholder. The Companies Act does not include a specific provision concerning the equality of the shareholders, but the above rule is interpreted to include the principle of shareholder equality.

The board of directors is elected by the general meeting of shareholders. However, even though a member's position on the board may be due to a certain shareholder or by a group of shareholders, every board member is obligated by the Companies Act to look strictly after the best interests of the company and the shareholders as a whole.

According to the Companies Act, a member of the board of directors or the managing director may not participate in the handling of a contract directly between himself and the company. Nor may he participate in the handling of a contract between the company and a third party if he has a fundamental interest in the matter that may contradict the best interests of the company. The above provisions on contracting apply correspondingly to other similar situations.

Board members are generally jointly and severally liable for the actions of the board unless special grounds exist to justify individual division of liability.

c. ROLE AND RESPONSIBILITY OF THE MANAGERIAL BODY

(1) **Role, make-up and powers of the managerial body.**

According to the Companies Act, the managing director is in charge of the day-to-day management of the company in accordance with the instructions and orders given by the board of directors. Any action which, considering the scope and nature of the operations of the company, might be considered unusual or extensive, may be undertaken by the managing director only when authorised by the board of directors or when the action cannot be postponed without causing material damage to the operations of the company. In the latter case, the board of directors must be notified of the act without undue delay.

In addition, according to the Companies Act, it is the duty of the managing director to oversee that the bookkeeping of the company complies with the laws and that the financial matters of the company are handled in a reliable manner.

(2) **Duties of management members.**

The fiduciary duties described above as applicable to members of the board of directors also apply to the managing director. Fiduciary duties run to both the company and its shareholders. In addition, the Employment Act sets forth loyalty obligations for managers employed by the company; for example, concerning performance, trade secrets and competing contracts of employment.

d. SHAREHOLDER RIGHTS

The class structure of shares in Finnish companies varies from company to company. The Companies Act requires that all companies comply generally with a one-share-one-vote principle for shares within a class. However, differential voting rights between classes are possible, if provided in the company's articles of

association. The Companies Act was amended in response to concerns that holders of many preference shares possessed limited voting rights with few actual preferential advantages. The Companies Act now requires that preference shares possess no voting rights but have true preferential rights to dividend and asset distribution. Under pre-existing company law, Finnish management is required to seek the approval of all classes of shares for mergers, increases in share capital, rights issues and transformation into a private limited company.

(1) Decisions reserved to shareholders and the general meeting.

According to the Companies Act, the shareholders shall exercise their right to take part in the decision-making concerning the company's affairs at the general meeting of shareholders. Under the Companies Act, voting items at routine general meetings include:

- Approval of financial statements;
- Setting of dividends / allocating profits;
- Election of directors (although a company's articles may empower other parties to elect a minimum of board members), including election of supervisory board members for two-tiered companies;
- Setting of directors' fees, including supervisory board members' fees for two-tiered companies;
- Setting of auditors' fees;
- Appointment of auditors; and
- Ratification of board and management acts: Finnish companies annually request that shareholders give the board of directors (or supervisory board) and management a discharge from liability for all decisions made during the previous year.

Non-routine proposals include:

- Amendment of articles of association: Shareholder permission is required before a Finnish company may amend the articles to change the firm's name, purpose, board powers or procedures or meeting procedures and before a company can amend, abolish or limit shareholder voting rights;
- Increase of authorised capital;
- Issuance of stock with or without pre-emptive rights;
- Approval of convertible bond issue;
- Issuance of convertible bonds; and
- Approval of mergers.

(2) Shareholders' legal recourse.

The annual general meeting of shareholders has the power to discharge from liability of the members of the board of directors, the members of the supervisory board and the managing director.

In addition, minority shareholders may also request a certain issue to be included in the agenda of an extraordinary general meeting of shareholders. An extraordinary general meeting of shareholders shall be held if requested in writing by the auditor or by shareholders holding a minimum of one-tenth of all shares or a lesser portion stipulated by the articles of association.

According to the Companies Act, if a resolution of the general meeting of shareholders has not been entered into in proper order or if it is otherwise against the provisions of the Companies Act or the articles of association, a shareholder, the board of directors, a member of the board of directors or the managing director shall have the right to bring an action against the company to have the decision invalidated or revised.

The Companies Act also includes a provision concerning the liability of members of the board of directors and the managing director. According to the Companies Act, a member of the board or the managing director shall be liable to compensate all damage caused to the company either wilfully or negligently. These parties may be liable towards the company when damage has been incurred. No specific rule of law has to be breached. These parties are liable for damage caused to a shareholder or a third person solely if the act infringes the Companies Act or the articles of association. The same liability rules apply to the members of a supervisory board.

(3) Duties of controlling shareholders.

Generally, controlling shareholders do not owe duties to either the company as a whole or to minority shareholders. However, the Companies Act contains a general loyalty clause, prohibiting the general meeting from taking any decisions that would render to a shareholder or a third party an undue advantage to the detriment of the company or other shareholders. A shareholder may be held liable for damages caused to the company, another shareholder or a third person, due to a wilful or negligent act by the shareholder which infringes the Companies Act or the articles of association.

2. CORPORATE GOVERNANCE CODES

The universe of corporate governance codes in Finland includes two published codes, one sponsored by an industry and employers association and the other sponsored by a government agency. Although this Study's definition of "corporate governance code" generally excludes codes that are wholly "governmental or regulatory" in nature, the code sponsored by the Finland Ministry of Trade and Industry is included because it is voluntary in nature and is aimed at improving the investment attractiveness of partially state-owned and associated companies.

There are no apparent plans for the publication of further corporate governance codes in Finland at this time. Nor does there appear to be any official reports analysing the way codes are applied in practice.

Note that Finnish law covers a number of provisions that in other jurisdictions are left to governance codes. Thus, to a large extent the codes explain and provide commentary on already existing requirements.

a. CHAMBER OF COMMERCE / CONFEDERATION OF FINNISH INDUSTRY AND EMPLOYERS CODE

Code: Corporate Governance Code for Public Limited Companies
Issuing Bodies: The Central Chamber of Commerce and the Confederation of Finnish Industry and Employers
Date Issued: February 1997
Official Language: Finnish. (English summary available.)

(1) **Background.**

(a) Issuing Body: *Business, industry and/or academic association or committee.*

The Central Chamber of Commerce is a non-governmental organisation concerned with the general interests of business and industry that works to improve the basic operating conditions of companies regionally, nationally and within the European Union, particularly relating to matters of taxation, legislation, economic policy, regional and structural policy, trade policy and EU policy.

The Confederation of Finnish Industry and Employers is a non-governmental organisation concerned with the interests of companies in manufacturing, construction, transport and other service sectors related to industry. The Confederation represents its members in business and industrial, economic, trade and social policy. The Confederation promotes entrepreneurship, free market economy, and internationalisation of business.

(b) Legal Basis and Compliance: *Voluntary (disclosure encouraged).*

Both compliance with the Code and disclosure of compliance with the Code are entirely voluntary. The issuing bodies recommended that the Code be adopted by the Helsinki Exchanges. The Code is referenced by the Helsinki Exchanges listing rules but it has not yet been included in the rules, nor has the exchange mandated any form of disclosure by companies relating to their compliance or non-compliance with this Code.

(c) Consultations.

The Code does not indicate whether any formal consultative process was undertaken.

(d) Contributions.

The issuing bodies appointed a Working Group of 11 persons with an array of expertise and experience. The group included managing directors of large Finnish companies, corporate legal counsel, attorneys in private practice, university professors and high-ranking government officials. Representatives from the Helsinki Exchanges actively participated in the creation of this Code. The President of Finland's Supreme Administrative Court was also consulted.

(e) Definition of Corporate Governance.

This Code does not provide a definition of the term "corporate governance."

(f) Objective: *Improve quality of board (supervisory) governance.*

The stated objective for creation of this Code was to set minimum standards of corporate governance for public limited companies in Finland. The Code aims to clarify the role of the board of directors and board committees in the governance of Finnish listed companies and to encourage (but not require) companies to disclose their governance practices.

However, it has become customary for companies listed on the Helsinki Exchanges to publicly disclose in their annual reports whether they comply with the guidelines, best practices and recommendations of this Code.

(g) Scope: *Listed companies.*

This Code is aimed specifically at Finnish limited liability companies that are publicly traded.

(2) Supervisory and managerial bodies.

(a) Rules/recommendations regarding the separate roles and responsibilities of supervisory and managerial bodies (including lines of responsibility).

The Code does not contain any statement concerning the duties of supervisory bodies. Instead, the Code refers in several instances to the Companies Act, which includes provisions regarding the role and the responsibilities of supervisory bodies. Generally, the focus of the Code is on disclosure of companies' practices and procedures relating to areas already regulated by the Companies Act.

The Code recommends that the company should disclose in the annual report and in any listing particulars the duties of the administrative bodies and the division of these duties between the individual members of management. The Code also recommends that areas of responsibility shall be defined in detail in the case of a full-time chairman of the board of directors or any internal member of the board of directors.

The Code also recommends that the duties and areas of responsibility of the supervisory bodies and the members thereof should be explained in the annual report and in any listing documents, if these bodies and members have been assigned special duties other than those mandated by the applicable law. With regard to the individual members of the board of directors, this information has to be given if a board member is also employed by the company. (English summary, § 1)

The Code does not contain any rules or recommendations concerning the mission or responsibilities of managerial bodies. The Code refers to the Companies Act, in which the duties and responsibilities of the managing director are prescribed. However, the Code recommends that the board of directors should define the material terms of the engagement of the managing director with the company in a director's contract. (English summary, § 2)

(b) Rules/recommendations regarding the accountability of supervisory and managerial bodies (including conflicts of interest).

The Code does not address this topic.

(c) Rules/recommendations regarding the size, composition, independence and selection criteria and procedures of supervisory and managerial bodies.

The Code recommends that companies should disclose in their annual reports the process by which members of the board of directors and the managing director are nominated for election and the terms of office of these directors. Additionally, the Code recommends that the personal and interest-group information of the persons proposed to be nominated to the board of directors should be disclosed at the general meeting of shareholders when such proposal is supported by at least twenty percent (20%) of all votes in the company and when the candidate has given his consent to the nomination. Such information should also be disclosed in the annual report and in any listing particulars. (English summary, § 3)

The Code recommends that the same disclosure principles be applied to the members of the supervisory board and to the managing director. If the composition of the supervisory board is especially large, the company may omit this information from its annual report. In such case, the information shall be kept available at the head office of the company and it shall be sent to anyone requesting it. The listing particulars should also contain the personal and interest-group information of the members of the supervisory board. (English summary, § 5)

The Code further lists the following items to be disclosed for each member of the supervisory body:

- Name and age;
- Education and essential work or other experience;
- Main job at the time of nomination; and
- Essential simultaneous duties or known future duties.

(English summary, § 5)

Finally, the Code contains a recommendation that all shareholder proposals regarding the election of the members of the supervisory body that have come to the attention of the board of directors of the company shall be disclosed at the next general meeting of shareholders if such proposal is supported by at least twenty percent (20%) of all votes in the company and if the person nominated has given his consent to the nomination. (English summary, § 4)

The Code does not contain any criteria for selection of the managerial bodies. The Code only states that provisions concerning the selection are prescribed in the Companies Act and in the articles of association. The Code recommends however, that the company should disclose in the annual report and in the listing particulars, which body nominates the managing director and when this nomination takes place. (Id.)

(d) Rules/recommendations regarding the working methods of supervisory and managerial bodies (including information flows).

The Code does not contain any recommendations concerning committees. However, a discussion paper of the working group includes a note stating that committees should usually engage only in preparatory work and, if they are authorised to make

decisions, such power must be in accordance with the provisions of the Companies Act and controlled by the board of directors.

The Code does not contain any recommendations concerning managerial bodies other than the managing director. However, the discussion paper of the working group advises that management bodies should usually engage only in preparatory work and, should they be authorised to make decisions, this power should be in accordance with the provisions of the Companies Act and controlled by the board of directors.

(e) Rules/recommendations regarding remuneration of members of supervisory and managerial bodies (including evaluation procedures).

The Code states that the company shall determine the general principles to be employed when deciding on the salaries and other benefits or privileges of the top management. It also states that if a member of the board of directors is, in addition to receiving remuneration for the board membership, also paid on another basis, the board of directors as a whole should always be informed of this fact. Disclosure regarding the payment of such fees shall be included in the annual report and the listing particulars. (English summary, § 6)

The Code recommends that the decision-making process relating to salaries, benefits and privileges of the top management shall be disclosed in the annual report and the listing particulars. According to the Code's recommendations, the above disclosures should contain the information on the total amount of salaries and fees paid as well as on the fringe benefits granted to the members of the board of directors or the supervisory board, the managing director and the deputy managing director for the latest financial period. (Id.)

(f) Rules/recommendations regarding the organisation and supervision of internal control systems and relations between supervisory bodies, managerial bodies and internal/external auditors.

The working group that drafted the Code discussed the importance of the internal audit in creating sufficient internal control for the company. The working group concluded, however, that due to the variety of industries in which listed companies exist and the differing internal control demands posed by these various industries, no blanket recommendations concerning the internal control were appropriate.

However, the working group states in its discussion paper that, in organising the internal control of a company, special attention should be paid to the transparency and independence of internal control systems. Also, the Code recommends that, if the company has an audit committee, it should be governed by the following principles:

- The committee shall, if possible, be nominated from among the outside members of the board.
- The board of directors shall determine the central duties and operating principles of the committee by creating instructions or guidelines for the committee.

- The composition of the committee shall be disclosed in the annual report and the listing particulars.

(English summary, § 7)

(3) Rights of Shareholders/Stakeholders.

(a) Rules/recommendations regarding protection of the rights of shareholders.

The discussion paper of the working group states that the company should provide the shareholders with sufficient information concerning the company.

(b) Rules/recommendations regarding equal/fair treatment of shareholders.

The Code does not contain any specific recommendations concerning equal treatment of shareholders. However, the discussion paper notes that the company should ensure that both the minority and foreign shareholders receive sufficient information.

(c) Rules/recommendations regarding the rights of stakeholders.

The Code does not address this topic.

Additional information about the Chamber of Commerce/Confederation of Finnish Industry and Employers Code is included in the Comparative Matrix appended to this Report as Annex V.

b. MINISTRY OF TRADE AND INDUSTRY GUIDELINES

Code: Handling Corporate Governance Issues in State-Owned Companies and Associated Companies

Issuing Body: Finland Ministry of Trade and Industry

Date Issued: November 2000

Official Languages: Finnish and English

(1) Background.

(a) Issuing Body: *Government entity.*

The Ministry of Trade and Industry is the arm of the Finnish national government responsible for Finland's industry and technology policies and for the creation of preconditions for the development of Finnish industry and enterprise. The Ministry also seeks to aid the establishment and growth of small and medium-sized firms, safeguard profitable business activities and promote competitiveness by Finnish companies in the international marketplace. The Ministry is also responsible for exercising, on behalf of the national government, shareholder control over a number of "special financing institutions," state-owned companies and state-associated companies.

(b) Legal Basis and Compliance: *Voluntary (disclosure encouraged).*

The Ministry's Guidelines "are a recommendation by nature" and, as such, are not compulsory, nor do they require any disclosure on the part of any company. The Ministry states that "[t]he guidelines deal mainly with cases in which determining the best practice is not always unequivocal, because making the choice depends on company-specific factors."

While the Guidelines state that it is important to provide information regarding governance practices in the annual report and in other published materials, no such disclosure is required.

(c) Consultations.

Representatives of other branches of Finnish government were consulted in the drafting of these Guidelines. Board members of the state-owned and associated companies, which are the primary target of the Guidelines were also consulted. The Ministry also studied international developments and national guidelines, including the OECD Principles of Corporate Governance and the Guidelines of the Finland Central Chamber of Commerce.

(d) Contributions.

There is no indication of other contributions by parties outside the Ministry.

(e) Definition of Corporate Governance.

The Guidelines do not expressly define the term "corporate governance."

- (f) Objective: *Improve companies' performance, competitiveness and/or access to capital.*

The Guidelines provide as follows:

“The attractiveness of state-owned companies and associated companies as investment objects, as well as the efficiency of the State’s ownership steering and control [as] shareholders, require that the corporate governance schemes of companies are up-to-date. In view of this objective, the Ministry of Trade and Industry recommends that the civil servants that are members of the Boards of Directors of state-owned companies and associated companies pay attention to corporate governance issues so as to solve them in as appropriate a manner as possible in terms of the companies’ size and other special conditions... The objective of the following guidelines is development of the corporate governance schemes of companies.” (Introduction)

The Guidelines are addressed to civil servants who make up the membership of boards of directors of companies that are at least partially state-owned. The Ministry asks these board members to “pay attention to corporate governance issues so as to solve them in as appropriate a manner as possible in terms of the companies’ size and other special conditions.”

The Guidelines aim to “draw the attention” of civil servant board members to the following issues of good governance practices:

- Operation of the Board of Directors;
- Ensuring the independence of the Board of Directors;
- Participation of the shareholders in the shareholders’ meetings; and
- The role of the State as owner.

- (g) Scope: *Listed companies and other privatised companies.*

The Guidelines are specifically aimed at companies that have other (private) shareholders in addition to the State. In these companies, especially those that are listed, “the State usually has a considerable investor’s interest.” However, the Ministry states that the “majority of the recommendations for measures are applicable to other state-owned companies and associated companies, too. The issues that pertain to listed companies only are separately mentioned in the relevant connection.”

(2) Supervisory and managerial bodies.

- (a) Rules/recommendations regarding the separate roles and responsibilities of supervisory and managerial bodies (including lines of responsibility).

According to the Guidelines, the primary mission of the supervisory body is to ensure that the activities of the company produce financial added value. A description of the duties of the supervisory body should be included in the company’s annual report, and should describe the measures by which the supervisory body endeavours to create such added value. The Guidelines further recommend that if the company employs

internal corporate governance guidelines, such guidelines should be disclosed in the annual report. (§ 2.1.2)

- (b) Rules/recommendations regarding the accountability of supervisory and managerial bodies (including conflicts of interest).

The Guidelines state that companies' annual reports should state that the management and immediate related parties of the management have not engaged in any transactions with the company. (§ 2.2.2)

- (c) Rules/recommendations regarding the size, composition, independence and other selection criteria and procedures of supervisory and managerial bodies.

The Guidelines do not address this topic.

- (d) Rules/recommendations regarding the working methods of supervisory and managerial bodies (including information flows).

According to the Guidelines, the larger the company, the more important the role of outside members of the supervisory body. Boards of listed companies should consider placing outside members on working committees including the auditing, nomination and remuneration committees. (§ 2.2.1)

The Guidelines also emphasise that delegating work to a committee or other entity does not limit the statutory responsibilities of the supervisory body. Subject to the Companies Act, all members of the board of directors are liable for the decisions made by the board. Therefore, committees may only engage in preparatory work; the supervisory body retains actual responsibility for decision-making. (*Id.*)

- (e) Rules/recommendations regarding remuneration of members of supervisory and managerial bodies (including evaluation procedures).

The Guidelines do not provide any specific recommendations concerning the remuneration of the members of the supervisory or managerial bodies, other than to encourage supervisory bodies to define general principles that guide the remuneration decision. The Guidelines focus on how information regarding remuneration should be disclosed to the public. The Guidelines recommend that the annual report should include, at minimum, information on the principles followed when deciding on the salaries and other bonuses of the management, and a description as to what remuneration members of the supervisory body receive for reasons other than their membership on the supervisory body. If no remuneration is paid, this should also be disclosed. (§ 2.2.2)

- (f) Rules/recommendations regarding the organisation and supervision of internal control systems and relations between supervisory bodies, managerial bodies and internal/external auditors.

The Guidelines recommend that the annual report should include a description of the internal auditing process -- what kind of resources are available and how the internal systems work to ensure that the company's operations comply with law and are designed to prevent possible misappropriation by employees. (§ 2.1.2)

The Guidelines also recommend that internal and external auditors should meet annually with the outside members of the supervisory body to discuss the auditing of the company (without the presence of the executive members of the board of directors). (§ 2.2.1)

(3) Rights of Shareholders/Stakeholders.

(a) Rules/recommendations regarding protection of the rights of shareholders.

The Guidelines are primarily concerned with partially state-owned companies; they do not include extensive comments regarding the rights of other shareholders, other than to specify items for disclosure in the annual report, including:

- Management’s opinion on risks regarding the objectives set for the company and description of the general features of the risk management systems used by the company;
- Account of the bonus scheme and a statement of how successfully the objectives of the payment plan have been achieved;
- Description of the common guidelines of the personnel strategy and the development of the working conditions; and
- Account of the measures implemented regarding environmental values in the business of the company.

(§ 2.1.2)

(b) Rules/recommendations regarding equal/fair treatment of shareholders.

The Guidelines recommend that minority shareholder participation in the shareholders general meeting should be encouraged and facilitated. The Guidelines emphasise that the interests of minority shareholders should be taken into account in proportion to the weight of their holdings. (§ 2.3.1)

The Guidelines also state that the rules on pre-registration and other procedures relating to general meetings of shareholders should be as flexible as possible, in accordance with the applicable laws, to encourage shareholder participation. (*Id.*)

(c) Rules/recommendations regarding the rights of stakeholders.

The Guidelines do not address this topic.

Additional information about the Ministry of Trade & Industry Guidelines is included in the Comparative Matrix appended to this Report as Annex V.

E. FRANCE

1. LEGAL SYSTEM OVERVIEW

| CIVIL LAW SYSTEM | |
|--|---|
| LEGAL/REGULATORY FRAMEWORK | ENFORCEMENT/ REGULATORY BODIES |
| COMPANY LAW FRAMEWORK <ul style="list-style-type: none"> • <i>Code de commerce</i> -- Commercial Code • <i>Code civil</i> -- Civil Code | <ul style="list-style-type: none"> • Commercial Courts • Civil Courts |
| SECURITIES LAWS/REGULATIONS <ul style="list-style-type: none"> • <i>Code monétaire et financier</i> -- Monetary and Financial Code • <i>Règlement Général du Conseil des Marchés Financier</i> | <ul style="list-style-type: none"> • <i>Council des Marchés Financiers</i> • <i>Commission des Opérations de Bourse</i> (“COB”) |
| STOCK EXCHANGE LISTING RULES <ul style="list-style-type: none"> • Euronext Paris: <i>Règles de la bourse de Paris et du nouveau marchés</i> | <ul style="list-style-type: none"> • <i>Council des Marchés Financiers</i> • <i>Commission des Opérations de Bourse</i> (“COB”) • Euronext |

a. GENERAL

Corporate governance reform efforts have generated considerable attention in France in the past decade due: to the privatisation of government-owned entities; a slow unravelling of cross-shareholdings among corporations, banks and insurance companies; and, increased activism by both institutional and individual shareholders. In addition, the private sector has undertaken voluntary reforms in an effort to avoid legislation. The governance code issued in 1995 by a committee chaired by Marc Viénot played a significant role in encouraging voluntary reform. Legislated reforms have also emerged, most notably in the *Loi relative aux Nouvelles Régulations Economiques* adopted on 15 May 2001 (NRE Act).

The principal business entities under French law are the *société anonyme* (“SA”), a form used primarily for large publicly-held companies, and the *société à responsabilité limitée* (“SARL”), a form used by more closely held limited liability companies having fifty or fewer shareholders. (The SA is similar to the German AG and the United Kingdom’s plc. The SARL is similar to the GmbH in Germany and the Ltd. in the U.K.) Another company structure is the *société en commandite par actions* (limited partnership), which is used by large family-controlled companies to retain control while accessing the equity markets. A specialised corporate form, the *société par actions simplifiée* (“SAS”) was created in 1994. The SAS is intended to provide a more flexible structure for the management and administration of large private commercial corporations than the SA regime.

Other forms of commercial business entities are available under French law, including the *société en nom collectif* (general partnership) and the *société civile* (civil company). They function in a manner different from SAs, SASs, and SARLs and are subject to different rules. According to French law, all these types of entities have their own legal identity separate from the shareholders or partners.

b. ROLE AND RESPONSIBILITY OF THE SUPERVISORY BODY

(1) Type of board system: *Predominantly one-tier.*

An SA may be administered under either a unitary or a two-tier board structure. Prior to 1966, only the unitary board structure was available. However, in 1966, legislation was introduced to provide companies the option of having a two-tiered system. The unitary system continues to predominate. Well under five percent (5%) of French companies opt for the two-tier structure, although the percentage is higher -- somewhere around twenty percent (20%) -- for companies in the CAC 40. Note that the law that created the SAS form leaves it up to the *statuts* of each SAS to determine its board structure. (Generally a company can change from one board model to the other as circumstances change.)

Note that the NRE Act of May 2001 distinguishes between supervisory and executive powers in the unitary governance structure, as described in greater detail below, by allowing the roles of supervisory body leader and management leader to be separated in unitary board systems. Until the NRE Act, a company with a one-tier board was required to give the board's chairman combined supervisory and executive powers. That is no longer the case.

(2) Role, make-up and powers of the supervisory body.

One-tier system: In the unitary board system, shareholders elect a board of directors (*conseil d'administration*) at the general meeting in accordance with terms set out in the company's articles (*statuts*). (Board nominees are usually proposed by the board itself.) The board then appoints a president (*président du conseil d'administration*) from among its ranks. The board may also appoint one or several separate general managers, who assist the president and are often responsible for the day-to-day operations of the company.

Traditionally the board of directors has had broad powers and authority to act in the name of -- and bind -- the company, limited only by the corporate purpose and powers expressly reserved by law to shareholders (see discussion below). Under the NRE Act, the board retains this broad authority but must determine whether to delegate executive powers to the president (which in effect joins the positions of chairman and CEO, as has been typical practice) or to a distinct general manager (which thereby separates the roles of chairman and CEO). In either event, the board retains its responsibility for supervising the operations of the company, and it has the power to dismiss the president, the general managers and other top company officers.

The president is usually given, broad powers to act on behalf of the company in the *statuts*. Traditionally, the *président* has exerted considerable power and has tended to dominate both the board and the management of the company (not unlike the chairman-CEO in the United States). Frequently the *président* has had significant

influence in determining board composition and management succession. It will be interesting to see what effect the NRE Act has in this regard.

At least two-thirds of the board must be non-executives, but executives of subsidiaries and affiliated companies are not considered company executives. Note also that a corporate entity may be a board member (through a representative). The NRE Act of May 2001 imposes strict limits on the number of positions a director may hold. Directors are generally limited to serve on no more than five boards. The precise limits are fairly technical depending on the circumstances and are beyond the scope of this discussion. (In the past, it was common for directors to sit on numerous boards of related companies and to be compensated for each such board.)

Directors are required by law to own at least one share of company stock, but can be required to own a greater number of shares as prescribed in the company's articles (*statuts*).

Two-tier system: In the two-tier system, shareholders elect a supervisory board (*conseil de surveillance*) at the general meeting. The members of the supervisory board appoint the management board (*directoire*) and the *président du directoire* for a set term; early dismissal of management board members or the president generally required shareholder approval. However, under the NRE Act of May 2001, the bylaws can authorise the supervisory board to dismiss management board members.

In the two-tier system, the supervisory board and the management board are entirely distinct. No supervisory board members are executives of the company, although former executives may serve on the supervisory board. The positions of supervisory body leadership and management body leadership are held by separate individuals.

The supervisory board exercises control over the management board, which is charged with managing the company. The supervisory board can veto certain decisions. The supervisory board comments at the annual general meeting of shareholders on the management report presented by the management body and on the annual accounts.

The management board generally has broad powers (like the unitary board), limited by corporate purpose and those powers expressly reserved to the supervisory board and shareholders.

(3) Duties of the supervisory body.

In both the one-tier and two-tier systems, the supervisory body is legally responsible for representing the best interests of the company. (One of the tensions in governance in many nations, however, is that members of the supervisory body may function in practice as though they represent the interests of majority shareholders.)

Directors are required to act with prudence and diligence in the interests of the company. They have no direct duties to shareholders (individually or as a body), to the employees or to any other group of stakeholders.

French law allows works council representatives to attend board meetings, where they have a consultative voice. French law also allows for a certain proportion of directors

to be elected by the employees of certain public limited liability companies if provided in the articles. In SAs, shareholders must appoint to the supervisory body one or more employee shareholder representatives (nominated by employee shareholders) if employees hold at least three percent (3%) of the company's share capital. (Note also that listed companies are now required to disclose in their annual reports how they take into account the social and environmental consequences of their activities.)

The supervisory board must approve contracts between the company and a director (or a supervisory or management board member). Otherwise, those contracts can be voided. Shareholders must approve contracts with companies in which a board member is an officer or an owner. Otherwise, the board of directors (or the supervisory and management board or some of their members) can be liable for any negative consequences to the company. (Commercial Code, Arts. L. 225-238 -- 225-243; 225-286 -- 225-291)

In an SA, directors are liable towards the company and towards third parties for damages caused by their mistakes or their breach of laws and regulations applicable to SAs, or of the company's articles of association. SA supervisory board members can be held liable if they had knowledge of the misconduct of management board members and did not inform shareholders. Shareholders can act against directors for damages in the name of and on behalf of the company. (Commercial Code, Arts. L. 225-249 -- 225-257).

Directors can also be held criminally liable under the French Criminal Code and criminal sanctions are provided for by the Commercial Code and other laws for specific offenses.

c. ROLE AND RESPONSIBILITY OF THE MANAGERIAL BODY

(1) **Role, make-up and powers of the managerial body**

The directors in a unitary system, or the management board in a two-tier system, are obligated to manage the company according to the terms set out by the supervisory board, the company's articles of association (*statuts*), and the law. Responsibilities may include:

- Ensuring the company's compliance with applicable laws and regulations. The board of directors in a unitary system or the members of the management board in a two-tier system are individually and jointly responsible for breaches of laws and regulations applicable to companies.
- Ensuring the integrity of the corporation's financial reporting systems. The board of directors in a unitary system, or the management board in a two-tier system, is responsible for preparing the annual accounts, a management report and, where applicable, projected accounts. (Commercial Code, Art. L. 225-251)

(2) **Duties of management members.**

SA directors and members of the management board are liable to the company and to third parties for any damages caused by their managerial mistakes, or their breach of

laws and regulations applicable to SAs, or of the company's articles. The civil liability to which management board members are exposed extends to members of the supervisory body if the latter had knowledge of the misconduct of managerial members but did not duly inform the shareholders. Shareholders can bring a legal action against management for damages in the name of, and on behalf of, the company. (Commercial Code, Arts. L. 225-249 -- 225-257, and case law)

Managers can be held criminally liable under the French Criminal Code, under criminal sanctions provided in the Commercial Code, and other laws for specific offenses.

d. SHAREHOLDER RIGHTS

Shares of French companies may come in either registered or bearer form. Although most shares carry proportional voting rights, company articles or bylaws may give greater voting rights to registered shares that are held for a significant period of time. For example, it is not uncommon to give double voting rights to a holder of registered shares who has held the shares for two consecutive years. In addition, voting caps may be imposed. Voting caps may help entrench managers but some view them as legitimate protection from undue influence by a large shareholder or protection from take-over attempts.

(1) Decisions reserved to shareholders and the general meeting.

All decisions of shareholders are made at the ordinary general meeting of shareholders (*assemblée générale ordinaire*), other than those that would require a modification of the company articles (*statuts*). Convocation of an extraordinary general meeting of shareholders (*assemblée générale extraordinaire*) is required to decide on proposed amendments to the *statuts*, such as: (i) a change of corporate purpose or (ii) an increase or reduction in the corporate capital.

A general meeting is held at least annually to approve the financial statements and address other business. At the meeting, the supervisory body must present a written report on the company's situation, including financial statements and discussion and analysis thereof. The annual report must also discuss business developments, including any acquisitions the company has made and its prospects for the future. After receipt of this report, the shareholders may submit written questions to the supervisory body, which must answer such questions during the general meeting.

Under law, the following decisions are reserved to shareholders at the general meeting:

- Electing or dismissing members of the supervisory board;
- Dismissing members of the management body before the appointed term has run (in a two-tier system);
- Approving remuneration of members of the supervisory body;
- Approving the auditors;
- Approving the financial statements;
- Approving the dividend and dividend reinvestment;

- Approving issuance of company bonds;
- Approving mergers/acquisitions;
- Approving the grant of additional powers to the supervisory body; and
- Approving annual accounts.

In addition, companies must seek shareholder approval of the auditor's report on related-party transactions.

Shareholders may participate in the general meeting in person or by proxy. However, certain restrictions may apply in either context. To attend a meeting, a shareholder may be required to obtain an entry card from the company. For bearer shares, proxy ballots must be requested. The company can require shares to be deposited or blocked as long as five days prior to the meeting. (Regulations are in the process of being eased with respect to depositing and blocking.) Note that the majority of shares are in bearer form and the identity of the owner may not be apparent to the company (although a system of third party registries has developed).

The NRE Act of May 2001 prohibits requiring a shareholder to own a certain minimum number of shares to attend a shareholders meeting.

(2) Shareholders' legal recourse.

Shareholders have the right to petition the court to appoint an administrator empowered to call a general meeting (option open to minority shareholders with five percent (5%) of the share capital). Shareholders also have the right to initiate a legal action for damages against the management of a company either in their own name or in the name of the company. (In the latter case, they must hold 0.5% to 5% of the share capital of the company, depending on the amount of share capital of the company).

Shareholders holding five percent (5%) of the share capital of a company may address written questions to the chairman of the supervisory body concerning an event that could affect the continuity of the company, and also request revocation of the auditors. They may also petition a court to appoint an expert to review and report on the company's operations. (The NRE Act lowered the required threshold from ten percent (10%).)

The *Commission des opérations de bourse* (la "COB") is in charge of protecting the invested funds (including those of shareholders) in publicly traded instruments. Investors can file complaints with the COB. The COB issues regulations, supervises markets, conducts investigations, and can impose sanctions or refer cases to courts.

(3) Duties of controlling shareholders.

Companies are established in the common interest of their shareholders. (Civil Code, Art. 1833) Controlling shareholders may not act in their own interest and against the interests of the company, to the detriment of the minority. If they are found to have done so, their decision (or the decision of their representatives on the supervisory body) is usually voided by action in the civil courts. Rules on conflicts of interest

also apply to contracts between an SA and its shareholders holding more than five percent (5%) of voting rights.

When a shareholder's stake reaches one-third (33.3%) of a listed company's shares or votes, that person must make a public bid for all outstanding voting stock, at an acceptable price. (There are exceptions to this rule.) When a majority shareholder attains ninety-five percent (95%) or more of the share capital of a listed company, the minority shareholders may ask the *Conseil des Marchés Financiers* to request that the majority shareholder make a public bid for the purchase of the remaining shares. Alternatively, the majority shareholder may voluntarily bid for the remaining shares. The *Conseil des Marchés Financiers* will decide whether any shareholders that have not brought their shares to such an offer can be forced to sell them at a price equal to or higher than the price of the public bid.

In the case of a merger, the consent of all the shareholders (including minority shareholders) is necessary only if the merger increases their commitment. This rare situation arises if a company merges with a company having another corporate structure in which the legal commitment of the shareholders is higher. Otherwise, the approval of a majority sufficient for amending the articles of association is sufficient (*i.e.*, two-thirds of the shareholders in SAs). In merger situations, shareholders are given access to information (in particular regarding the relative value of the shares exchanged) through a special report prepared by an independent auditor (*commissaire à la fusion*).

The offeror in a public bid for the acquisition of the shares of a listed company must file an information notice with the *Commission des Opérations de Bourse* for its review. The *Conseil des marchés financiers* reviews take-over offers (*e.g.*, regarding their price and compliance with the principle of equality of shareholders) and supervises compliance with market procedures.

The purchaser of shares that give it a majority of the share capital or the votes in a listed company must commit to acquire any share offered to the purchaser for at least ten days, at the price of the acquisition of the initial number of shares.

2. [CORPORATE GOVERNANCE CODES](#)

Although France has been engaged in significant discussion of corporate governance practices for much of the last decade, only three codes have been issued meeting this Study's definition.

- The first committee chaired by Marc Viénot issued a Report in 1995 that was wholly aspirational in nature and emphasised that then-current French law and regulation was sufficient to support good governance practices by French companies.
- Just four years later, in 1999, the second Viénot committee came forward with a code that, among other things, recommended legislative changes. As noted above, a number of these recommendations have been enacted through the NRE Act of May 2001.

- Another French code, the Hellebuyck Commission Recommendations, has been issued by an association that represents the French asset management industry. First issued in 1998, it was recently updated in 2001.

Note that in 2000, the Paris, Brussels and Amsterdam exchanges integrated to form Euronext. Euronext launched a common trading platform in 2001. Corporate governance codes, so far, have not been affected by the integration. Corporate governance policy remains national.

The following COB Bulletins analyse the way certain principles of corporate governance have been applied in France: *Commission des Opérations de Bourse, Le gouvernement d'entreprise des sociétés du CAC 40*, Bulletin COB n° 352, December 2000, pp. 29-34; and *Commission des Opérations de Bourse, Gouvernement d'entreprise: évolutions récentes en France et à l'étranger*, Bulletin COB n° 338, September 1999, pp.1-24. Additional information may be available from executive recruiting, consulting and accounting firms.

a. VIÉNOT I REPORT

Code: The Board of Directors in Listed Companies (Le Conseil d'Administration des Sociétés Cotées) (Viénot I Report)
Issuing Bodies: Association Française des Entreprises Privées (AFEP) and Conseil National du Patronat Français (CNPF) [now Mouvement des Entreprises de France (MEDEF)]
Date Issued: July 1995
Official Language: French (English translation available)

(1) **Background.**

(a) Issuing Body. *Business, industry and/or academic association or committee.*

Association Française des Entreprises Privées (AFEP) is a business association of the largest eighty companies based in France. Conseil National du Patronat Français (CNPF) (which in 1998 became Mouvement des Entreprises de France (MEDEF)) is the largest French business association, representing over one million companies of all sizes in the industry, trade and services sectors. CNPF (now MEDEF) concerns itself with promoting and protecting French businesses around the world, conducting research and actions in the mutual interests of French business.

AFEP and CNPF formed a “specially constituted committee” for the purposes of issuing this report.

(b) Legal Basis and Compliance: *Voluntary.*

The recommendations of Viénot I are wholly voluntary and can be implemented by companies within the existing legal framework. (The Committee notes that “the current legislation does not stand in the way of changes in the make-up of boards, or more formal procedures for the way they function.”)

(c) Consultations.

The Report does not indicate whether any formal consultative process was undertaken.

(d) Contributions.

The Viénot I Report does not make reference to any contributions by any bodies or individuals other than the issuing body and the members of the Committee. The Committee was chaired by Mr. Marc Viénot, then chairman of *La Société Générale*, and was comprised of chairmen and directors of many of France’s largest corporations.

(e) Definition of Corporate Governance.

The Viénot I Report does not offer any definition of the term “corporate governance.”

- (f) Objective: *Improve quality of board (supervisory) governance.*

According to this Report, the focus of the recommendations involves transparency and improvement in board practices:

“Privatisation and the growing presence of non-resident investors on the Paris stock market has led to the rapid emergence of a new type of shareholder with little knowledge of the rules and practices applied by the boards of directors of listed companies in France. Such shareholders have naturally sought clarification. . . . The French employers’ association CNPF . . . and the private business association AFEP . . . thus entrusted a specially constituted committee with a review of the principal issues concerning the membership, powers and operation of the boards of directors of French listed companies. . . . The committee reviewed related problems and the various solutions proposed, drawing the conclusions detailed in the present document.”
(Introduction)

The above-referenced review considered various proposed solutions to commonly cited problems in the French system; in particular, the extent to which the company law framework met market expectations and business needs. Rather than propose legislative changes, however, the Committee set forth “principles which should guide the boards and each director of listed companies.” The Committee emphasised that “implementation of its recommendations is necessary to consolidate investor confidence in the bodies governing the companies they are asked to invest in.”

- (g) Scope: *Listed companies.*

The recommendations in the Viénot I Report are aimed at French listed companies.

(2) Supervisory and Managerial Bodies.

- (a) Rules/recommendations regarding the separate roles and responsibilities of supervisory and managerial bodies (including lines of responsibility).

The Viénot I Report emphasises that the role of the supervisory body is to determine the company’s strategy and to appoint the corporate officers charged with implementing that strategy. It is the role of the leaders of the managerial body to draw up and propose corporate strategy. It is also the responsibility of the supervisory body to supervise management and ensure that proper information is made available to shareholders and markets concerning the company’s financial position and performance, and its involvement in any major transactions.

According to the Report, separation of the chairman and CEO (in unitary boards) was the norm before World War II in France. For decades, however, company law has required that in unitary boards the roles be combined. The Report expresses scepticism of any need to separate the role of board chairman from that of chief executive officer in a unitary board system, given that separation is now available for those circumstances when it might prove beneficial through implementation of the two-tier system. (p. 8) (Note, however, that pursuant to recent legislation, these positions may now be separated under the unitary system.)

(b) Rules/recommendations regarding the accountability of supervisory and managerial bodies (including conflicts of interest).

The Report recommends that directors inform the board of any conflicts of interest. It also recommends that directors consider themselves bound by a duty of professional confidentiality, not merely by the discretion specified by regulation. (p. 20)

Regarding specific means of avoiding conflicts among directors, the Report advises against cross-directorships involving service on audit and remuneration committees. (p. 14) It also advises that where a company is controlled by a majority shareholder or shareholder group, “the board must be particularly attentive to avoid any conflict of interest, take all interests into due account and ensure the transparency of information provided to the market.” (p. 13)

(c) Rules/recommendations regarding the size, composition, independence and selection criteria and procedures of supervisory and managerial bodies.

The Viénot I Report recommends that the supervisory body should not be unduly large: “[T]he number of members should not be increased to a point where it would be difficult for each to contribute to discussion.” (p. 10)

The Report recommends that the supervisory body periodically review its size, criteria and procedures for selecting nominees. It notes that, although the shareholders general meeting appoints and dismisses the members of the supervisory body, the supervisory body “has considerable power over its own membership, since it can co-opt members and propose their appointment. . . . The absence of a formal procedure . . . leads markets to assume that chairmen have undue influence on the choice of board members.” (p. 14) The Report recommends that the supervisory body set up a special committee of between three and five members to select nominees, or delegate this task to the remuneration committee. If a selection or nominating committee is created, it should include the supervisory body chairman and at least one independent director, and it should be charged with proposing candidates after due examination of all relevant factors. According to the Report, the factors to consider include: balance in board membership, the structure and development of shareholdings, the desired number of independent directors, the possible representation of interest groups, the identification and assessment of possible candidates, and the renewal of existing directorships.

The Viénot I Report considers whether boards should include representatives of certain interest groups, but concludes that constituent directors are not desirable. Once directors are appointed, it is their duty to represent, and act in the interests of, the company and not specific interest groups. The presence of independent directors should suffice to ensure that all legitimate interests are considered. (p. 12)

The Report defines an independent director as someone who is not an executive and further lacks any “special interest” in the company, “whether as a shareholder, a supplier or a customer.” (p. 11) In addition, the Report discusses the prevalence in France of cross-shareholdings and related reciprocal board memberships -- where one company holds a seat on the board of a second company and vice-versa -- and states that “when a board is considering how best to structure its membership, it should take care to avoid including an excessive number of such reciprocal directorships.” (p. 14)

As to the mix of executive and non-executive directors, French law limits the number of directors holding a contract of employment with the company to a third of board members; two-thirds must be outsiders. The Viénot I Report encourages companies to ensure that some of the non-executive directors qualify as independent. It recognises that the appropriate mix of directors will vary from one company to another. (p. 11) However, it concludes that “the boards of all listed companies should have at least two independent members, although it is up to each board to determine the most appropriate balance in its membership.” (p. 12)

(d) Rules/recommendations regarding the working methods of supervisory and managerial bodies (including information flows).

The Report recommends that supervisory bodies meet four to six times per year, and more often if necessary. (p. 16) According to the Report, the supervisory body chairman is charged with ensuring that all members receive the information they need to perform their duties. The chairman should ensure that information requiring particular analysis is provided to the board in advance of meetings. (p. 17) Board members share responsibility for ensuring that they are properly informed; they should “make timely requests” to the chairman for information. (p. 21) If directors believe they have not been given the necessary information to make an informed judgement, the Report imposes on directors a duty to request adequate information from the board’s chairman before deciding on a matter. (p. 17)

According to the Report, it is the chief executive’s duty to provide the market with a regular flow of information on a day-to-day basis. However, the supervisory body is responsible for presenting annual and half-yearly financial statements and informing the market of major financial transactions. The supervisory body must ensure that the information is of sufficient quality, reliability and clarity. (p. 6)

The Viénot I Report encourages the creation of (supervisory) board committees for tasks including the review of audit and accounting functions, remuneration and selection of directors. “[I]t is up to each board to determine the most suitable structure for its own membership and that of the committees it sets up, and to ensure that markets and shareholders have no reason to doubt their independence and impartiality.” (pp. 10 & 17-18) However, the Report warns against transfers of duties away from the full supervisory body. (p. 18)

Supervisory body committees include the following:

- Selection Committee: The Viénot I Report recognises the considerable power that the supervisory body has over its own membership given that it proposes candidates to the general meeting. It notes that the process has tended to be “highly informal,” leading to concern about whether appropriate issues of board balance are duly taken into account. It also notes concern “that markets may assume that chairmen have undue influence on the choice of board members.” Therefore, it suggests that a selection committee made up of three to five members, including the chairman and at least one independent director, be charged with identifying and proposing candidates for the board. (pp. 14-15)
- Remuneration Committee: The Report notes that most boards already have a remuneration committee charged with recommending compensation for

corporate officers, which may include stock option plans. (p. 18) (Note, however, that some commentators attribute the widespread use of remuneration committees by French boards as a means of keeping information about compensation decisions from the union/employee representatives in attendance at board meetings.)

- Audit Committee: The Report recommends that an audit committee be appointed of at least three directors, none of whom are executives or employees of the company, including at least one independent director. The committee should be charged with “ensuring the appropriateness and consistency of accounting policies applied in consolidated and company financial statements, and with verifying that internal procedures for collecting and checking information are such that they guarantee accuracy.” (pp. 18-19)

Note that the Report advises against allowing cross or reciprocal service by directors involving remuneration or audit committees.

The frequency of committee meetings is a discretionary matter for the supervisory body to determine. (p. 18)

- (e) Rules/recommendations regarding remuneration of members of supervisory and managerial bodies (including evaluation procedures).

The Report does not address the evaluation of management members and their remuneration, other than to recommend the use of a remuneration committee by the supervisory body to provide advice to the full board on remuneration issues. The Report indicates that most boards already have a committee charged with recommending remuneration levels for corporate officers, including in some cases stock option plans, although these should be the responsibility of a more independently recruited committee. The Report also recommends against allowing reciprocal memberships of company directors on each other’s remuneration committees. (p. 18)

The Report recognises that serving as a supervisory body member entails a significant commitment. “Considering the responsibilities borne by directors and the time they must devote to their duties, fees should be more than token, and it thus appears natural to encourage directors to participate in advisory committees by increasing fees.” It also suggests that to encourage participation in board and committee meetings, fees could be made proportional to attendance. (p. 22)

The Report urges that directors own a significant number of their company’s shares, whether or not the company’s bylaws require a certain level of stock ownership by directors. (The Report does not discuss whether this would compromise director independence. Elsewhere the Report indicates that a shareholding interest may be one that impedes independence.) Directors who do not own stock at the time of their election are encouraged to use at least some of their remuneration to purchase company stock. (p. 20)

As to evaluating the board’s own performance, the Report states that “each board should periodically review its membership, organisation and operations and keep shareholders informed of conclusions and actions taken.” (p. 3) It recommends that the board collectively consider “the status of its members and their capacity to fulfil

their duties, notably in that they have the necessary information. . . .” Further, it urges the board to impose any requirements it believes necessary. Finally it suggests that these tasks be carried out by the selection (or nominating) committee in the first instance. (p. 21)

- (f) Rules/recommendations regarding the organisation and supervision of internal control systems and relations between supervisory bodies, managerial bodies and internal/external auditors.

As discussed above, the Report recognises the special responsibility of the supervisory body for ensuring the quality of financial information released by the company to the market. It recommends that each supervisory body appoint an audit committee charged with ensuring the appropriateness and consistency of accounting policies and with verifying that internal procedures for collecting and checking information are such that “they guarantee its accuracy.” (p. 19)

The Report recommends that the audit committee be composed of at least three directors; it should exclude executive directors and employees, and should include at least one independent director. It also recommends that the audit committee should be able to meet in the absence of corporate officers or executive directors, statutory auditors and the audit department. (p. 19)

(3) Rights of Shareholders/Stakeholders.

- (a) Rules/recommendations regarding protection of the rights of shareholders.

A fundamental underpinning of the Viénot I Report is that the supervisory body “represents all shareholders and it must at all times put the company’s interests first.” (p. 2) Moreover, the supervisory body is “collectively answerable to the general meeting of shareholders for the fulfilment of its duties. . . . [I]t informs the shareholders meeting through its annual reports and the financial statements which it adopts.” (p. 5)

Much of the focus of the report is on positioning the supervisory body to ensure that it can perform this role in an accountable and transparent manner vis-à-vis the shareholders. For example, the Report urges directors to attend the general meeting. (p. 21) It recommends that the supervisory body keep shareholders informed of its periodic review of its own governance structures and practices (pp. 3 & 16). It also urges the board to inform shareholders of its committee structure and the number of meetings held.

Specifically it states that: “the board must respect the rights of the General Meeting of Shareholders when it envisages a transaction which is of a nature to affect, *de jure* or *de facto*, the company’s [purposes].” In addition, “it is the Committee’s opinion that the board should also ask the general meeting of shareholders to consider any divestment representing a preponderant portion of the company’s assets or activities.” (p. 6)

(b) Rules/recommendations regarding equal/fair treatment of shareholders.

Viénot I does not address this topic, other than to expressly state that it is the duty of the supervisory body to represent the interests of all shareholders and not specific interest groups. (p. 10)

(c) Rules/recommendations regarding the rights of stakeholders.

According to the Viénot I Report, “[t]he interest of the company may be understood as . . . distinct from those of shareholders, employees, creditors, . . . suppliers and customers. It nonetheless represents the common interest of all these persons, which is for the company to remain in business and prosper.” (p. 5) Viénot I recognises that French law allows representatives of work councils to attend board meetings, where they have consultative votes, and also allows, but does not mandate, employee representatives to serve on boards. (p. 12)

Additional information about the Viénot I Report is included in the Comparative Matrix appended to this Report as Annex V.

b. HELLEBUYCK COMMISSION RECOMMENDATIONS

Code: Recommendations on Corporate Governance (Hellebuyck Commission Recommendations)
Issuing Body: Association Française de la Gestion Financière - Association des Sociétés et Fonds Français d'Investissement ("AFG-ASFFI")
Date Issued: June 1998; Updated October 2001
Official Language: French (English translation available)

(1) Background.

(a) Issuing Body: *Investors association.*

AFG-ASFFI is the association that represents the asset management industry in France. AFG-ASFFI promotes and defends the business, financial, and ethical interests of its members and their clients. As a member of the European Federation of Investment Funds and Companies, AFG-ASFFI is also active in giving advice on the drafting of the European legislation and organises the self-regulation of investment funds and the entire asset management industry.

(b) Legal Basis and Compliance: *Voluntary (association members recommended to apply to portfolio companies).*

The Recommendations provide investment selection and shareholder voting criteria for use by firms belonging to AFG-ASFFI. (It has been reported that AFG-ASFFI has hired Proxinvest to alert members when a company fails to follow a material Recommendation.) The Commission stated that its Recommendations were "not necessarily intended as the basis for new legislation." However, the Commission has advocated that discussion be had at the European level of "minimum corporate governance guidelines for all listed companies in the Euro zone."

(c) Consultations.

The Recommendations do not indicate whether any formal consultative process was undertaken.

(d) Contributions.

AFG-ASFFI formed a "Commission on Corporate Governance" for the purpose of issuing this report. The Commission was chaired by Jean-Pierre Hellebuyck of AXA Investment Managers Europe, and was made up of 11 representatives from other French investment concerns as well as the chairman of AFG-ASFFI.

(e) Definition of Corporate Governance.

These Recommendations do not offer any express definition of the term "corporate governance."

- (f) Objective: *Improve accountability to shareholders and/or maximise shareholder value.*

“In France, several factors have combined to lead market players to become concerned about corporate governance. Principal among them are privatisation, the increasing presence of foreign shareholders -- American pension funds in particular -- the emergence in France of the pension fund concept, the desire to modernise the Paris financial market and the publication of the Viénot Report. . . . With this in mind, the Board of Directors [of AFG-ASFFI] decided to create a Commission on Corporate Governance. The present recommendations are the result of its work. . . . [T]he Commission takes the view that it would be advisable that discussion of these issues begin rapidly at the European level so that its recommendations constitute minimum corporate governance guidelines for all listed companies in the Euro zone.” (Introduction)

AFG-ASFFI’s interest in corporate governance arose out of the investment managers’ desire to build the value of their clients’ investments by exercising all their rights as shareholders, including active participation in the general meetings of listed companies.

- (g) Scope: *Listed companies.*

These Recommendations apply to publicly traded French companies and, as stated above, are meant to serve as investment selection and voting criteria for investment firms belonging to AFG-ASFFI.

(2) Supervisory and Managerial Bodies.

- (a) Rules/recommendations regarding the separate roles and responsibilities of supervisory and managerial bodies (including lines of responsibility).

According to the Hellebuyck Commission Recommendations, the supervisory body is a body for strategic decision-making. Its choices affect the future of the company and involve the responsibility of its members. Therefore, openness, accountability, and effectiveness must govern its actions. (§ II) The Recommendations emphasise that the accountability of the supervisory body to all shareholders requires the supervisory body to be separate and distinct, or independent, from the company’s managerial body. (§ II.A.1-2)

The Recommendations invite companies to deliberate on the choice of board structures (one-tier or two-tier) available in France, and also on the option of separating the functions of the chairman of the board and the managing director. The Commission favours such a separation (§ II.A.3). ((Note that in the 1998 version, the Commission expressed a preference for the two-tier board structure and recommended legislation to allow separating the leadership functions in a one-tier structure.)

(b) Rules/recommendations regarding the accountability of supervisory and managerial bodies (including conflicts of interest).

The Recommendations state that “the board’s accountability to all shareholders requires that it be independent in relation to company management.” (§ II.A.2) The Recommendations emphasise that to the extent that the supervisory body is responsible to all shareholders, it must act in the long-term interests of all the shareholders. (§ II.A.1) They suggest that this responsibility can be enhanced by establishing a charter containing a director’s code of professional conduct. Such a code of conduct could address the director’s obligations: to own company shares, to attend board meetings and general meetings of shareholders, to respect the confidentiality of matters relating to company business, to abide by ethical standards applying to company employees regarding transactions in company shares, and to disclose all transactions in company shares. (§ II.D.5)

The Recommendations also advocate that the outside members of the supervisory board avoid conflicts of interests. (§ II.B.1)

(c) Rules/recommendations regarding the size, composition, independence and selection criteria and procedures of supervisory and managerial bodies.

The Recommendations urge that in every supervisory body, at least one-third of members be outside directors. (§ II.B.1) (The original set of Recommendations called for at least two outside directors.) They also advise keeping the number of additional board memberships to fewer than five for outside directors, and less than three for all other directors. (§ II.D.2)

French law currently specifies that a director’s term may not exceed six years (the general meeting may re-elect a director to a subsequent term), and that directors who are seventy years of age or older may not constitute more than one-third of the supervisory body’s membership. The Recommendations take a more restrictive position: directors sixty-five years of age or older should not constitute more than one-third of the board membership, and a director’s term should not exceed four years. (§ II.D.4)

The Recommendations favour the use of a nominating committee to help select director candidates. Such a committee should be made up of three to five directors; at least one-third should be independent. (§ II.B.3)

The Recommendations state that director independence is important because it allows a director to participate objectively in board discussion. They equate independence with being “free of any interest” either through a direct or indirect tie with the company or companies of the group. To secure such status requires that the director was never an employee, chairman or chief executive of the company or related entity, nor related to a major shareholder in any way. The Recommendations also emphasise that a director considered free of any interest must have no relation to a commercial or financial partner of the company or any related company. (§ II.B.1) The Recommendations generally oppose the appointment of directors from companies with cross shareholdings, unless the cross shareholding is the result of a strategic alliance. (§ II.B.4)

(d) Rules/recommendations regarding the working methods of supervisory and managerial bodies (including information flows).

The Commission views standing committees as integral to the ability of the supervisory body to function. The Recommendations encourage the creation of at least three standing committees: a nomination committee; a performance and compensation committee; and an audit committee. Each committee is to be composed of at least three directors, with outside directors making up at least one-third of the nomination and audit committees, and a majority of the remuneration committee. Company executives or employees should not be members of the performance and compensation committee or audit committee, and the members of these committees should be able to freely call upon and hear from company personnel. Through the shareholders meeting, the board should inform shareholders of the existence of these committees and the frequency of their meetings. (§ II.B.2)

The Recommendations state that the supervisory body should disclose in the annual report the number of its meetings during the previous year, board members' attendance records, and an evaluation of supervisory body organisation and performance. They also suggest disclosing detailed résumés of the board members and lists of other directorships held by each current member as well as of each nominee proposed for director posts. (§ II.D.3)

(e) Rules/recommendations regarding remuneration of members of supervisory and managerial bodies (including evaluation procedures).

The Recommendations urge full disclosure regarding all forms of direct, indirect or deferred compensation of individual directors and senior executives. This disclosure should encompass the calculation used, the amounts involved, and details about stock options granted (*e.g.*, price and duration). (§ II.C.2) (French law was modified in May 2001 and now imposes on companies a duty to include in their annual report information on total compensation paid to individual directors.)

The Recommendations state that base executive compensation and additional financial incentives, as well as adjustments up or down, should be linked to company performance and share value. (§ II.C.1) The supervisory body should deliberate on executive compensation. The supervisory body should also disclose its remuneration methodology and whether stock options are a part of the compensation package. (§ II.C.2) Stock options are favoured when awarded without discount. (§ II.C.3) The Recommendations oppose severance packages not scaled to the individual's time of service, base compensation, and the company's intrinsic value during the period of service. (§ II.C.4)

The Recommendations urge that the aggregate number and total value of stock options held by the ten most highly paid executives be disclosed, together with the total value of stock options granted to employees. (§ I.B.3)

- (f) Rules/recommendations regarding the organisation and supervision of internal control systems and relations between supervisory bodies, managerial bodies and internal/external auditors.

The Recommendations favour the creation of an audit committee composed of at least three directors, at least one-third of whom should be outside directors. It suggests that company executives or employees should not be members of the audit committee. The members of the audit committees should be free to call on and hear from company personnel. Through the shareholders meeting, the board should inform shareholders of the existence of the audit committee and the frequency of its meetings. (§ II.B.2)

(3) Rights of Shareholders/Stakeholders.

- (a) Rules/recommendations regarding protection of the rights of shareholders.

Nature, frequency and information to which shareholders are entitled: The Recommendations make substantial comments on the nature, frequency and amount of information to which shareholders are entitled. They indicate that the shareholders' meeting is the occasion when the supervisory body renders an account to the shareholders on the exercise of its duties, and that the presence of the directors at this meeting is therefore essential. (§ I.B)

The Recommendations urge companies to draw up and distribute a guide for facilitating the shareholders' participation in the general meeting. (§ I.B.1) They favour the company practice of publishing two annual reports, one in full form and the other in summary form, stating that this can help make company information (in particular, any proposed resolutions) more easily accessible for shareholders, especially those less familiar with the company. Every shareholder should receive the summary report, with the complete report available on request. These reports should also be available through electronic means, in both French and English. (§ I.B.2)

Furthermore, the Recommendations favour the practice of explaining the reasons for, and the expected consequences of, resolutions, in particular those related to appointments to the supervisory body, the renewal of directors' terms, and authority to carry out financial operations. The résumés of these directors, and the number of shares they hold, should be included with other information. (§ I.B.3) Companies should remind shareholders of their right to submit resolutions to the general shareholders' meeting and to raise questions at it, as well as the conditions shareholders must meet to exercise these rights. In this regard, shareholders should be reminded that they can join together to reach the minimum capital threshold for proposing a resolution. (§ I.B.4)

The Recommendations encourage companies to publish a summary of the minutes of the general meeting of shareholders within a short time after the meeting, to inform shareholders (in particular, the foreign shareholders) of the results of votes on resolutions. An analysis of the votes should be included within the minutes. They recommend that, within thirty days following the shareholders meeting, a full report be sent (by electronic or other means) to all holders of registered shares and to all shareholders present or represented at the meeting. (§ I.B.5)

Shareholder voting rights, voting systems and voting procedures: The Recommendations state that “[w]hile the practice of soliciting blank proxies certainly facilitates fulfilling quorum requirements . . . it limits active shareholder participation. This limitation is all the more important as shareholders are often unaware that these proxies, in principle, favour management proposals.” The Recommendations further state that when a company solicits proxies, it should specify its voting intentions. (§ I.C.1)

The Recommendations favour standardisation of voting forms, so that the four voting procedures (physical presence, postal vote, by proxy, blank vote) “may be presented explicitly and clearly, in particular with respect to the consequences of a blank vote.” (§ I.C.1)

The Recommendations favour the introduction of better reporting relating to the counting of votes and emphasise the importance of counting all votes, including votes by mail and by proxy. They call for the introduction of more flexibility in the law regarding the representation of shareholders, in particular through their permanent representation by portfolio companies. (§ I.C.7)

The Recommendations encourage companies to respect the voting rights of holders of preferred shares (excluding their participation in the general meeting) based on the amount of capital they control in the company. (§ I.C.2)

The Recommendations note that the practice of double voting rights rewards the loyalty of certain shareholders, but this practice can allow control of a company to be held by a minority of shareholders and can be abused in a manner contrary to the spirit of responsible corporate governance. The Recommendations would limit this practice to a period of five years from the date of the company’s initial public offering. (§ I.C.3)

The Recommendations express general opposition to issuing shares that do not give a voting right (§ I.C.2) and to the limitation of voting rights. (§ I.C.3)

The Recommendations favour electronic voting, stating that the most reliable and rapid voting system, which also ensures confidentiality, should be used. (§ I.C.6)

(b) Rules/recommendations regarding equal/fair treatment of shareholders.

The Recommendations state that “out of concern for the interests of the minority shareholders,” they do not generally favour the use of anti-take-over measures. (§ I.C.4)

(c) Rules/recommendations regarding the rights of stakeholders.

The Recommendations do not discuss the rights of stakeholders in any detail. However, they note that the supervisory body is responsible to all shareholders, and recommends that the supervisory body’s “strategy and action [should] fall within the framework of the company’s sustainable development.” (§ II.A.1)

Additional information about the Hellebuyck Commission Recommendations is included in the Comparative Matrix appended to this Report as Annex V.

c. VIÉNOT II REPORT

Code: Report of the Committee on Corporate Governance
Chaired by Mr. Marc Viénot (Viénot II Report)
Issuing Bodies: Association Française des Entreprises Privées (AFEP) and
Mouvement des Entreprises de France (MEDEF)
Date Issued: July 1999
Official Language: French (English translation available)

(1) **Background.**

(a) Issuing Body: *Business, industry and/or academic association or committee.*

Association Française des Entreprises Privées (AFEP) is a business association of the largest eighty companies based in France. *Mouvement des Entreprises de France (MEDEF)*, formerly known as *Conseil National du Patronat Français (CNPF)*, is the largest French business association, representing over one million companies of all sizes and in all sectors of business (industry, trade and services). MEDEF's purpose is to conduct "any research and actions in the mutual interests of business." MEDEF also concerns itself with promoting and protecting French businesses around the world.

The Committee on Corporate Governance was sponsored by both AFEP and MEDEF. Its membership consisted of fourteen chairmen of French listed companies, assisted by a secretary and a technical committee.

(b) Legal Basis and Compliance: *Voluntary (disclosure encouraged).*

The recommendations of the Viénot II Report are wholly voluntary. However, the Report does strongly encourage companies to disclose their decisions on how to approach the key areas of corporate governance concerns. Such disclosure, however, is entirely voluntary, and Viénot II has not been made part of any Exchange's listing standards.

Note that, unlike many other European codes of corporate governance, the Viénot II Report makes many specific recommendations for amendments to the French company statute (*e.g.*, allowing a split between the positions of chairman of the board and chief executive officer). This appears to be a departure from the position of Viénot I, which considered "that problems can be resolved under the existing law governing the boards of listed companies, with no major amendments."

(c) Consultations.

The Viénot II Report does not indicate whether any formal consultative process was undertaken.

(d) Contributions.

Viénot II, like Viénot I, does not make reference to contributions by any bodies or individuals other than the issuing body and the members of the Committee. The Committee was chaired by Mr. Marc Viénot, honorary chairman of *La Société*

Générale, and was comprised of chairmen and directors of many of France's largest corporations.

(e) Definition of Corporate Governance.

Viénot II does not offer any definition of the term "corporate governance."

(f) Objective: Improve quality of board (supervisory) governance.

"[T]his is an initiative from companies themselves, concerned with laying down certain principles of proper operation and transparency such as to improve their management and their image to the public and investors." (Introduction)

Viénot II follows up on the report published in 1995 under the title "Le Conseil d'Administration des Sociétés Cotées" (The Board of Directors in Listed Corporations) (Viénot I) (discussed above). Like its predecessor, Viénot II is an initiative by private companies themselves.

Viénot II acknowledges that "the report issued in 1995 met with some scepticism," but asserts that "many of the recommendations it contains have gradually made their mark, and it has had a positive effect on the operation of corporations' management bodies and their relations with shareholders." (p. 2)

Due to "a growing concern in French companies for application of the principles of 'Corporate Governance' now preached by many associations of institutional and individual investors," AFEP and MEDEF appointed a new committee to review the desirability of updating and supplementing the 1995 report. The new report makes a number of practical recommendations. It expressly states that the recommendations of the 1995 report "remain valid." (pp. 2-3)

(g) Scope: Listed companies.

The recommendations contained in Viénot II are aimed at French listed companies.

(2) Supervisory and Managerial Bodies.

(a) Rules/recommendations regarding the separate roles and responsibilities of supervisory and managerial bodies (including lines of responsibility).

The primary recommendation of Viénot II on this topic regards the separation of the roles of chairman and chief executive officer in one-tier systems. Viénot II (unlike Viénot I before it) favours introducing an option under French law for the single-tier board of directors to separate the offices of board chairman and chief executive officer. (Note that such a legislative change was enacted in 2001.) The Report discusses a number of structural changes the board should consider in either a combined or separated leadership structure, and stresses the importance of maintaining the division of powers between the board of directors and the chief executive officer.

The Committee recommends that the company law statute be amended to require listed corporations with board of directors to put to shareholder vote an amendment of

the bylaws to allow the option of either separation or combination of the offices of chairman of the board and chief executive officer. According to the Report, the law should also require that, once this resolution is decided, the board must report its decision on which form to employ to the shareholders in the annual report. (p. 7)

The Committee recommends that the chief executive be given authority to act in all circumstances in the name of the corporation, and that the chairman of the board's duties be specified by the rules of operation of the supervisory board to include issues relating to the frequency and agenda of its meetings, chairmanship of the meetings of shareholders and the scope of the duties of monitoring the corporation's affairs. The Committee emphasises that, whether or not there is a separation or combination of managerial and supervisory boards, there be a clearly defined division of powers without creating an inflexible corporate structure unable to react to changing circumstances. (p. 7)

(b) Rules/recommendations regarding the accountability of supervisory and managerial bodies (including conflicts of interest).

The Viénot II Report indicates that one consequence of amending French law to allow for the incorporation of a choice between a one-tier or two-tier system will be a need to amend statutory rules regarding civil and criminal liability. In order to address a separation of chairman and CEO, the Committee suggests that this amendment make the chairman devoid of any mismanagement responsibilities. (p. 8)

(c) Rules/recommendations regarding the size, composition, independence and selection criteria and procedures of supervisory and managerial bodies.

“The Committee confirms that the presence of genuinely independent directors in sufficient numbers on boards of directors and board committees is an essential factor in guaranteeing that the interests of all the shareholders will be taken into account in the corporation's decisions.” (p. 15)

Independent directors should account for at least one-third of the supervisory body as a whole, and at least one-third of the audit and nominations committees. They should form a majority of the compensation and options committee(s). (p. 15)

Viénot II defines an “independent director” as one who is free from any relationship with the corporation or its group that could jeopardise the exercise of free judgement. (p. 15)

The Viénot II Recommendations advise that, in order to give full weight to the process for the election of directors by the shareholders, it is essential for the latter to have all the information relevant to their decision. The Recommendations propose that the annual report indicate the dates of the beginning and end of each director's term of office, and how the terms are staggered, together with the following information: age, principal position, any other directorship(s) in either French or foreign listed corporations other than group affiliates and, if applicable, committee membership(s). When it is necessary to hold a meeting of the shareholders in order to act upon the nomination or re-election of a director, both the annual report and the notice of the meeting should provide biographical information on each candidate that

summarises his or her résumé, without prejudice to the existing statutory rules. (pp. 23-24)

(d) Rules/recommendations regarding the working methods of supervisory and managerial bodies (including information flows).

The frequency of meetings should be such as to allow for in-depth review and discussion of matters within the board's purview, and the annual report should specify the number of committee meetings during the past year. Viénot II recommends that committee members have access to officers of the company and external technical review. It also recommends that companies provide appropriate information to directors, and that director's request any information which they consider necessary. (pp. 16-17)

The Committee states that the prior and continuing information to the directors is an essential requirement enabling the board to fulfil its duties effectively. Noting case law, the Committee states that corporations are bound to provide their directors with the necessary information required for them to perform their duties effectively. The Committee asserts that it is the duty of the chairman of the board of directors to provide sufficient, relevant, and first-rate information to the directors. (p. 16)

(e) Rules/recommendations regarding remuneration of members of supervisory and managerial bodies (including evaluation procedures).

Viénot II recommends that French law be amended to allow the supervisory body to provide payment of all or part of the attendance fees due to directors in shares of the corporation's stock. It states that the annual report should include a chapter on the compensation of corporate officers, setting forth the criteria used and the aggregate amount paid to corporate officers, as well as aggregate and individual amounts of attendance fees paid to directors and the rules for attendance fees to members of the general management team for directorships held in group affiliates. The annual report should also include a chapter on the rules governing executive compensation in the form of stock options. (pp. 12-13)

The Report also states that it is of fundamental importance that the board evaluate its ability to meet the expectations of the shareholders. It is recommended that the board and its committees periodically review their membership, organisation and operation. (pp. 14-15)

(f) Rules/recommendations regarding the organisation and supervision of internal control systems and relations between supervisory bodies, managerial bodies and internal/external auditors.

The audit committee should submit a yearly report to the supervisory body concerning the amount of auditing and consulting fees paid to the company's outside auditor (or entities related thereto) and the nature of work assignments connected to such fees. Such assignments should be avoided unless the auditor is able to guarantee that such assignments will not interfere with its independence and objectivity. The audit committee should also refer to the board the issue of selection of the accounting standards for the consolidation of accounts. (pp. 17-18)

(3) Rights of Shareholders/Stakeholders.

(a) Rules/recommendations regarding protection of the rights of shareholders.

Viénot II recommends that annual reports include information on board meetings, director attendance, and compensation for attendance.

The Report also recommends putting an end to the practice of obtaining permission at an extraordinary meeting of shareholders to increase share capital after a take-over bid has been made. (p. 27)

(b) Rules/recommendations regarding equal/fair treatment of shareholders.

Viénot II does not address this issue.

(c) Rules/recommendations regarding the rights of stakeholders.

Viénot II does not address this issue.

Additional information about the Viénot II Report is included in the Comparative Matrix appended to this Report as Annex V.

F. GERMANY

1. LEGAL SYSTEM OVERVIEW

| CIVIL LAW SYSTEM | |
|---|---|
| LEGAL/REGULATORY FRAMEWORK | ENFORCEMENT/ REGULATORY BODIES |
| <p>COMPANY LAW FRAMEWORK</p> <p><u>The following generally apply to all corporations:</u></p> <ul style="list-style-type: none"> • <i>Bürgerliches Gesetzbuch</i> (“BGB”) -- Civil Code • <i>Einführungsgesetz zum Bürgerlichen Gesetzbuch</i> (“EGBGB”) -- Introductory Act to the Civil Code (law of conflicts, etc.) <p><u>The following generally apply to most corporations:</u></p> <ul style="list-style-type: none"> • <i>Handelsgesetzbuch</i> (“HGB”) -- Commercial Code • <i>Handelsregisterverordnung</i> (“HRV”) -- Ordinance on the Implementation and Operation of the Commercial Register • <i>Insolvenzordnung</i> (“InsO”) -- Insolvency Act <p><u>Other:</u></p> <ul style="list-style-type: none"> • <i>Gesetz betreffend die Gesellschaften mit beschränkter Haftung</i> (“GmbHG”) -- Law pertaining to Companies with Limited Liability, applies to all limited liability companies • <i>Aktiengesetz</i> (“AktGesetz”/“AktG”) -- Stock Corporation Act, applies to all stock corporations | <ul style="list-style-type: none"> • The sole government entity responsible for enforcing company laws is the <i>Amtsgericht -- Handelsregister</i> (District Court -- Commercial Register), which enforces registration and de-registration of company-related entries. (Most important facts in a company’s existence depend on a register entry, or on deletion of an entry, in order to become effective.) |
| <p>SECURITIES LAWS/REGULATIONS</p> <ul style="list-style-type: none"> • <i>Börsengesetz</i> (“BörsenG”) -- Exchange Act • <i>Börsenzulassungsverordnung</i> (“BörsenZulVO”) -- Exchange Admission Ordinance • <i>Wertpapierhandelsgesetz</i> (“WpHG”) -- Securities Trading Act • <i>Depotgesetz</i> (“DepotG”) -- Safekeeping of Securities Act • <i>Verkaufsprospektgesetz</i> (“VerkProspG”) -- Securities Sales Prospectus Act • <i>Verkaufsprospektverordnung</i> (“VerkProspVO”) -- Ordinance on Securities Sales Prospectuses | <ul style="list-style-type: none"> • <i>Bundesaufsichtsamt für den Wertpapierhandel</i> (“BAW”) -- Federal Securities Supervisory Office • <i>Bundesaufsichtsamt für das Kreditwesen</i> (“BAKred”) -- Federal Banking Supervisory Office |
| <p>STOCK EXCHANGE LISTING RULES</p> <ul style="list-style-type: none"> • <i>Börsenordnung der Frankfurter Wertpapierbörse</i> (“BörsenO”) -- Frankfurt Stock Exchange Rules • <i>Regelwerk Neuer Markt</i> -- Rules of the Frankfurt Securities Exchange pertaining to the market segment <i>Neuer Markt</i> (New Market) • Listing rules of regional stock exchanges (Munich, Stuttgart, Düsseldorf, Hannover, Berlin, Bremen, Hamburg, and Leipzig Power Exchange) | <ul style="list-style-type: none"> • Respective Exchange Supervisory Authority (State of Hesse: Supervision of Frankfurt Stock Exchange, XETRA, EUREX, EEX). (Duties include supervision of the price formation process, investigation of violations against the exchange rules and regulations, the development of fraud prevention, and the supervision of lawful conduct by the exchange bodies.) |

a. GENERAL

Historically, Germany’s system of corporate governance has emphasised co-operative relationships among banks, shareholders, boards, managers, and employees in the

interests of labour peace and corporate efficiency. It is one of the relatively few systems to give employees a significant voice in electing the supervisory body. Also, in relying on a two-tier structure, Germany has formalised the distinction between managing the company and supervising the management of the company. However, due to a series of corporate failures in the early 1990s that highlighted the relatively weak role of supervisory boards relative to company management, and related capital market pressure for heightened supervision and transparency, the unique German system has faced significant calls for reform.

The unique system of employee “co-determination” was introduced following World War II and expanded in the 1970s in an effort to improve management and labour relations and social cohesion. Co-determination today is found at every level of larger corporations:

- At the supervisory board level, by labour representatives who may account for up to one-half of the board members in the largest quoted AGs, or one-third in somewhat smaller ones. (Note, however, that generally the chairman of the supervisory board, who is elected by shareholders, has a qualifying vote.);
- At the management board level of large AGs, which must include a board member in charge of labour matters (*Arbeitsdirektor*); and
- On the shop floor level, through works councils which, in large corporations, have umbrella committees at the corporate holding level known as the “economics committees” (*Wirtschaftsausschuss*).

However, greater reliance by German companies on equity financing through both domestic and international capital markets, and increased cross-border merger and acquisition activity, which are broadening the shareholder base in German companies, are resulting in subtle shifts towards an equity culture. Privatisation of large state-held stakes in companies such as Deutsche Telekom and Deutsche Post -- and the maturing of family-owned companies’ needs for capital -- have led to growth in the number of shareholders (both domestic and foreign) in German companies. In February, 2001, The Financial Times noted that “[i]n Germany, the number of shareholders, at over 8 million, exceeded the number of trade union members for the first time last year.”

This increase in shareholding -- and participation by individuals directly or through intermediaries such as pension funds -- is expected to continue. One reason is new legislation for individual tax preferred pension plan schemes to be invested in fund or insurance products, and new features for collective company pension schemes via tax exempted conversion of employee compensation into collective pension programs. By 2010 these savings are estimated to reach EURO 300 billion (according to Deutsche Bank Research). Up to EURO 80 billion of that money is expected to be invested in equity (according to Bankgesellschaft Berlin). In addition, a package of tax reform measures will eliminate by 2002 the capital gains tax currently imposed on corporate sales of shares in other companies. This is expected to encourage the unwinding of cross-shareholdings and make German companies more attractive to a broader base of domestic and foreign shareholders.

Over the past several years Germany has engaged in review of various aspects of its system of corporate governance. Significant legislative reforms have already been

enacted -- in the form of the *Gesetz zur Kontrolle und Transparenz im Unternehmensbereich* (Law on Control and Transparency in the Corporate Sector) (“KonTraG”) in 1998 and *Gesetz zur Namensaktie und zur Erleichterung der Stimmrechtsausübung* (Law pertaining to Registered Shares and the Relief of the Exercise of Voting Rights) (“NaStraG”), in 2001 -- and more legislative reform is likely.

On July 10, 2001, Prof. Theodor Baums delivered the report of the *Regierungskommission Corporate Governance -- Unternehmensführung -- Unternehmenskontrolle -- Modernisierung des Aktienrechts* (Government Commission on the Management and Control of Companies and on the Modernization of Stock Corporation Law) (“Baums Commission Report”) to the German chancellor. After considerable consultation with experts and other parties, and discussion within the Commission on possible shortcomings in the German system of corporate governance, the Commission issued this 320-page report, containing 148 proposals to be implemented in three steps:

- Issuance of a German code of best practice (to be drafted by a twelve-person permanent expert panel) in spring 2002;
- Incorporation of key proposals regarding the supervisory board’s access to information, the independence of the company’s auditors, and the stemming of abusive shareholders’ actions into the Fourth Financial Market Promotion Act (*Viertes Finanzmarktförderungsgesetz*) to be passed into law in mid-2002; and
- Incorporation of all other proposals into German stock corporation law in 2003, as well as into a separate act on the improvement of company reporting.

The overarching aim of the Baums Commission Report is to create a German governance model for listed companies that will meet international standards and will be the equal of any other European Union Member State’s governance model, while avoiding any barriers to a single EU market.

The Report is divided into six chapters: (i) statutory law and code; (ii) boards; (iii) shareholders and investors; (iv) corporate finance; (v) information technology and corporate publicity; and (vi) accounting and auditing. It addresses the following substantive corporate governance issues: comparability of financial reporting; minority shareholder protection; agency conflict; accountability of board members; personal liability of board members for false information; equal treatment of shareholders as regards access to information (“fair disclosure”); squeeze-outs of minority shareholders; free access to all relevant company data to be filed with the commercial register; and utilisation of new electronic means.

The Baums Commission’s main proposals may be summarised as follows:

- Both the supervisory board and the management board of listed companies should be obliged to publicly disclose whether or not they comply with a forthcoming code of best practice and, if not, why (“comply or explain”) (§§ 8 & 10);
- The code of best practice should address the independence of supervisory board members, including whether retiring management board members should serve on the supervisory board (§ 55);

- Any management decisions that substantially change the earning power and risk exposure of the company should be subject to supervisory board approval (§§ 34 & 35);
- The supervisory board should have more extensive rights to factual information and the right to appoint the auditor who reviews the books of group companies without the consent of the management board (§§ 299 & 324-326);
- Supervisory boards ought to meet at least four times per year (§ 57);
- Abusive shareholder actions ought to be discouraged by, among other measures, switching from an individual right to sue to a right to sue by groups of shareholders who hold a minimum of one percent (1%) of the stated capital of the company, or who hold shares having a market value of at least 100,000 Euros. Damages awarded in successful suits should be paid to the company, not to plaintiffs. All claim settlements should be subject to court approval. Settlements and the conditions of settlements should be disclosed and explained by the management board to the general assembly (§ 73);
- An electronic register of German companies (*Deutsches Unternehmensregister*) should be established as a single portal for access to company information, including the full content of the commercial register, the shareholdings database of the Federal Securities Supervisory Office (“BAW”), and the Federal Gazette (*Bundesanzeiger*) (§ 252);
- Communication between companies and shareholders should make use of new electronic means (§§ 97 & 115-120);
- Similar improvements ought to be made regarding communications among shareholders. When a shareholder needs to contact other shareholders to build a quorum, the company should be obliged to publish the shareholder’s request on the company’s homepage (§ 131);
- Companies should be required to publish quarterly financial statements, and all such publications of the company should be made available in electronic form (§§ 270 & 271);
- The aggregate remuneration of board members (both fixed and performance-related components) should be published in electronic form (§§ 250-252 & 259);
- Supervisory and management board members of listed companies should be held personally liable if, either by intent or by gross negligence, they provide misleading or inaccurate information (§ 186);
- By 2005, group accounts ought to be comparable. The ongoing efforts of the International Accounting Standards Board (“IASB”) to harmonise its International Accounting Standards (“IAS”) with U.S. Generally Accepted Accounting Principles (“GAAP”) are to be favoured (§ 267); and
- A (privately held) Financial Reporting Panel ought to be set up to verify gross deviations from the accounting standards, and have the right to bring actions in court (§§ 277 & 278).

(Note that a draft of the code envisioned by the Baums Commission issued in late December 2001 by a commission headed by Gerhard Cromme, retired chief executive and current supervisory board chairman of ThyssenKrupp. It is discussed in detail below.)

Overall, the Baums Commission proposals are in the tradition of the *KonTraG* (discussed below), in aiming to strengthen accountability and transparency. These reform efforts are consistent with continued movement by Germany in the direction of an equity culture. Some commentators have suggested that continued development of an equity culture may eventually lead Germany to place less emphasis on the role of labour in governance. As members of labour become shareholders, through pension plans and other investment vehicles, distinctions between labour and shareholders may also diminish.

b. ROLE AND RESPONSIBILITY OF THE SUPERVISORY BODY

(1) Type of board system: *Two-tier.*

Most German companies are formed as limited liability companies (*Gesellschaft mit beschränkter Haftung* or “GmbH”) or more widely held joint stock companies (*Aktiengesellschaft* or “AG”). Certain German limited liability companies and all joint stock corporations are governed by a two-tier board system, consisting of a supervisory board (*Aufsichtsrat*) and a management board (*Vorstand*).

In GmbH companies with 500 or more employees, or AG companies with fewer than 2,000 employees, shareholders select two-thirds of the supervisory board, and the employees select one-third. In AG companies with 2,000 or more employees, employees (and trade unions) select one-half of the supervisory board and shareholders elect the other half, including the chairman. In a voting tie, the chairman casts the deciding vote. In both instances, the supervisory board selects the management board. Size of the supervisory board depends on the size of the company and the company’s articles of association.

(2) Role, make-up and powers of the supervisory body.

The supervisory board controls and advises the management board on policy but does not participate in the company’s day-to-day management.

The management board reports to the supervisory board on corporate affairs including: (i) the intended business policy and the future strategy of the company (in particular, finance, investment, and personnel plans); (ii) the profitability of the company (in particular, the return on equity); (iii) the state of business (namely revenues) and the condition of the company; and (iv) transactions which may have a material impact upon profitability or liquidity. (Stock Corporation Act, § 90) The supervisory board is entitled to inspect the books, records and properties of the corporation. The supervisory board has approval authority for certain business decisions of the management board as required by law and the articles of association or the internal rules of the supervisory board. The supervisory board may not, however, encumber the management board’s ability to manage the corporation with excessive consent requirements. If the supervisory board withholds consent, the

management board may nevertheless act if it can obtain a three-fourths majority of votes at the annual shareholders' meeting.

The supervisory board bears responsibility for:

- Appointing, dismissing and remunerating top managers: The supervisory board is responsible for appointing and dismissing members of the management board. The supervisory board represents the corporation in its dealings with the management board, including entering into employment agreements with its members. It appoints them for a term not to exceed five years, and may revoke the appointment (or the appointment of a member as chairman) for cause, including, *inter alia*, gross breach of duties, inability to manage the company properly, or following a vote of non-confidence by the general assembly.
- Approving distributions: The management board proposes profit allocation for supervisory board approval.
- Ensuring the integrity of the corporation's accounting, audit and financial reporting systems: The supervisory board participates in the preparation of annual financial statements, and entrusts the auditors with the mandate to audit. (§ 111 AktG) (The shareholders' meeting formally appoints the auditor. § 318 HGB.) The management board forwards the auditor's report to the supervisory board together with its drafts of the annual financial statements and annual report. The supervisory board examines the annual financial statements, the annual report and the proposal for profit allocation. It submits a written report on its examination to the annual shareholders' meeting. This report covers the manner and extent of its examination of management, comments on the results of the audit review of the annual financial statements, any objections to the documents and transactions examined by the supervisory board, and, if applicable, its approval of the annual financial statements prepared by the management board. The annual financial statements can only be adopted upon the approval of the supervisory board, unless the management board and the supervisory board resolve to have them adopted at the annual shareholders' meeting. (The shareholders meeting is competent to approve the financial statements if the management board and the supervisory board so resolve or if the supervisory board fails to approve the financial statements.) Resolutions of the management board and supervisory board on the approval of the annual financial statements ought to be contained in the report of the supervisory board to the annual shareholders meeting.

Although many of the items under supervisory board oversight are subject to laws and regulations, it should be noted that supervisory board members are not the compliance or "law enforcement" officers of the company. It is up to the management board to run the regular day-to-day business, and not the role of the supervisory board to supervise such day-to-day business. That is also why the management board, and not the supervisory board, is responsible for taking suitable measures to establish a risk-monitoring system aimed at early recognition of developments that might endanger the future existence of the corporation. (Stock Corporation Act, § 91)

(3) Duties of the supervisory body.

The members of the supervisory board are held to the same basic duties as members of the management board: they have responsibility for managing the business with the care of a diligent and prudent manager. According to the Stock Corporation Act, §§ 93, 116, they cannot disclose confidential information and secrets of the company, in particular trade and business secrets, which have become known to them as a result of their service on the supervisory board. Violation of the duty of confidentiality constitutes a criminal offence. (Stock Corporation Act, § 404)

In fulfilling its duties, the supervisory board serves the interests of the company as a whole. Members of the supervisory board who violate their duties are liable to the company for any resulting damages. In the event of a dispute, they bear the burden of proof as to whether or not they exercised the care of a diligent and conscientious board member.

As regards supervisory board responsibility for individual management board member liability, in addition to a duty to diligently gather facts, to avoid conflicts of interest, and to act in good faith in the company's best interests, members of the management board have to exercise the care of a diligent and conscientious manager. If the supervisory board finds that: (i) a management board member violated his/her duties; (ii) this caused damage to the company; (iii) the damage may be recovered from the board member in whole or in part; and (iv) the company will not suffer even more damage if it holds the board member liable; then the supervisory board is legally bound to recover for damages and even sue the board member for that purpose. In doing so, the supervisory board represents and acts in the interest of the company as a whole, with all constituencies benefiting from such actions.

If the company is listed, German insider trading laws are applicable. Members of the supervisory board are primary insiders, according to the Securities Trading Act (*Wertpapierhandelsgesetz*), § 13. Disclosure of information is only permissible to the extent necessary for supervisory board members to fulfil their obligations. For example, confidential information may be disclosed to an appropriate person within the board member's company to help the board member fulfil his or her obligations. Information may be disclosed to external advisors such as bankers, or auditors and legal advisors which are under a professional obligation to keep information confidential, when this is necessary for the "insider" to fulfil obligations as a supervisory board member.

c. ROLE AND RESPONSIBILITY OF THE MANAGERIAL BODY

(1) Role, make-up and powers of the managerial body.

Management boards (*Vorstand*) of the largest publicly listed AGs are typically composed of between five and ten members, including a member responsible for labour matters and human resources (*Arbeitsdirektor*), as required by German co-determination regulations. Smaller companies, such as those listed on the *Neuer Markt*, tend to have smaller management boards of three to five members representing the founding shareholders, but not labour. In an AG, the managing board is charged with considerable collective power to manage the corporation's affairs (*Leitungsverantwortung*). The management board delegates day-to-day business

matters to individual managers and others either within the corporation (provided, that in doing so, it puts in place adequate internal monitoring structures, and provides for internal audits) or externally (even to the point of entering into “management agreements” with third parties and consultants, to the extent the board retains information and quality controls). However, the management board remains responsible for corporate strategy, policy and planning, the corporate structure, the appointment of senior management personnel, the economic performance of the corporation, and certain extraordinary corporate actions and transactions.

In 1998, the management board’s responsibilities were increased by enactment of the Act on the Control and Transparency of Companies (*Gesetz zur Kontrolle und Transparenz im Unternehmensbereich -- “KonTraG”*). This law explicitly requires that the management board report to the supervisory board on finance, investment, and personnel planning, and mandates that adequate internal monitoring and control structures be put in place. It further requires that external auditors examine and attest whether the management board has adequately implemented these monitoring measures.

The management board has direct responsibility for management of the company. It also prepares and executes the resolutions of the annual shareholders’ meeting. The management board may be granted a right to participate in the company’s profits: as a rule, such participation will consist of sharing in the company’s annual profits. Total remuneration ought to bear a reasonable relationship to the duties of the respective individual members and the financial condition of the company. Absent the consent of the supervisory board, members of the management board may not engage in any trade, nor enter into any transaction, in the company’s line of business on their own behalf or on behalf of others. Absent such consent, they may not be a member of the management board, or a manager or a general partner, of another commercial enterprise.

(2) Duties of management members.

As with members of the supervisory board, management board members are not legally bound to render duties to any particular constituency other than the company as a whole. They owe loyalty to the company as such and, in conducting business, they are to employ the care of a diligent and conscientious manager. They may not disclose confidential information which has become known to them as a result of service on the board. Constituencies such as shareholders are believed to benefit from this loyalty to the company as a whole.

(See the discussion of the duties of supervisory board members, above.)

d. SHAREHOLDER RIGHTS

The one share/one vote principle is recognised in Germany. Although traditionally it was common to use stocks having multiple voting rights to protect family stakes or management interests, multiple voting rights have been abolished by NaStraG. (Stock Corporation Act, § 12) Non-voting stock can be issued as participation certificates or as preferred stock.

Under law, investors must inform the company when they acquire five percent (5%) of the share capital.

Annual meeting dates and agendas must be published in leading business papers and periodicals four weeks before the meeting. Shareholders have ten days to submit proposals. The company then must send the agenda containing any legal shareholder proposals to registered shareholders and custodians. Proxy voting is permissible but can be complex to arrange. Under Section 134 of AktG (as amended by NaStraG), a proxy must be conferred in written form (unless the articles of association provide otherwise) and, if persons named by the corporation are authorised to act as a proxy, “it shall keep a verifiable record of the proxy for a period of three years.” There are no filing requirements with respect to solicitation of proxies. To prove ownership prior to voting, shares must be deposited.

Note that German law currently does not require disclosure to shareholders of supervisory and management board members’ individual remuneration. Under Section 285 19a of the German Commercial Code (“HGB”), the aggregate amount has to be disclosed in the notes to the financial statements. The Baums Commission has not recommended mandatory disclosure on a name-by-name, director-by-director basis for the following reasons:

- Many listed companies are already disclosing on a director-by-director basis under International Accounting Standards or US Generally Accepted Accounting Principles;
- The Baums Commission expects that mandatory disclosure on a director-by-director basis will soon become part of generally accepted accounting practice for all group companies; and
- The Baums Commission felt no need to force the remaining non-listed, non-affiliated companies to disclose on a name-by-name basis.

(1) Decisions reserved to shareholders and the general meeting.

The shareholders’ meeting is the supreme body of the company and makes fundamental decisions. The powers of the shareholders’ meeting are defined by the Stock Corporation Act (*Aktiengesetz* or AktG) and the articles of association. The powers include the following:

- Election of the supervisory board members, to the extent that they are not delegated to the supervisory board or must be elected by the employees under the relevant co-determination laws;
- Removal of supervisory board members elected by the general shareholders’ meeting;
- Approval of the annual financial statements to the extent that this does not fall within the competence of the management board or supervisory board;
- The discharge of responsibility of the members of the management board and supervisory board;
- Distribution and retention of profits;

- Assertion of damages claims against members of the management board and supervisory board;
- Appointment of auditors, including the appointment of special auditors;
- Consent to acts of the management board that are submitted by the management board to the shareholders' meeting for approval;
- Amendments to the articles of association;
- Capital increases and decreases including the creation of an authorised or a conditional capital and the issue of convertible bonds, profit participation bonds and other similar rights;
- Dissolution or transformation of the company; and
- Consent to conclusion or enterprise agreements, mergers and consolidations.

Additionally, certain corporate decisions require varying percentages of shareholder approval:

- General: Holders of twenty-five percent (25%) plus one share of the share capital of a stock corporation may block all decisions where a seventy-five percent (75%) majority is required. Holders of ten percent (10%) may block a waiver or settlement of claims that the company may have against its board members or third parties. Holders of five percent (5%) (or of a lower amount, if provided for by the articles of association) may request an extraordinary shareholders' meeting, or that an item be included on the agenda of the regular annual shareholders' meeting;
- Sale of all or substantially all assets/liquidation: The sale of all, or substantially all, of the assets, as well as the liquidation of a stock corporation, requires at least a seventy-five percent (75%) majority of those voting at the annual shareholders' meeting. Minority shareholders participate *pro rata*;
- Transformation, i.e., a change in the corporate form (Umwandlung): A transformation requires at least a seventy-five percent (75%) majority of those voting at the annual shareholders' meeting. Minority shareholders are entitled to compensation either in shares or in cash;
- Merger or amalgamation (Verschmelzung): A merger requires at least a seventy-five percent (75%) majority of the general assemblies of all companies directly involved. Concurring minority shareholders are entitled to compensation in shares and, if applicable, cash. Dissenting minority shareholders are entitled to compensation in cash; and
- Other corporate transactions: According to a Federal Supreme Court ruling (*Holz Müller*), a meeting of the general assembly is required for all corporate transactions which have the effect of a major restructuring of the company and which are likely to affect shareholders' rights and financial positions.

Contrary to the shareholders' meeting of a limited liability company (*Gesellschaft mit beschränkter Haftung* or GmbH), the AG shareholders' meeting may not decide on questions of management, unless the management board submits the question for a decision. However, according to legal precedent, the management board can be

required in exceptional cases to submit management proposals of substantial importance for approval.

Each shareholder can demand information from the management board in the general meeting regarding matters relating to the company, insofar as this is necessary to make a reasonable decision on the matters on the agenda. The management board may only refuse to provide such information in rare cases -- *e.g.*, if providing the information would lead to a substantial disadvantage to the company.

(2) Shareholders' legal recourse.

KonTraG introduced the possibility of initiating shareholders' suits against board members for breach of their statutory duties and responsibilities. In order to initiate suit, the acting shareholders must hold at least five percent (5%), or Euro 500,000, of the common share capital of the corporation. Under the German stock corporation concept, a shareholder's right to sue is understood as an implicit right of equity participation. Shareholder-initiated legal proceedings may aim at any or all of the following: The action to rescind ("*Anfechtungsklage*") and action for annulment ("*Nichtigkeitsklage*") aim at control of majority power; prohibitory actions ("*Unterlassungsklage*" and "*Abwehrklage*") and action for abatement ("*Beseitigungsklage*") aim at control of management; the action for damages ("*Schadenersatzklage*") aims at compensation for damages; and the right of the minority to bring claims of the company for compensation of damages against persons liable under the Stock Corporation Act aims at prosecution of claims through a court-appointed representative ("*Verfolgungsrecht*"). However, there is no right of action by a governmental agency or regulatory body (as compared, *e.g.*, to the U.S. Securities and Exchange Commission -- *see* 15 U.S.C. § 78n), and at present shareholder class action suits are not possible in Germany.

The most important judicial relief available to shareholders in Germany is, both in fact and in law, legal action to rescind resolutions passed in a shareholders' general assembly. An action to set aside a shareholders' resolution should be brought against the company and instituted within one month after adoption of the resolution. Between 1980 and 1998, 408 legal actions to rescind resolutions were brought before the courts; half of them were instituted by shareholder groups of not more than fifteen persons.

The German Stock Corporation Act contains a special provision imposing liability on persons who use undue influence to cause members of the supervisory or management board to act to the corporation's detriment. (Stock Corporation Act, § 117) The supervisory board members are jointly and severally liable. Shareholders may claim against supervisory board members for losses they sustain, in addition to any loss sustained by virtue of the damage inflicted on the corporation, and creditors may assert claims if unable to obtain satisfaction from the corporation. (Stock Corporation Act, § 117)

The competent District Court -- Commercial Register (*Amtsgericht Handelsregister*) fulfils an important function as regards corporate actions. Many corporate actions need to be registered with the Commercial Register in order to become effective, and the District Court will only undertake the register entry after thoroughly reviewing the application. There is no single German regulatory agency or stock exchange that has

authority to protect shareholder rights. In a de-listing context, the Frankfurt Stock Exchange regulates the pricing of mandatory offers and monitors compliance. (Frankfurt Stock Exchange Rules, § 54(a)) In a take-over context, the Take-over Commission (*Übernahmekommission*), a subcommittee of the Federal Ministry of Finance's Exchange Expert Commission (*Börsensachverständigenkommission*), monitors compliance with the Take-over Code (*Übernahmekodex*). Compliance with the Take-over Code is voluntary as to most listed companies, but many of them have publicly stated that they will comply on a voluntary basis. For companies listed on the *Neuer Markt*, however, compliance is mandatory.

(3) Duties of controlling shareholders.

Notwithstanding a general legal obligation that controlling shareholders owe a duty of loyalty to the company (*allgemeine gesellschaftsrechtliche Treuepflicht*), this obligation is rarely enforced. Controlling shareholders are not hindered from acting independently of any other constituency. An obligation not to disclose confidential company information applies to all shareholders, including any shareholders who nominate persons to the supervisory board.

2. CORPORATE GOVERNANCE CODES

German law is fairly explicit about corporate governance practices, and therefore the codes that have issued to date tend to provide commentary on practices, many of which are already mandated. Two codes of corporate governance have been published in Germany and are analysed herein: the Berlin Initiative Code, which suggests best practice for modern internal corporate governance, and the German Panel Rules, which are directed towards capital market issues and the needs of investors. Several years ago, another code-like document was published by an association of individual shareholders and investment clubs, the *Deutsche Schutzvereinigung für Wertpapierbesitz e.V.* ("DSW"). However, it has largely been superseded by the two subsequent codes, and is no longer actively promoted by DSW. Therefore, it is not analysed herein.

Note also that, as suggested by the Baums Commission, a new corporate governance code is being drawn up by a commission headed by Gerhard Cromme, the retired chief executive and current supervisory board chairman of ThyssenKrupp. It is expected to be highly influential given its genesis in governmental support, its link to the Baum Commission's recommendations and the high level composition of the Cromme Commission itself. A draft was issued in December 2001. Even though not yet final, due to its importance it is analysed herein.

Although the published governance standards of individual companies do not qualify as codes for the purpose of this Study, Deutsche Bank's recently issued Corporate Governance Principles (*Corporate Governance Grundsätze der Deutschen Bank*) are worth mentioning due to both the economic and political weight of Deutsche Bank and the likelihood that many German companies may benchmark their own codes against the Deutsche Bank code.

Dr. Bernhard Pellens, a professor of international business accounting at Bochum University, conducted a study covering the DAX 100 companies regarding their

receptiveness to a code (November 2000) and concluded that most companies are aware of governance issues and favour a voluntary, uniform, financial markets-orientated code. Also, the Berlin Initiative Group, in preparing its code, conducted a survey of the DAX 100. In addition, the leading German association of capital market experts, the *Deutsche Vereinigung für Finanzanalyse und Asset Management* (“DVFA”), published a “Scorecard for German Corporate Governance” (July 2000) which rates specific companies and refers to the German Panel Rules (discussed below).

a. BERLIN INITIATIVE CODE

Code: German Code of Corporate Governance
Issuing Body: Berliner Initiativkreis (Berlin Initiative Group)
Date: June 2000
Official Languages: German and English

(1) **Background.**

(a) Issuing Body: *Business, industry and/or academic association or committee.*

The Berlin Initiative Group is a non-governmental, non-profit group that is not officially tied to any public or private entity or association. The Initiative Group, chaired by Prof. Dr. Axel Werder of Berlin Technical University, consisted of members of German management and supervisory boards, academics and an attorney.

(b) Legal Basis and Compliance: *Voluntary (disclosure encouraged).*

This Code is purely voluntary, and has not been referenced by or appended to any stock exchange listing rules or any other legal or contractual requirements. The Code recommends that German companies publicly disclose their governance practices, stating that “it would seem that the thing to do is . . . in the annual report or in separate corporate principles . . . to set forth which guidelines are to be adopted and which rules are not to be followed for which reason.” (Preamble)

(c) Consultations.

The Code does not indicate whether any formal consultative process was undertaken.

(d) Contributions.

There is no indication that parties outside the Berlin Initiative Group contributed to the preparation of this Code.

(e) Definition of Corporate Governance.

The Code’s Preamble states that “[c]orporate governance describes the legal and factual regulatory framework for managing and supervising a company.” The Code also states that the “basic order of corporate governance determines the company’s system of objectives and therefore the upper guideline for the company’s management.” (I. 1)

(f) Objective: *Improve quality of board (supervisory) governance.*

“The guidelines tackle problems and processes of company management which from a managerial point of view prove to be particularly critical for the efficiency of corporate governance. . . . The code rules are to be understood as being management and supervision standards which, according to today’s level of managerial knowledge (best practices), stand the test of time.” (Preamble)

According to the Preamble, the Code contains recommendations for the arrangement of the legal and factual regulatory framework which are intended to promote the quality of company management. However, the Code seems less an agenda for regulatory action and more a set of governance standards whose adoption would improve the performance of German companies in the new globalised economy. While the Code rules “correspond partially with important legal regulations,” it is the opinion of the drafters that the “formulation of governance principles in a code below the legal level offers the advantage of being able to adapt standards more flexibly to altered conditions and fresh experiences.” “In the end,” the Preamble states, “they thereby serve to de-regulate.”

(g) Scope: *Listed companies; encouraged to all companies.*

The recommendations of this Code are directed primarily towards large, listed public stock corporations. The Code states, however, that various provisions may “be transferred analogously to companies with other ownership structures (for example, family-owned companies and other close companies) and applied under affiliated group conditions.” (Preamble)

(2) Supervisory and managerial bodies.

(a) Rules/recommendations regarding the separate roles and responsibilities of supervisory and managerial bodies (including lines of responsibility).

The Berlin Initiative Code states that the supervisory board plays an important role in the company by its selection and supervision of the management board. (§ II.1.2) It does not, however, have a managerial function. (Thesis 6) It acts as a supervisory organ in a system of checks and balances, appointing, controlling, advising and, when necessary, dismissing any or all members of the management board. (§ II.1.10) Management consults with the supervisory board and presents fundamental issues to the annual general meeting for final decisions (§ II.3.1).

The management board operates as the initiator of measures, while the supervisory board takes up the role of informed discussion partner. The development of business ideas and the ongoing work of their implementation lie within the management board’s sphere of responsibility. The supervisory board, on the other hand, analyses the prospects for success of the proposals presented. In particular, it tests and examines the plausibility of the strategies proposed to determine whether relevant risks have been adequately addressed. (§ II.3.2)

The Code states that supervisory board exercises its duties in observance of generally accepted principles of adequate supervision. It orientates its activities towards the following general guidelines: (i) all measures taken by the supervisory board are subject to the principle of legal permissibility -- they cannot therefore infringe the appropriate provisions of applicable law; (ii) all measures taken by the supervisory board are subject to the principle of economic usefulness -- they should accordingly contribute to economic usefulness within the bounds of what is possible, to increase the value of the company; and (iii) the supervisory board should, when carrying out its duties, be aware of social responsibility to a reasonable extent and take account of the ethical considerations without which a social market economy cannot survive. (§ IV.1.1-1.4)

The responsibility for developing the value of the company lies primarily with the management board. The management board, as “the organ of management,” forms the company’s clear locus of decision-making. Excessive control by the supervisory board should be avoided. (§ I.6) The management board leads the public corporation, observing the “generally accepted principles of proper company management.” (§ III.1.1)

The Code states that the role of the managerial board is to:

- Give direction to the company; (§ III.2.1)
- Assemble infrastructure for the process of wealth-creation; (§ III.2.1)
- Determine the general course of the company’s activities by identifying specific goals and by formulating strategies to achieve such goals; (§ III.2.2)
- Put planning and control systems in place; (§ III.2.3)
- Decide important matters; (§ III.2.4)
- Conduct crisis management; (§ III.2.4)
- Communicate with the supervisory body as well as with the shareholders; (§ I.8 & § III.2.5)
- Supervise the successful execution of board decisions; and (§ III.2.6)
- Check the efficiency of control systems and the quality of delegated decisions. (§ III.2.6)

The Code states that the management board should follow three general guidelines: (i) all management board measures are subject to the principle of legal permissibility (§ III.1.2); (ii) all management board measures are subject to the principle of economic usefulness (§ III.1.3); and (iii) the management board should be aware of social responsibility to a reasonable extent and take account of the ethical considerations without which a social market economy cannot survive. (§ III.1.2-1.4)

(b) Rules/recommendations regarding the accountability of supervisory and managerial bodies (including conflicts of interest).

The Code states that Members of the supervisory and management boards owe a duty of loyalty to the company. The Code recommends that they not pursue their own interests if they conflict with the interests of the company. Even the appearance of conflict is to be avoided. (§ III.5.1 & § IV.6.1)

In particular, members of the supervisory and management boards may neither directly nor indirectly take advantage of the company’s business opportunities, assist competitors or undertake commercial transactions with the company which do not correspond with normal market conditions. (§ III.5.2 & § IV.6.2) All members of the supervisory board should acknowledge in writing the rules applicable for insider dealings as well as the company guidelines for the sale and purchase of shares in the company. (§ IV.6.3) Any participation by members of the management board in other companies should be revealed to the chairman of the supervisory board and examined for potential conflict of interests. (§ III.5.3) The chairman of the supervisory board should be asked to give prior approval to any director’s acceptance

of a seat on the supervisory board of another company, as well as engaging in significant ancillary activities. (§ III.5.4) The management board appoints a representative who issues guidelines for the sale and purchase of shares in the company and who assures their observance (compliance officer). All members of the management board acknowledge in writing the rules applicable for insider dealings as well as these guidelines. (§ III.5.5)

(c) Rules/recommendations regarding the size, composition, independence and selection criteria and procedures of supervisory and managerial bodies.

(Until now it has been typical at large listed companies in Germany for retiring management board members, as well as representatives of banks, the company's business partners and advisors to be appointed as supervisory board members.)

Notwithstanding any recommendations and other opinions that might be proffered by the management board, the supervisory board remains in charge of appointments to the management board. The decision of the supervisory board on the appointment of a management board member ought not be a mere formality: The supervisory board makes these decisions based on an assessment of performance as objectively as possible. The individual performance of each management board member, including the chairman of the management board, is for this reason to be systematically evaluated on an annual basis by the personnel committee. Appointments of management board members whose performance falls short are not to be renewed. Serious deficiencies in performance and mistakes are the principal grounds for premature dismissal. (§ 1.1-1.11)

The Code states that the supervisory board is to decide on the selection of the members of the management board, with the goal of ensuring optimal qualifications. Decision of the supervisory board should be informed by the recommendations of a personnel committee or search committee. This committee also undertakes the regulation of contractual relationships with members of the management board such as contracts for services and pensions. In order to place the selection of personnel on a sound foundation, the supervisory board should avail itself of the expert knowledge of the management board. (§ 1.2-1.3)

Recruiting members of the management board from within the ranks of the company's own executives should be the normal process and the result of a well-devised management succession planning. (§ II.1.4) As soon as it becomes known that a vacancy on the management board is about to, or has, occurred, the management board members in conjunction with the personnel committee of the supervisory board should be prepared to nominate specific candidates. Several nominees should, if possible, be proposed for consideration for each vacant seat. (§ II.1.7)

(d) Rules/recommendations regarding the working methods of supervisory and managerial bodies (including information flows).

The Code maintains that the exercise of supervision -- apart from contact between the chairman of the supervisory board and the management board -- occurs primarily in the meetings of the supervisory board and its committees. Discussions between those supervisory board members who represent the shareholders and those who represent

the employees, if they take place outside of the formal supervisory board meetings, should facilitate the shaping of opinion, not lead to pre-arrangements. (§ IV.5.2)

The supervisory board makes rules of procedure for itself which are directed towards its own best functioning. Its chairman prepares a systematic schedule of supervision to be discussed in the meetings of the supervisory board or its committees. All members of the supervisory board should receive the schedule of supervision before each supervisory period. The chairpersons stipulate the agenda for the individual meetings of the supervisory board and its committees on the basis of the schedule of supervision as well as current developments. All documentation necessary for proper discussion of the items on the agenda pending is delivered to the members of the supervisory board or the committees in good time before each meeting. (§ 5.4-5.8)

The Code recommends that supervisory boards form committees to increase working efficiency. The committees should have at least three, but not more than five, members. The chairman of the supervisory board co-ordinates the activities of the committees in consultation with the respective committee chairpersons. (§ IV.3.2-3.3)

The number and tasks of the committees depend on the size of the supervisory board and the realities of the company. Normally, there is to be established:

- At least one business committee for managerial key policy issues;
- A personnel committee for all matters affecting the personnel of the management board and, if necessary, a committee pursuant to the Co-determination Act 1976, § 27 (3);
- An investment and finance committee;
- An audit committee; and
- A committee on corporate governance.

(§ IV.3.4)

Candidates ought to possess “those various qualifications which are required for competent control of the management board according to the realities of the company.” (§ IV.4.2)

The supervisory board normally meets on six occasions annually. Extraordinary events may require a higher number of meetings. The frequency of committee meetings is taken into account when determining the number of meetings of the entire supervisory board. The length of each meeting should allow for the proper exercise of supervisory tasks. In order to promote openness of discussion, the supervisory board meets once per year without the management board. (§§ IV.5.1 & 5.3)

The Code offers detailed recommendations on how a management board should work. Insofar as the recommendations reflect common sense, they are likely already to be followed. The basic structure of the distribution of responsibilities between the members of the management board is fixed in the standing rules of the company. Members of the management board participate in the management of the company on equal terms in accordance with the principle of collective responsibility. The management board should have a chairman or speaker. The chairman of the

management board does not have a right of command over the other members of the management board; rather, decisions of fundamental importance for the company are the responsibility of the management board as a whole. Such decisions include ascertaining the company's targets, determining company strategies, and setting important infrastructural directions. Decisions which involve greater levels of detail may be delegated by the management board to individual management board members or committees. (§ III.3.2-3.4)

The Code states that individual management board members should receive particular spheres of responsibility for which they have been deemed competent, either as a spokesperson (without authority to make decisions outside of the board as a whole) or as head of a department (with authority to make decisions in their area of responsibility). Tailoring the areas, depending on the degree of diversification of the company and the geographical extent of its activities, should ensure that all of its major functions, products and markets are represented on the management board. (§ III.3.5)

The chairman or speaker of the management board sets the agenda for the meetings of the management board. Each member of the management board may add to the agenda points for discussion and decision via the chairman or speaker. In cases where speed is required, either the management board chairman or another member of the management board may extend the agenda. If there is insufficient time available to deal with all the items on the agenda, a date is fixed for another meeting to address the remaining items. (§ III.4.1)

The management board must be very prepared to make decisions. Issues are discussed before decisions are made. The discussion is to be conducted with conclusions still open, not prejudiced by pre-conceived notions. Well-founded preparation for a decision requires, above all, that the expectations for the success of the planned measures be justified in detail. All members of the management board receive information and supporting documentation relevant to the decision in good time before the management board meetings. (§ III.4.2-4.3)

The management board strives to reach decisions unanimously. If this cannot be achieved, it decides by simple majority after a waiting period of at least twenty-four hours. The chairman of the management board may defer a majority decision with a veto. The veto may be overruled at the next management board meeting by a majority of members. (§ III.4.6)

(e) Rules/recommendations regarding remuneration of members of supervisory and managerial bodies (including evaluation procedures).

The Code states that remuneration of members of the supervisory board should be reasonable and related to performance.

- Forms of compensation: Supervisory board members should not receive stock options or similar remuneration related to market price of the stock, so that they will maintain the necessary distance from managerial measures taken by the management board. An exception is made here for remuneration of supervisory board members of young companies.

- Criteria for compensation amounts: Criteria for assessing the reasonableness of remuneration provisions are, in particular, the commercial situation, the current success and future prospects of the company, its size and importance, as well as its comparability with similar services. The basis for assessing the performance of the individual members of the supervisory board is based upon the extent of their duties, such as chairmanship, memberships on committees, and frequency of participation in meetings.
- Disclosure of compensation levels: The company discloses, apart from the total remuneration, the principles underlying the remuneration system of the members of the supervisory board.

(§ IV.7.1-7.4)

The basis for determining the various components of remuneration of the individual members of the management board is systematic evaluation, carried out periodically by the personnel committee of the supervisory board. The Code states that remuneration can be paid partly through stock option schemes or comparable schemes oriented towards the market price of the stock. The following four points apply to the variable forms of remuneration: (i) the components of the remuneration should bear a reasonable relationship to the market price and not be purely additional remuneration in nature; (ii) the option scheme should be related to an industry-based index, ensuring that option profits only arise if the long-term average performance of the company's shares lies above the performance of the index without any lowering in the option prices (re-pricing); (iii) the option schemes should be scheduled for the long-term -- options should only be exercisable after a waiting period of at least two years, and shares obtained by exercising an option should be held for at least three years before they may be sold; and (iv) the option should set scheme set an upper limit for how much the individual management board member may profit from share options. (§ III.6.1-6.3)

Apart from the emoluments of the total management board, the Code states that the company should also disclose the principles of the system for remuneration. This disclosure should include, in particular, the procedure and the standards of comparison for evaluating the performance of the management board, as well as the form of any market price orientated compensation systems. (§ III.6.4)

- (f) Rules/recommendations regarding the organisation and supervision of internal control systems and relations between supervisory bodies, managerial bodies and internal/external auditors.

The auditor should be a guarantor of open disclosure to all the constituencies of the company and, in addition, be a supportive partner to the supervisory board in its supervisory responsibility. The auditor should control separate parts of management board dealings while also being available to the management board as an advisor. Regular audits should cover the company's financial reporting and the risks attaching to its business activities. It is for the auditor to establish whether the financial reporting, as performed on a day-to-day basis by management personnel, accords with the appropriate regulations and accurately reflects the company's assets, financial situation, earnings and risks. (§ VI.2.1-2.3)

The independence of the auditor is essential for consistent and reliable control. Hence, the auditor is to take all reasonable steps to maintain neutrality. Above all, the auditor ensures that the extent of the mandate for the audit, as well as any additional business relationships with the company (*e.g.*, consultancy contracts), do not negatively affect the auditor's independence. The supervisory board should consider, when selecting an auditor, whether the work of the auditor should undergo evaluation by an expert third party at regular intervals. (§ VI.2.6-2.7)

(3) Rights of Shareholders/Stakeholders.

(a) Rules/recommendations regarding protection of the rights of shareholders.

The company should take all reasonable measures to relieve the shareholders from having to personally safeguard their rights. This includes allowing shareholders to follow the annual general meeting with modern means of communication (*e.g.*, internet) as well to cast votes electronically. (§ V.1.5)

Depository banks have a particular responsibility for safeguarding the interests of the shareholders. They should keep clear of possible conflicts of interest, *e.g.*, those that may result from simultaneous customer relations to the company or its own holdings of capital. Representation of the rights of the shareholders is also a duty of the protection associations. (§ V.1.3)

Furthermore, the shareholders alone should decide whether to accept or reject offers of acquisition. The management board and the supervisory board are obliged to present the opportunities and risks of the offers in a balanced manner. (§ V.1.6)

(b) Rules/recommendations regarding equal/fair treatment of shareholders.

All shareholders have the same power to influence the public corporation, in proportion to their shareholdings in the company. The precept of equal treatment within the parameter of extent of participation also applies, in particular, to institutional investors on the one hand and small private shareholders on the other. Shareholders exercise their influence at the annual general meeting. They conduct themselves with awareness of their responsibility towards the interests of the company. (§ V.1.1)

All shareholders should receive access to the same information, regardless of the extent of their shareholdings. The precept of equal access to information also applies, in particular, to institutional investors on the one hand and small private investors on the other. Shareholders receive access to the same information that has been provided to financial analysts and other financial professionals. The company should use modern means of telecommunication such as the Internet for current and consistent information to the various shareholders and stakeholders of the company. Provided that it is commercially justified, it should allow interested parties to follow press and analyst conferences directly over the new technology media. (§ IV.1.3-1.5)

(c) Rules/recommendations regarding the rights of stakeholders.

The Code states that employees, shareholders, customers, creditors, suppliers, as well as the public at large, are recognised as stakeholders. Company management is to balance the interests of the various stakeholders of the company. (Thesis 8)

Furthermore, the Code recommends that a public corporation should not limit information exclusively to the benefit of shareholders when it fulfils minimum requirements for financial reporting and other disclosure. Rather, the company should establish an integrated system of external communications which covers the legitimate information needs of all stakeholders. The communication system extends, in particular, to the supply of information for actual and potential investors (investor relations), the workforce (employee relations), the consumers (customer relations) and the public at large (public relations). (§ IV.1.1-1.2)

Additional information about the Berlin Initiative Code is included in the Comparative Matrix appended to this Report as Annex V.

b. GERMAN PANEL RULES

Code: Corporate Governance Rules for Quoted German Companies

Issuing Body: German Panel on Corporate Governance

Date: July 2000

Official Languages: German and English

(1) Background.

(a) Issuing Body: *Business, industry and/or academic association or committee.*

The German Panel on Corporate Governance is a non-governmental, non-profit group that is not officially tied to any public or private entity or association. It was made up of ten members from the academic and business communities.

(b) Legal Basis and Compliance: *Voluntary (disclosure encouraged).*

The Rules state that: “The Rules, their acceptance, implementation and respective adjustments to the specifics of the individual Company shall be communicated in the Annual Report.” However, compliance with the Rules is purely voluntary, and there is no requirement, via listing rules or otherwise, that companies disclose whether they are complying with the Rules’ recommendations.

(c) Consultations.

The Rules do not indicate whether any formal consultative process was undertaken.

(d) Contributions.

There is no record of any contributions by parties outside the Association in the preparation of these Rules. The Panel states that it relied heavily on the OECD Principles of Corporate Governance, providing a detailed summary of the OECD Principles before laying out its own principles.

(e) Definition of Corporate Governance.

The Rules state that “[t]he purpose of Corporate Governance is to achieve a responsible, value-oriented management and control of companies. Corporate Governance Rules promote and reinforce the confidence of current and future shareholders, lenders, employees, business partners and the general public in national and international markets.” (§ I)

(f) Objective: *Improve accountability to shareholders and/or maximise shareholder value; Improve quality of board (supervisory) governance.*

The Rules’ recommendations focus on improving accountability in the equity markets and aim to “serve as general guidelines for Corporate Governance of quoted (*i.e.*, listed) German companies.” They note that, due to various legal systems, institutional parameters and traditions, “there is presently no internationally accepted universal model for Corporate Governance.” They are guided by “codified law and leading

cases” and by “generally accepted national and international codes of good conduct and market practice.” (§ I)

(g) Scope: Listed companies.

These Rules are targeted towards German companies “whose shares are officially listed on a German stock exchange or traded over-the-counter.” (§ I)

(2) Supervisory and managerial bodies.

(a) Rules/recommendations regarding the separate roles and responsibilities of supervisory and managerial bodies (including lines of responsibility).

The Rules remind that the role of the supervisory board is to provide independent advice and to monitor the management board. The Rules encourage the supervisory board to advise the management board on a regular basis, and specifically monitor whether proposed long-term goals are being achieved. The supervisory board appoints the members of the management board and ensures that an orderly management succession plan is in place. (Stock Corporation Act, § 84) The supervisory board can make certain transactions subject to its approval. (Stock Corporation Act, § 111) This refers in particular to investment projects, loans, the establishment of subsidiaries, and the acquisition or disposal of shareholdings above a certain size. (§ III.2.a-c)

The Rules note that the supervisory board issues its own standing rules, stipulates the information and reporting duties of the management board, and appoints the external auditors. (Stock Corporation Act, § 111) Contracts, in particular company consulting contracts with members of the supervisory board, require the approval of the supervisory board (except for routine transactions). (§ III.2.f) The supervisory board is to receive at least annually a report by the management board regarding any donations exceeding an amount to be determined by the supervisory board. (§ III.2.g) It should subject its activity to regular (*i.e.*, annual) evaluation in order to identify areas for improving its performance. (§ III.2.h) Supervisory board members ought to exercise their duties diligently. (§ III.1.a)

The management board represents the company both in and out of court. (Stock Corporation Act, § 78) Its members manage the company jointly, unless the articles of association or the bylaws provide otherwise. The Rules expressly reference the Stock Corporation Act, § 77, stating that, in managing the company according to § 77, the management board is bound by the corporate interest, company policy, the company’s (or group’s) guidelines, and the basic principles of proper management. The management board develops corporate strategy in consultation with the supervisory board, and is responsible for its implementation. It should be noted that these Rule provisions add nothing to the legal duties of management board members that are already in effect. (§ II.1.a-b)

(b) Rules/recommendations regarding the accountability of supervisory and managerial bodies (including conflicts of interest).

The Rules state that supervisory board members’ transactions should be at arm’s length. Transactions, even the terms of transactions, require prior approval. The

granting of loans should require the approval not only of the supervisory board but also of the management board. (§ III.2.b)

The Rules call for supervisory board members to disclose any conflicts of interest to the chairman of the supervisory board or his deputy, unless they do not participate for cause in a specific meeting or retire for cause due to a continuing conflict. In the event of a serious conflict of interest, the chairman of the supervisory board or his deputy should decide to whom the information is to be forwarded and whether the member of the supervisory board in question ought to participate in a specific meeting. In their decisions, supervisory board members are not to pursue their own interests or those of associated persons or companies which are in conflict with the interests of the company or any of its affiliates or subsidiaries. They may not pursue for their own benefit business available to the company or its group companies. The interests of the company and its group companies take priority, and the supervisory board members at issue should abstain from voting. All transactions between the company, any group company and supervisory board members and/or associated persons/companies should comply with normal industry standards. All transactions (with the exception of routine business transactions) and their terms are to be approved in advance by the supervisory board. Transactions may not run counter to the interests of the company or any group company. (§ III.4.a-e)

The Rules reiterate that in conducting the management of the company, management board members should not pursue any interest that could conflict with the interests of the company. The Rules recommend that members of the management board disclose to the supervisory board any material personal interests in transactions of the company and group companies as well as any other potential or actual conflicts of interest. They should also inform their management board colleagues. (§ II.4.a-b)

Similar to its statements regarding supervisory board members, the Rules state that all transactions between the company and management board members and/or associated persons/companies should comply with normal industry standards. The transactions, and the terms and conditions of transactions, should be approved in advance by the supervisory board. Transactions may not run counter to the interests of the company/group. The granting of loans to management board members is to be approved by the supervisory board with advance notice to the management board. In all such transactions, the company should be represented by the supervisory board. Management board members and senior group executives may not exploit business opportunities available to the company or group companies for themselves or for the benefit of associated persons or companies. Management board members and senior group executives are also prohibited from conducting transactions for themselves or for associated persons that would conflict with the interests of the company or a group company. (§ II.4.c-e)

This recommendation extends even beyond business duties. The Rules recommend that management board members disclose to the whole management board any transactions (except routine business transactions) among themselves or with supervisory board members or senior group executives. Transactions require the approval of the supervisory board. Management board members and senior group executives are, during their employment, subject to a comprehensive prohibition of competition. (Stock Corporation Act, § 88) Any other activities of management board members, in particular the acceptance of supervisory board appointments, require the approval of

the supervisory board. Any other activities of group senior executives require the approval of the management board. (§ II.4.f-i)

(c) Rules/recommendations regarding the size, composition, independence and other selection criteria and procedures of supervisory and managerial bodies.

The Rules emphasise that supervisory board members are to have the required knowledge, skills and relevant professional experience, and should ensure that they have sufficient time available. The Rules recommend that the annual report disclose the failure of a supervisory board member to attend (in person) at least half of the board meetings during a single business year. (§ III.1.a)

According to the Rules, the supervisory board ensures independent advice and monitoring of the management board by including a sufficient number of independent persons who have no current or former business association with the company or group. This principle should also be taken into consideration for the composition of supervisory board committees as well. (§ III.1.b)

The Rules state that nominations to the supervisory board ought not to include, as a matter of course, retiring management board members. (§ III.1.b) This is significant because it is common in Germany for the retired chairman of the management board to become chairman of the supervisory board.

The Rules recommend that, to ensure supervisory board efficiency, both board composition and size ought to be given due consideration. However, the Rules do not recommend any specific board size. (§ III.1.a)

(d) Rules/recommendations regarding the working methods of supervisory and managerial bodies (including information flows).

The Rules recommend that the supervisory board establish the following committees:

- General Committee: This committee would address strategy and planning with members of both the supervisory and managerial boards. Its functions would include: (i) advising the management board on strategy and planning; (ii) preparing supervisory board decisions; (iii) assessing the internal state of the company (or group); and (iv) reviewing corporate governance rules and their compliance;
- Personnel Committee: This committee would address: (i) staffing of the management board; (ii) management succession planning; (iii) remuneration of management board members; (iv) performance evaluation of the management board members; and (v) granting of loans;
- Nomination Committee;
- Market and Credit Risk Committee;
- Mediation Committee; and
- Accounts and Audit Committee (see below).

(§ III.3)

The Rules state that the supervisory board may establish, in line with its standing rules, various other committees to deal with complex business matters. With regard to the composition of such committees, it should ensure that committee members possess the requisite professional experience. The formation of committees, and the determination of their duties, are subject to the specific circumstances and the size of the company. (§ III.3)

Further, the management board should disclose, in timely fashion, any new facts that may significantly impact on the price of the company's listed securities. (Securities Trading Act, § 15) It will issue quarterly and annual reports, in timely fashion and in accordance with internationally recognised principles. It will inform the supervisory board, on a regular basis, of all relevant matters regarding business development, risk exposure and risk management. It will record, in the standard business record, any significant changes in shareholdings, both holdings by the company and holdings in the company. (§ II.2.a-j)

(e) Rules/recommendations regarding remuneration of members of supervisory and managerial bodies (including evaluation procedures).

Remuneration of the supervisory board ought to reflect each member's level of responsibility as well as any increase in corporate value. (§ III.1.e)

The Rules recommend that the remuneration of the management board and the other executives include sufficient incentives to foster long-term corporate value creation, *i.e.*, performance-related remuneration including share option programs. Such performance-related remuneration should be related to share price development and to the ongoing success of the company. To emphasise the incentive character of options, as well as to balance the surrender of the subscription right by shareholders, the exercise of options should be made contingent upon management achieving or exceeding relevant and transparent benchmarks (*e.g.*, the development of an industry index). (§ II.3.a)

Total compensation and shareholdings (including existing option rights) of the management board should be disclosed in the notes to the annual financial statements. (§ III.3.b) Changes in equity participation by management ought to be disclosed by comparison with the previous year. (§ II.2.j)

(f) Rules/recommendations regarding the organisation and supervision of internal control systems and relations between supervisory bodies, managerial bodies and internal/external auditors.

The Rules focus on the supervisory board, elaborating on its supervising/monitoring functions. Through the establishment of an accounts and audit committee that verifies the management board's business figures for the company/group and its business segments, the financial engineering of the company is ultimately shared by both boards. This shifts responsibility from supervisory (Stock Corporation Act, § 111) to management functions. (Stock Corporation Act, § 76) The supervisory board selects the external auditors. (Stock Corporation Act, § 111)

To ensure the independence of the external auditors, the Rules recommend that the supervisory board determine that:

- The auditor has not obtained, during the last five years of employment with the company (or with corporations where the company holds more than twenty percent (20%) of the shares) more than thirty percent (30%) of its total revenue from its services to the company. This should also not be expected for the current fiscal year;
- No auditor is employed that has issued the auditor's confirmation for the annual accounts in more than six instances in the ten years preceding the audit; and
- No conflicts of interest exist for the auditor. The supervisory board may call for additional audit issues that extend the legally required scope and focus of the audit. Stipulation of the audit fee is part of the appointment process. All members of the supervisory board should receive audit reports in good time before the pertinent supervisory board meetings. (Stock Corporation Act, § 170) Audit-related meetings are to be held in the presence of the auditor. (Stock Corporation Act, § 171)

(§ III.2.e)

The Rules also recommend that the supervisory board establish an accounts and audit committee. It would be responsible for all matters pertaining to the accounting and auditing of the company/group, including risk management. The committee evaluates the auditor's reports and informs the supervisory board of its assessment, particularly with regard to future development. It verifies the management board's assumptions on budget figures for both the company/group and its business segments. Both this and other important financial documents that are to be provided to shareholders would be reviewed by this committee prior to their release. (§ III.3)

The tasks of the accounts and audit committee would include:

- Preparatory work that precedes selection of the auditor, the determination of additional major auditing issues, and the auditor's fee;
- Evaluation of the findings and recommendations set forth in the auditor's management letter;
- Preparation of the audit of the annual company/group accounts by the supervisory board, including relevant business reports based on the results of the audit and additional points raised by the auditor;
- Preparation of a report by the management board on corporate donations that exceed an amount to be determined by the supervisory board; and
- If applicable, discussion of partial auditing results during the year (*e.g.*, internal control system), and discussion of interim accounts and results of any audits performed.

(§ III.3)

The Rules emphasise that management should be responsible for assuring that regular financial reporting (annual and quarterly reports) occurs in timely fashion. Moreover, both group accounts (if applicable) and quarterly reports should be prepared according to internationally recognised accounting principles. (§ II.2.a)

The management board should list in the notes to the annual financial statements any stakes in which the company holds a minimum of five percent (5%) of the capital or the voting rights. (However, such disclosure need not extend to stakes that are of no material importance for the company's assets, financial situation and profits, or if such disclosure would cause serious damage to the company or the other corporation.) In the notes to group accounts, all stakes exceeding five percent (5%) of the capital or the voting rights that are not included in these accounts should be reported. (§ II.2.g-h)

(3) Rights of Shareholders/Stakeholders.

(a) Rules/recommendations regarding protection of the rights of shareholders.

According to the Rules, the following OECD Principles are covered by mandatory law:

- Full voting right for each ordinary share (Stock Corporation Act, § 12);
- No impediments with regard to ownership or registration (Stock Corporation Act, § 67);
- Transferability of shares at any time (Stock Corporation Act, § 68);
- Participation, proxy and exercise of voting rights at general meetings (Stock Corporation Act, § 134);
- Election of members to the supervisory board (Stock Corporation Act, § 101);
- Participation in company profits (Stock Corporation Act, § 58).

(§ I)

The Rules state that the management board should disclose promptly any new facts regarding company activities which are not yet publicly known and which, due to their impact on the financial position of the company or its general course of business, are likely to have a significant impact on the price of the company's listed securities. (Securities Trading Act, § 15) As part of regular communications, the dates of major publications and events (*e.g.*, annual and quarterly reports, general meetings) should be published in a "Financial Calendar" at least one year prior to their issuance or occurrence. Company information ought also be made available on the Internet, including the invitation to general meetings, their agenda, shareholder initiatives and management comments thereto, and the voting results at such meetings. If possible, all publications are provided in the English language. (§ II.2.a)

(b) Rules/recommendations regarding equal/fair treatment of shareholders.

The Rules state that the "equal treatment of shareholders" stipulated by the OECD is in place for German companies. (§ I) The Rules encourage precautionary measures against insider trading and self-dealing, including disclosure by supervisory and managerial board members of personal interests in transactions or other company matters which extend beyond minimal legal requirements. (§ II.4 & § III.4)

The Rules, in the section relating to the management board, state that in the event of a company buyback of shares, "[t]he company shall pursue the principle of equal treatment of all shareholders in the matter of information dissemination." (§ I)

(c) Rules/recommendations regarding the rights of stakeholders.

The Rules do not address this topic.

Additional information about the German Panel Rules is included in the Comparative Matrix appended to this Report as Annex V.

c. CROMME COMMISSION CODE

Code: Deutscher Corporate Governance Kodex / German Corporate Governance Code (“Cromme Commission Code”)
Issuing Body: Regierungskommission Deutscher Corporate Governance Kodex / Government Commission on the German Corporate Governance Code
Date Issued: Draft, December 17, 2001
Official Languages: German (English translation available)

Perspective Note: The Cromme Commission Code, although still in draft form, is included in this Study because it is expected to be highly influential given its genesis in governmental support, its link to the Baum Commission’s recommendations and the high level composition of the Cromme Commission itself.

(1) Background.

(a) Issuing Body: *Committee organised by government.*

The Government Commission on the German Corporate Governance Code was formed in September 2001 by Justice Minister Professor Dr. Herta Däubler-Gmelin, at the recommendation of the Baums Commissions. Dr. Gerhard Cromme, the retired chief executive and current supervisory board chairman of ThyssenKrupp, chairs the twelve member Commission, which is made up of representatives of the German business sector and members of the legal, financial and academic communities.

(b) Legal Basis and Compliance: *Disclosure (comply or explain).*

It is anticipated that the Cromme Commission Code, once finalised, will be used on a disclosure (“comply or explain”) basis. The draft *Transparenz- und Publizitätsgesetz* (Transparency and Public Disclosure Act) issued on November 26, 2001 introduces an annual obligation for companies to disclose whether they have complied with the Cromme Commission Code’s recommendations, including a description of which rules of conduct have not been complied with. (Commercial Code § 161) It also introduces a duty for auditors to note whether or not the information has been provided (Commercial Code § 321 ¶ 2, last sentence); and a duty to disclose and file the compliance statement with the commercial register (Commercial Code § 325 ¶ 1).

(c) Consultations.

The Code itself does not indicate that any formal consultative process was undertaken. However, the December 2001 draft was circulated broadly with a request for comments.

(d) Contributions.

The Code does not indicate to what extent parties outside the Cromme Commission contributed to the preparation of this Code.

(e) Definition of Corporate Governance.

The Code does not provide a definition of corporate governance.

(f) Objective: Improve companies' performance, competitiveness and/or access to capital.

The Code presents recommendations that companies will be required to disclose against (designated by "shall") and other suggestions (designated by "should" or "can"), as well as statements pertaining to statutory regulations for the management and supervision of publicly listed German companies (indicative statements). It attempts to integrate internationally and nationally recognised standards for good corporate governance.

(g) Scope: Listed companies; encouraged to all companies.

The Cromme Commission Code by its terms applies to German listed companies.

(2) Supervisory and Managerial Bodies.

(a) Rules/recommendations regarding the separate roles and responsibilities of supervisory and managerial bodies (including lines of responsibility).

The supervisory board appoints, supervises, advises and, when necessary, dismisses members of the management board. It is involved in decisions of fundamental importance to the enterprise. Both the representatives elected by the shareholders and representatives of the employees are equally obligated to act in the enterprise's interests. (§§ I, V.1.1) To ensure the supervisory board's independent advising and supervising of the management board, the supervisory board shall have no more than two former members of the management board. (§V.4.2)

The management board is responsible for independently managing the enterprise. It is jointly accountable for management of the enterprise. (§ I) The management board co-ordinates the enterprise's strategic approach with the supervisory board and discusses the current state of strategy implementation with the supervisory board on a regular basis. (§§ III.2, IV.1.2) The management board is required to act in the enterprise's interests and undertakes to increase the sustainable value of the enterprise. (§ IV.1.1)

(b) Rules/recommendations regarding the accountability of supervisory and managerial bodies (including conflicts of interest).

The supervisory board shall issue Terms of Reference (§ V.1.3) which shall regulate the allocation of business in the management board. (§ IV.2.1)

The management board submits to the general meeting the established annual financial statements and the consolidated financial statements. The general meeting approves the appropriation of net income and ratifies the acts of the management and supervisory boards, elects the shareholders' representatives to the supervisory board and, as a rule, the auditor. (§ II.2.1)

The management board and supervisory board shall report on the enterprise's corporate governance in the annual report. This includes explanations of any deviations from this Code. (§ III.10)

Supervisory board members shall exercise no directorships or similar positions or advisory tasks for important competitors of the enterprise. (§ V.4.2) Each member of the supervisory board shall inform the chairman of the supervisory board of any conflicts of interest resulting from consultancy or directorship functions with clients, suppliers, lenders or other business partners. The chairman of the supervisory board shall inform the supervisory board or a committee commissioned for this purpose of any personal conflicts of interest. (§ V.5.2) In its report, the supervisory board shall inform the general meeting of any conflicts of interest which have occurred, together with how they were resolved. (§ V.5.3)

During their employment for the enterprise, members of the management board are subject to a comprehensive non-competition obligation. (§ IV.3.1) No member of the management board may pursue personal interests in his decisions or use business opportunities intended for the enterprise for himself. (§ IV.3.3)

All members of the management board shall disclose conflicts of interest to the chairman of the supervisory board without delay and inform the other members of the management board thereof. All transactions between the enterprise and the members of the management board as well as persons they are close to or companies they have a personal association with must comply with standards customary in the sector. Important transactions shall require the approval of the supervisory board. (§ IV.3.4)

(c) Rules/recommendations regarding the size, composition, independence and other selection criteria and procedures of supervisory and managerial bodies.

The Code does not address the size of the supervisory board. It does require that it be composed of members possessing the knowledge, abilities and expert experience required to properly perform their tasks and to be sufficiently independent. The selection of supervisory board members should take into account, *inter alia*, the international activities of the company, potential conflicts of interest and age limit. (§ V.4.1)

To better ensure that the supervisory board will in fact provide independent advice and supervision of the management board, the Supervisory Board shall have no more than two former members of the management board. (§ V.4.2)

The members of the supervisory board are elected by the shareholders at the general meeting. For enterprises with more than 500 or 2000 employees respectively in Germany, employees are represented on the supervisory board, which then is composed of employee representatives to one-third or to one-half. Both the representatives elected by the shareholders and representatives of the employees are equally obligated to act in the enterprise's interests. (§ I)

The Code indicates that the management board shall be comprised of “several persons” and have a chairman. (§IV.2.1) It does not provide criteria for choosing members of the management board, instead deferring to the supervisory board’s judgement when it appoints or, when necessary, dismisses members of the

management board. (§ V.1.1) The supervisory board can transfer the preliminary work required in the selection process of members of the management board to a supervisory board committee, which can also determine the conditions set forth in employment contracts. (§ V.1.2)

- (d) Rules/recommendations regarding the working methods of supervisory and managerial bodies (including information flows).

The Code first of all establishes the ground rule that the management board and supervisory board are to work closely together for the benefit of the enterprise. (§ III.1)

For transactions of fundamental importance, the Articles of Association or the supervisory board specify which decisions are reserved to the Supervisory Board for its approval. Such decisions include all those that would fundamentally change the assets, financials or profits of the company. (§§ III.3, V.1.1)

The supervisory board regularly advises and supervises the management board as it carries out its day-to-day management of the enterprise. (§ V.1.1) The supervisory board shall issue Terms of Reference for the management board. (§ V.1.3)

The management board ensures the company's compliance with all applicable laws and regulations. (§ IV.1.3) It ensures appropriate risk management and risk controlling in the enterprise. (§ IV.1.4) The management board shall establish principles and guidelines for the enterprise. (§ IV.1.5) Terms of Reference, as determined by the supervisory board, shall regulate the allocation of business in the management board. (§ IV.2.1)

The responsibility for adequate information flow between the management and supervisory boards is, according to this Code, the joint responsibility of both boards. (§ III.4)

The supervisory board shall specify the management board's reporting duties, including informing it, on a regularly and timely basis, of all issues important to planning, business development, risk situations and risk management. The management board's reports to the supervisory board are, as a rule, to be submitted in written form. Any documentation that the supervisory board may require as part of its decision-making process is to be forwarded to them in timely fashion prior to the meeting. The management board shall also identify any departures from previously formulated objectives, and indicate the reasons. (§ III.4)

The Code recognises that good corporate governance requires open discussion between the management board and supervisory board as well as among members of each board. Confidentiality is essential for this. Not only board members but also their support staff must observe confidentiality. (§ III.5)

- (e) Rules/recommendations regarding remuneration of members of supervisory and managerial bodies (including evaluation procedures).

The supervisory board shall examine the efficiency of its activities on a regular basis. (§ V.6) Compensation of its members is specified by resolution of the general

meeting or in the Articles of Association. It takes into account the responsibilities and scope of tasks of the members of the supervisory board as well as the economic situation and performance of the enterprise. Members of the supervisory board shall receive a fixed salary as well as performance-related compensation. Performance-related compensation should include a component based on the long-term performance of the enterprise. (§ V.4.5)

Compensation of the members of the management board is determined by the Supervisory Board on the basis of a performance assessment. (§ IV) Criteria for determining the appropriateness of compensation include the specific roles of the members of the management board, their performance in that role, the company's economic situation and the performance and outlook of the enterprise. (§ IV.2.2) Compensation of the members of the management board shall consist of both a fixed salary and variable components. Variable compensation should include one-time and annually-payable components linked to the performance of the enterprise as well as long-term incentives. Stock options or comparable instruments serve as variable compensation components with a long-term incentive effect. (§ IV.2.3)

- (f) Rules/recommendations regarding the organisation and supervision of internal control systems and relations between supervisory bodies, managerial bodies and internal/external auditors.

The supervisory board, in consultation with the management board, commissions the auditor. (§ VII.2.2) The supervisory board shall obtain a statement from a proposed auditor stating, where applicable, which professional, financial and other relationships exist between the auditor and the enterprise that could call its independence into question. This statement shall include the extent to which other services were performed for the enterprise in the past year, especially in the field of consultancy. (§ VII.2.1)

The supervisory board shall have a clear understanding with the auditor that the auditor is to inform the Chairman of the Supervisory Board of any significant facts or events uncovered by the audit that might affect the supervisory board's decision-making. (§ VII.2.3)

The auditor is present during the supervisory board's deliberations on the annual financial statements and consolidated financial statements and reports on the principal findings of the audit. (§ VII.2.4) Consolidated financial statements and interim reports shall be prepared according to internationally recognised accounting principles. For corporate law purposes, annual financial statements shall be prepared according to national regulations (the German Commercial Code). (§ VII.1.1) Consolidated financial statements shall be prepared by the management board and examined by the auditor and supervisory board. Consolidated financial statements shall be publicly accessible within 90 days of the end of the financial year; interim reports shall be publicly accessible with 45 days of the end of the reporting period. (§ VII.1.2)

The management board is responsible for ensuring appropriate internal risk management. (§ IV.1.4) The management board shall establish principles and guidelines for the enterprise. (§ IV.1.5)

The management board shall disclose any new facts about the company which, if known, could have an impact on the company's assets, financial situation or general business development, and ultimately on its stock price. (§ VI.1)

The management board ensures that the company is in compliance with all applicable laws and regulations. (§ IV.1.3)

Both the management board and the supervisory board comply with the rules of proper corporate management. If they fail to exercise due care and diligence, they are liable to the company for damages. (§ III.8)

(3) Rights of Shareholders/Stakeholders.

(a) Rules/recommendations regarding protection of the rights of shareholders.

Each shareholder is entitled to participate in the annual general meeting, to take the floor on matters on the agenda and submit materially relevant questions and proposals. (§ II.2.3) The company shall inform all domestic and foreign financial service providers, shareholders and shareholders' associations, who, in the preceding twelve months, have requested such notification, of the convening of the general meeting together with copies of the documents relating to it. (§ II.3.2) Shareholder minorities are entitled to demand convocation of a general meeting and extension of the agenda. (§ II.3.1)

According to the Code, the company shall make arrangements to facilitate shareholders' personal exercising of their voting rights and their use of proxies. The management board shall also arrange for the appointment of a representative to exercise shareholders' voting rights, in accordance with the shareholders' instruction, should they wish to vote through a representative.. This representative should be available during the General Meeting. (§ II.3.3)

Because the percentage of one shareholder's ownership of company stock may affect the exercise of rights of other shareholders, the management board shall disclose in timely fashion the fact that a shareholder has acquired, exceeded or fallen short of 5, 10, 25, 50 or 75% of the voting rights in the company by means of a purchase, sale or any other manner. (§ VI.2)

(b) Rules/recommendations regarding equal/fair treatment of shareholders.

The company's treatment of all shareholders in respect of information shall be equal. It shall make all new facts which have been made known to the financial analysts and similar addressees available to all shareholders without delay. (§ VI.3)

The company shall inform all domestic and foreign financial services providers, shareholders and shareholders' associations, who, in the preceding 12 months, have requested such notification, of the convening of the general meeting together with the convention documents, upon request, also using electronic channels. (§ II.3.2) The company should make it possible for shareholders to follow the General Meeting using modern communication media (Internet). (§ II.3.4)

(c) Rules/recommendations regarding the rights of stakeholders.

The Code's stated purpose is to promote the trust of, among others, employees, in the management and supervision of exchange-listed German stock corporations. (§ I)

The Code emphasises the role that employee co-determination already plays in German corporations, noting that for enterprises with more than 500 or 2000 employees respectively, employees are represented on the supervisory board, which thus becomes composed of employee representatives to one-third or to one-half. (§ I)

Additional information about the Cromme Commission Code is included in the Comparative Matrix appended to this Report as Annex V.

G. GREECE

1. LEGAL SYSTEM OVERVIEW

| CIVIL LAW SYSTEM | |
|---|---|
| LEGAL/REGULATORY FRAMEWORK | ENFORCEMENT / REGULATORY BODIES |
| COMPANY LAW FRAMEWORK <ul style="list-style-type: none">• <i>Νόμος 2190/1920 Περί Ανωνύμων Εταιρειών</i> -- Law 2190/1920 on Public Limited Liability Companies (“Law 2190/1920” or “the Law”). | <ul style="list-style-type: none">• Civil Courts• Ministry of Commerce (Law 2190/1920, Art. 51). |
| SECURITIES LAWS/REGULATIONS <ul style="list-style-type: none">• Law 2190/1920• Law 2324/1995 (on the organisation of the Hellenic Capital Market Commission) | <ul style="list-style-type: none">• Ministry of National Economy; Hellenic Capital Market Commission -- <i>Επιτροπή Κεφαλαιαγοράς</i> |
| STOCK EXCHANGE LISTING RULES <ul style="list-style-type: none">• Presidential Decree 350/1985 and 360/1985 | <ul style="list-style-type: none">• Ministry of National Economy; Hellenic Capital Market Commission <i>Επιτροπή Κεφαλαιαγοράς</i> |

a. GENERAL

Corporate governance discussion is relatively new in Greece, and has resulted in greater regulation of the governance of listed companies by the Athens Stock Exchange. In November 2000, the Greek Capital Market Commission, which formed the committee that drafted the Mertzanis Report (discussed below), issued a “Code of Conduct for Companies Listed on the Athens Stock Exchange.” The Code of Conduct mandates certain governance practices, such as the establishment of an internal audit department responsible for monitoring the company’s auditing process and reporting to the board of directors. Since it is regulatory in nature it does not fall into the definition of “Corporate Governance Code” as used in this Report. In November 2000, the Greek Capital Market Commission issued a Code of Conduct for Issuers. The Code of Conduct is regulatory in nature and is, therefore, not included in this Study. The drafters acknowledge that its adoption and contents have been influenced by the guidelines issued by the Mertzanis Report, issued in October 1999 and analysed herein.

According to a representative of Greece’s Capital Market Commission, the economics department of the University of Athens is currently working on assigning corporate governance ratings to Greek companies.

b. ROLE AND RESPONSIBILITY OF THE SUPERVISORY BODY

(1) Type of board system: *Predominantly one-tier.*

In Greece, public limited companies (the equivalent of *sociétés anonymes*) are governed by Law 2190/1920. Public limited companies are managed by a board of directors, which generally delegates day-to-day management of the company to hired

executive managers. The board must be made up of at least three members. Directors are elected by shareholders for terms of not longer than six years, and may be removed by the will of the shareholders at any time.

(2) Role, make-up and powers of the supervisory body.

The board of directors combines supervisory and management functions. In principle, it is given a large margin of discretion under the law. A company's bylaws may impose stricter limits, guidelines, etc. on the manner in which the board should represent the interests of the company.

Pursuant to Law 2190/1920 (Arts. 18 § 2 & 22 § 3), and provided that the company's bylaws allow, the board of directors may allocate specific management tasks to one or several persons. These can be members of the board (referred to in Greek as *εντεταλμένος σύμβουλος* or *διευθύνων σύμβουλος*) or third parties (*διευθυντής* or *γενικός διευθυντής*). While the use of these terms in Greek and their translation in English is not always consistent and can be confusing, in practice, the general managing director (*διευθύνων σύμβουλος*) is roughly equivalent to a chief executive officer. Pursuant to Law 2190/1920 (Art. 22(a)(2)), the liability of the general managing director vis-à-vis the company is stricter than that of other board members or other senior managers.

(3) Duties of the supervisory body.

The supervisory body's legal obligation to represent the interests of the company arises indirectly, based on legal provisions on liability, confidentiality and loyalty that apply to the board of directors. As a general rule, the directors' duties apply directly only vis-à-vis the company and not the shareholders or other constituencies. However, there are some exceptions applying in cases of mergers and acquisitions of the company.

Under Law 2190/1920 (Art. 22(a)(3)), the directors have a duty to hold company information confidential. Under Law 2190/1920 (Art. 23), directors may not engage professionally, on their own behalf or on behalf of others, in activities covered by the objectives of the company in which they are directors. Directors may not be general partners in a partnership that pursues the same objectives as the company they serve as directors. This restriction may be lifted only through permission given by the company's general meeting of shareholders. Article 23(a) of Law 2190/1920 prohibits loans by the company to members of the board, certain other senior managers, and their relatives. Other transactions between the above categories of persons and the company are null and void, unless approved in advance by the general meeting.

The care/prudence element referred to in Law 2190/1920 refers to the directors' standard of liability vis-à-vis the company for any "fault," including wilful misconduct or negligence. Under Article 22(a) of Law 2190/1920, directors are not liable for faults committed vis-à-vis the company, if they can prove that they exercised a reasonable level of care -- that of a "prudent head of family" -- a standard that may sometimes exclude slight negligence. However, the general managing director can be held liable, even for slight negligence.

The fiduciary duty concept also includes a loyalty element, expressed in a number of provisions that impose restrictions on various types of transactions between the board members and the company. (See the provisions of Arts. 23 & 23(a), discussed above.)

c. ROLE AND RESPONSIBILITY OF THE MANAGERIAL BODY

(1) Role, make-up and powers of the managerial body.

By law, supervisory and management responsibilities are fulfilled by the board of directors. However, it is typical for the board of directors to delegate certain responsibilities to managers. The legislative provisions on management responsibility are therefore essentially identical to the ones discussed in the previous section and apply *mutatis mutandis* to those relating to the management role and responsibilities.

(2) Duties of management members.

See discussion above.

d. SHAREHOLDER RIGHTS

Shares in Greek companies come in either bearer or registered form. While bearer shares are transferred by simple delivery of the share certificates, the transfer of registered shares is subject to various formalities depending on whether or not the shares are listed on the Stock Exchange.

In principle all shares must have the same nominal value (unless they are issued at different times) and are equal in that the rights attaching to them are proportional to the percentage of capital represented by them. An exception to this general rule of equality is preference shares, which give some exceptional rights to their owners, including preferential payment of the first dividend, preferential repayment of the contribution in the case of liquidation and the right to collect a cumulative dividend for financial years during which no dividend was declared.

(1) Decisions reserved to shareholders and the General Meeting.

The general meeting of shareholders is the supreme organ of the Greek stock corporation. It is the forum in which the most important decisions of the company are made. The general meeting has exclusive competence to:

- Make amendments to the company's articles of association (statutes);
- Elect members of the board of directors;
- Appoint statutory auditors;
- Approve the annual accounts and appropriation of the annual profits (dividends);
- Approve issuance of corporate debt;
- Approve the merger, extension of duration or dissolution of the company; and
- Approve the appointment of liquidators.

(2) Shareholders' legal recourse.

As a general rule, a shareholder cannot bring a derivative action on behalf of the company as a direct means of seeking redress against the company's directors. At least as a starting point, an action for damages against any and all members of the board can only be exercised by the board itself, acting on behalf of the company. The board has an obligation to sue for damages, however, if:

- Damage to the company was caused through wilful misconduct of one or more members of the board; or
- The general meeting, or shareholders holding at least one third of the paid-up capital (provided such minority shareholders became shareholders at least three months prior to their request), so requests. (Law 2190/1920, Art. (22(b))

According to certain commentators, if the board fails to take action, despite the existence of previously mentioned mechanisms, individual shareholders may have recourse against the members of the board based on the general provisions on liability and damages action found in the Civil Code. However, this view does not seem to be supported through case law.

As an important exception to the general rule, shareholders may have direct recourse against the members of the board in cases of mergers or acquisitions. The company's bylaws may provide minority or foreign shareholders with special rights relating these transactions. In the absence of such provisions, the law protects shareholders indirectly, through additional provisions on disclosure of information (Law 2190/1920, Art. 69 *et seq.*). In addition, the approval of such transactions by the general meeting of shareholders requires a quorum of two-thirds of the paid-up capital and a two-thirds majority vote.

As an important exception to the absence of any direct liability of the board vis-à-vis shareholders, Law 2190/1920 (Art. 76) provides that the board members of an acquired company are liable vis-à-vis the company's shareholders and third parties for any misconduct they may commit in connection with the preparation and implementation of an acquisition. The same provisions apply, *mutatis mutandis*, in the case of mergers resulting in a new public limited company that absorbs the merged company, and in the case of company divisions.

(3) Duties of controlling shareholders.

Some legal commentators have argued that shareholders have certain fiduciary duties vis-à-vis the company, depending on the level of their participation and the particular circumstances. We are not aware of any case-law supporting this view.

2. CORPORATE GOVERNANCE CODES

A widely recognised code of corporate governance, the Mertzanis Report, was adopted in 1999. More recently, the Federation of Greek Industries adopted a code.

a. MERTZANIS REPORT

Code: Principles on Corporate Governance in Greece: Recommendations for its Competitive Transformation (Mertzanis Report)
Issuing Body: The Committee on Corporate Governance in Greece
Date: October 1999
Official Languages: Greek and English

(1) Background.

(a) Issuing Body: *Committee (commission) organised by government.*

The Committee on Corporate Governance in Greece was an ad hoc committee set up through an initiative of Greece's Capital Market Commission and composed of seventeen members representing the Capital Market Commission, the Union of Members of the Athens Stock Exchange, various private industry bodies, the Union of Greek Banks and the University of Athens. Harilaos V. Mertzanis of the Capital Market Commission served as Committee Co-ordinator.

(b) Legal Basis and Compliance: *Voluntary (may serve as basis for legal reform).*

The Report aims to provide a "code of principles and best practice recommendations." In its Report, the Committee proposes that these recommendations should remain voluntary and subject to review, at least during a first phase, but that their status could be eventually reinforced. The Committee states that it would welcome the future inclusion of these recommendations in the listing standards for Greek companies through a "comply or disclose" requirement.

(c) Consultations.

The Report does not indicate whether any formal consultative process was undertaken.

(d) Contributions.

Members of the Committee contributed to the Mertzanis Report based on their respective organisations' experience and priorities.

(e) Definition of Corporate Governance.

The Report does not offer an express definition of the term "corporate governance."

(f) Objective: *Improve companies' performance, competitiveness and/or access to capital.*

"[The] mandate [of the Committee on Corporate Governance in Greece] is to help establish a competitive framework of corporate behaviour, which would contribute to the effective restructuring of the country's productive and financial system." (Preface)

The Mertzanis Report's objectives can be summarised as: (a) the improvement of Greek companies' performance; (b) the improvement ("normalisation") of international financing and corporate transactions involving Greek companies; and (c) the strengthening of domestic investors' confidence in the ability of Greek companies to adjust to international standards.

The Report's Preface points out that the "expansion of public offerings of new equity has resulted in the transformation of corporate ownership structure." The separation of ownership from control, it is asserted, "is associated with the incident that professional managers may govern the corporation to their own interest rather than the interest of the corporation and its shareholder-owners." Thus, a central premise of the Report is that "the solution involved the effective clarification of rights and responsibilities of all different agents involved in the governance of the corporation as well as their consequences for the latter's performance and prospects."

(g) Scope: Listed companies.

Although the Report is not altogether clear on this point, it appears to be aimed at listed companies.

(2) Supervisory and managerial bodies.

(a) Rules/recommendations regarding the separate roles and responsibilities of supervisory and managerial bodies (including lines of responsibility).

The Committee advocates that the members of the board act in the interests of the company as well as the shareholders. Their duty toward the company is a rule already evident under the law; their duty towards shareholders is generally not reflected in the provisions of the law. The Report states that "[t]he members of the board of directors should . . . act in good faith and with all required diligence and care in the interest of the corporation and its shareholders." (§ 5.1) Similarly, "[a]ll members of the board of directors should exercise their duties in an independent manner, taking into account exclusively the interest of the corporation and its shareholders." (§ 5.12) The Report defines the board of directors as the authority that governs the corporation. Its duties include decision-making and the responsibility for exercising full and efficient supervision of all activities of the corporation. (§ 5.1) In line with the general principles of Law 2190/2190, the board of directors combines managerial and supervisory functions.

The Report describes the board's mission in fairly broad terms, which replicate, at least partly, the relevant provisions of Law 2190/1920. Specifically, the board of directors has the responsibility for:

- The general strategy and planning of the corporation, the formation of the corporation's annual budget and business plan, the determination of the corporation's performance targets and the monitoring of the efficacy of governance practices followed during the operation of the corporation and in large capital transactions (§ 5.3.1);
- The adoption and implementation of the corporation's general policy based on the suggestions and recommendations by executive management (§ 5.3.2);

- The selection, appointment and monitoring of executive management and the determination of their compensation by taking account of the corporation's interests as well as the executive management's dismissal and replacement (§ 5.3.3);
 - The consistency of disclosed accounting and financial statements, including the report of the (independent) certified accountants, the existence of risk evaluation procedures, supervision, and the degree of compliance of the corporation's activities to existing legislation (§ 5.3.4);
 - The reporting of the corporation's activities to its shareholders (§ 5.3.6); and
 - The monitoring of the efficacy of governance practices, which characterise the operation of the board of directors and the decision-making procedures. (§ 5.4)
- (b) Rules/recommendations regarding the accountability of supervisory and managerial bodies (including conflicts of interest).

The Report states that it is the responsibility of the board of directors to monitor and resolve conflicts among executive management, the members of the board of directors and the shareholders, including cases of mismanagement of the corporate assets and private beneficial transactions. (§ 5.3.6)

- (c) Rules/recommendations regarding the size, composition, independence and selection criteria and procedures of supervisory and managerial bodies.

The Report considers it to be good practice to have the majority of the members of the board of directors consisting of non-executive members so that independent judgement is ensured. (§ 5.6) According to the Report, in order to remain independent, non-executive members of the board should not:

- Presently be or in the past year have been a member of the executive management of the company or of a board of directors of a directly or indirectly connected affiliate of the company (§ 6.3.1);
- Be related to executive members of the board (§ 6.3.2);
- At the same time be a member of the group forming the majority of shareholders of the company, have been elected as a candidate by that group or be involved in any transactions with that group (§ 6.3.3);
- Have any other relationship with the company, which, by its nature, may affect his or her independent judgement. More specifically, these members may not be suppliers of goods or services to the company, nor a member of a company that provides consulting services to the company. Any negotiations between a non-executive member of the board and the company should be confined to compensation matters (§ 6.3.4).

The Mertzanis Report states that, as a matter of good practice, the non-executive members of the board should not be elected for many terms. (§ 6.4) Furthermore, they recommend that the company's CFO should be part of the company's executive management team (*i.e.*, as an executive member of the board). (§ 7.3)

(d) Rules/recommendations regarding the working methods of supervisory and managerial bodies (including information flows).

The Mertzanis Report's recommendations state that the board should meet at least once a month (depending on the size of the corporation and the sector to which it belongs). (§ 5.1) The Report encourages the establishment of an internal audit committee. This Committee should consist of non-executive members of the board of directors whose power and duties should be clearly described during the approval of their appointment by the general meeting. (§ 4.7) The internal audit committee:

- Should be established as a sub-committee of the board of directors to which it should be accountable and which it should inform regularly. The operation of the sub-committee should be characterised by clearly defined reference terms, describing adequately conditions of participation, authority and duties. The meetings of the sub-committee should take place regularly -- two or three times per year (§ 4.7.1);
- Should include in its composition at least three non-executive members of the board of directors (§ 4.7.2);
- Should communicate with the internal (independent) and external auditors of the corporation with the purpose of achieving a settlement of all unresolved issues in the corporation (§ 4.7.3);
- Should have the authority to inquire into all matters that fall into its domain and the financial resources and information required to accomplish its tasks. The Internal Audit Committee should be able to obtain external advice and, if necessary, to invite external specialists to attend the meetings of the committee (§ 4.7.4); and
- Should disclose its composition in the company's annual report. (§ 4.7.5)

In addition, the Report considers it to be good practice for the general meeting of shareholders to establish a review committee that consists of a majority of non-executive board members to review management compensation. The review committee's composition should be disclosed in the company's annual report. (§ 7.2)

(e) Rules/recommendations regarding remuneration of members of supervisory and managerial bodies (including evaluation procedures).

The Report states that the compensation of non-executive members of the board should be commensurate to the time they devote to board meetings and decision-making, and should not be tied to the company's financial performance. Their compensation may take the form of stock options but it should not take the form of participation in the company's insurance or pension programs. The total compensation of non-executive members of the board should be reported separately and with the required justification in the company's annual report. (§ 6.1)

As a matter of good practice, the Report is in favour of tying the compensation of executive members of the board or other senior managers to the company's general level of profitability and overall performance. It is also considered a good practice that the total compensation of management be disclosed and justified in the financial

statements of the corporation. Concrete determination procedures should be adopted for management compensation. (§ 7.1)

- (f) Rules/recommendations regarding the organisation and supervision of internal control systems and relations between supervisory bodies, managerial bodies and internal/external auditors.

As discussed above, the Report encourages the establishment of an internal audit committee, that should include at least three non-executive members of the board. (§ 4.7) In addition, the Report states that the board of directors should provide adequate assurance to the general meeting that the external auditors have no direct or indirect relationship with the company that could affect their judgement and evaluation. (§ 4.5) Additionally, the Report recommends that:

- The board of directors should provide adequate assurance to the general meeting that the internal (independent) auditors are given the required financial and operating autonomy to accomplish their task to a full extent. The internal auditors should be supervised in a satisfactory manner (§ 4.6);
- The board of directors should make available the resources required to assist the exercise of proper and efficient internal auditing (§ 4.8); and
- The members of the board should disclose to the internal audit committee all necessary information regarding the prospects of the company (§ 4.9).

(3) Rights of Shareholders/Stakeholders.

- (a) Rules/recommendations regarding protection of the rights of shareholders.

The Report discusses and clarifies the law's provisions on shareholder protection and suggests complementary guiding principles. It emphasises that shareholders are entitled to relevant information from the corporation on a timely and regular basis. (§ 1.1.3) Shareholders should have sufficient and timely information regarding the date, the place and the agenda of the general shareholder meeting as well as the issues on which the general shareholder meeting will have to make decisions. (§ 1.3.1) Shareholders representing a sufficient amount of shares should have the opportunity to ask questions and recommend actions to the members of the board of directors. (§ 1.3.2)

The rules and procedures governing the selection of candidates for the board of directors, the acquisition of control of a listed corporation, and the execution of unusual and complex transactions (mergers, acquisitions and sales of a considerable portion of the corporation's assets), should be fully analysed and disclosed so that investors know their rights and the procedures to be followed. The price of transactions should be transparent and settled in terms and conditions that protect the rights of the shareholders. (§ 1.4.1) Capital structures and arrangements that enable certain shareholders to obtain a degree of control disproportionate to their equity ownership should be disclosed. (§ 1.4.2)

The Report states that the board of directors should present to the general meeting a clear and credible evaluation of the existing situation and the prospects of the company. The annual report and the quarterly financial statements should contain

consistent reporting of the entire financial situation of the corporation, supplemented by the provision of sufficient information on the corporation's performance and prospects. (§ 4.4)

(b) Rules/recommendations regarding equal/fair treatment of shareholders.

In an effort to promote equal voting rights of shareholders, the Report states that multiple voting procedures and the issuance of non-voting privileged shares should be discouraged. (§ 1.6) It states that all shareholders of the same class should be treated equally. (§ 2.1) Specifically, the Report recommends that:

- Within any class, all shareholders should have the same voting rights. All investors should be able to obtain information on the voting rights affiliated with all classes of shares before their purchase of shares. Any changes in voting rights between or within classes should be subject to shareholder vote (§ 2.1.1);
- Votes through a representative should be cast after consultation with the legal owner of the shares (§ 2.1.2); and
- Procedures for general shareholder meetings should ensure the equitable treatment of all shareholders. The procedures of the corporation should make it simple and inexpensive to cast votes (§ 2.1.3).

(c) Rules/recommendations regarding the rights of stakeholders.

The Report's references to the interests of employees or other stakeholders are very general and effectively limited to ensuring that any relevant legislative provisions (of which there are very few) should be respected. Thus, according to the Report, the corporate governance framework should ensure that the rights of stakeholders that are protected by law are respected. (§ 3.1) Where the law protects stakeholder interests, stakeholders should have the opportunity to seek effective redress for violation of their rights. (§ 3.2) The corporate governance framework should encourage the role of stakeholders in the corporation in a manner that enhances the performance of the corporation and the market. There should be provision for the disclosure of information, which is relevant to the interests of stakeholders. (§ 3.3) Finally, where stakeholders participate in the corporate governance processes, they should have access to relevant information. (§ 3.4)

The Report does not refer directly to the board's obligation to protect the interests of employees and other stakeholders. However, it can be assumed that such an obligation is commensurate with the extent to which the protection of these interests is reflected in the company's bylaws or in the law.

Additional information about the Mertzanis Report is included in the Comparative Matrix appended to this Report as Annex V.

b. FEDERATION OF GREEK INDUSTRIES PRINCIPLES

Code: Principles of Corporate Governance
Issuing Body: The Federation of Greek Industries (Σύνδεσμος Ελληνικών Βιομηχανιών)
Date Issued: August 2001
Official Language: Greek (English translation available)

(1) Background

(a) Issuing Body: *Business, industry and/or academic association or committee.*

The Federation of Greek Industries (“FGI”) is an independent, non-profit association, sustained by dues paid by members. FGI members are individual enterprises or employer organisations from various industries and sectors, ranging from very small entities to small, medium and large corporations. The majority are small-to-medium enterprises, according to the definition prevailing in the European Union. The main body of FGI members (more than 85%) are manufacturing enterprises and the corresponding sectoral or regional employer organisations. The remaining members are firms or employer organisations belonging to the service sector -- such as administration, auditing, financing, computer services, personnel training, public relations, advertising and distribution. Firms in which the State is a shareholder may be members of FGI if they operate on market economy principles.

(b) Legal Basis and Compliance: *Voluntary (disclosure encouraged).*

Compliance with the FGI Principles is purely voluntary (§§ 1.4 & 7.1). All FGI members are expected to adhere to the FGI’s Code of Conduct, and it is recommended for public limited liability companies listed on the Athens Stock Exchange (§ 1.6). FGI is strongly opposed to the “penalisation” of corporate governance through legislative measures.

(c) Consultations.

We have no information suggesting that the preparation of the Principles involved any consultation with other bodies. It can be reasonably assumed that it is a largely internal product, prepared in consultation with FGI’s management.

(d) Contributions.

See above.

(e) Definition of Corporate Governance.

Section 1.1 of the Principles defines corporate governance as “a system of principles providing the basis for the organisation, operation and management of a public limited liability company (Ανώνυμη Εταιρεία), in a manner that ensures the protection and satisfaction of the legitimate interests of all persons linked to the company in the framework of the company’s interests.”

According to Section 1.2 of the Principles, the aim of corporate governance is to serve the “company’s interests” on an uninterrupted basis. The “company’s interests” are

the combined interests of the company, as a separate legal entity, and of the legitimate interests of all stakeholders linked to that company.

- (f) Objective: *Improve companies' performance, competitiveness and/or access to capital.*

Although the Principles do not express a specific objective, it appears that they are designed to encourage Greek companies to improve their corporate governance practices to achieve enhanced corporate performance, competitiveness and access to capital.

- (g) Scope: *Listed companies; encouraged to all companies.*

The Principles are addressed to all companies, but are especially recommended for public limited liability companies listed on the Athens Stock Exchange.

(2) Supervisory and Managerial Bodies.

- (a) Rules/recommendations regarding the separate roles and responsibilities of supervisory and managerial bodies (including lines of responsibility).

The FGI Principles do not define the job of the supervisory body (*i.e.*, the board of directors) in detail, but provide that its most important task is the protection and promotion of the “company’s interests” (defined as the combination of the interests of the company, as a distinct legal entity, and those of the associated stakeholders) and the achievement of continuous returns reflected in a long-term improvement of the company’s share value. (§ 2.4.)

The Principles recognise that the board of directors has a role within the company distinct from the role of management. The full board has authority to make decisions on company objectives and guidelines, which the executive directors (and other management personnel) have the responsibility subsequently to implement. In accordance with the distinct role of the board, the Principles indicate that board committees should consist of a majority of non-executive directors. (§ 2.2)

- (b) Rules/recommendations regarding the accountability of supervisory and managerial bodies (including conflicts of interest).

According to the Principles, board members should not pursue interests that are contrary to those of the company or its affiliates. They must reveal to the board any potential conflicts of interest that may result from major transactions of the company or otherwise. (§ 2.5) Board members should communicate to the board their intentions regarding any important transactions and financial activities relating to the company, as well as to any of its important clients or suppliers. (§ 2.6)

- (c) Rules/recommendations regarding the size, composition, independence and selection criteria and procedures of supervisory and managerial bodies.

The Principles state that the non-executive members of the board must be experienced professionals, with social recognition and proven objective judgement. (§ 2.3) The independent non-executive members of the board must have no family links (up to the second degree) with the controlling shareholder and they may not own more than 5%

of the company's or any of its subsidiaries' shares. (§ 2.3) The procedures and criteria for the selection of the company's management must be laid down in the company's internal operation rules. (§ 3.2(b))

- (d) Rules/recommendations regarding the working methods of supervisory and managerial bodies (including information flows).

The Principles propose the creation of at least two committees comprised of board members: the "internal control committee" and the "compensation and benefits committee." (§ 5.1) The majority of these two committees' members must be non-executive members of the board. (§ 2.2)

The internal control committee must meet at least three times per year. Its main task is evaluating and reporting to the board on the findings resulting from public regulatory authorities as well as the company's own internal and external control functions. (§ 5.2.)

The compensation and benefits committee must determine the remuneration and benefits of the board's executive members, and decide on the general remuneration policy for the company's management.

- (e) Rules/recommendations regarding remuneration of members of supervisory and managerial bodies (including evaluation procedures).

The Principles recommend that every board implement a compensation and benefits committee, that must decide on the general remuneration policy for the company's management. The compensation of non-executive directors is not addressed.

- (f) Rules/recommendations regarding the organisation and supervision of internal control systems and relations between supervisory bodies, managerial bodies and internal/external auditors.

The FGI Principles recognise that the regulation of internal operations and, specifically, internal control systems, are "fundamental" to good corporate governance. (§§ 3.1, 4.1)

Internal control is to be implemented on a day-to-day basis by a specific department or individual. (§ 4.1) The head of this department, or the sole individual who fills this role, is called the "internal controller." (§ 4.2) Appointed by the board of directors, the internal controller is positioned within the company's management structure, yet is to maintain independence from management in the exercise of duties. (§§ 4.2, 4.3) Both the board of directors and management are to provide the internal controller with all means necessary to exercise appropriate and effective internal control. (§ 4.4) Duties of the internal controller include ensuring company compliance with all applicable laws and regulations, identifying any conflicts of interest between members of the board or executives and the company, drafting quarterly reports to the board of directors on the current status of internal control, and supplying requisite disclosure of company information to public authorities. (§ 4.5)

(3) Rights of Shareholders/Stakeholders.

(a) Rules/recommendations regarding protection of the rights of shareholders.

The FGI Principles do not contain any provisions dealing specifically with the protection of shareholders' rights, other than a set of recommendations relating to the disclosure of additional financial information that the board should present to the general assembly prior to any capital increase through cash payment. (§ 6.1) These disclosure rules are toned down in cases of capital increase through the board's decisions that are allowed under Law 2190/1920. (§ 6.2) Further, the board may approve, by two-thirds majority, substantial changes to the use of the capital provided under Sections 6.1 and 6.2, but inform the next general assembly of these changes. (§ 6.3)

(b) Rules/recommendations regarding equal/fair treatment of shareholders.

The Principles do not address this topic.

(c) Rules/recommendations regarding the rights of stakeholders.

The Principles do not address this topic.

Additional information about the Federation of Greek Industries Principles is included in the Comparative Matrix appended to this Report as Annex V.

H. IRELAND

1. LEGAL SYSTEM OVERVIEW

| COMMON LAW SYSTEM | |
|---|---|
| LEGAL/REGULATORY FRAMEWORK | ENFORCEMENT / REGULATORY BODIES |
| COMPANY LAW FRAMEWORK <ul style="list-style-type: none">• Companies Acts 1963-1999 | <ul style="list-style-type: none">• Director of Public Prosecutions• Central Bank of Ireland |
| SECURITIES LAWS/REGULATIONS <ul style="list-style-type: none">• Companies Acts 1963-1999• UKLA's Listing Rules (as amended by The Board of The Irish Stock Exchange Limited) | <ul style="list-style-type: none">• Director of Public Prosecutions• Central Bank of Ireland |
| STOCK EXCHANGE LISTING RULES <ul style="list-style-type: none">• UKLA's Listing Rules (as amended by The Board of The Irish Stock Exchange Limited)• The Decision of the Ministry of Finance on Prospectus (1994/905)• The Decision of the Ministry of Finance on the Regular Duty of Disclosure of the Issuer of Securities (1999/390)• The Decision of the Ministry of Finance on the Conditions for the Admission of Securities to Stock Exchange Listing (1994/906) | <ul style="list-style-type: none">• The Board of The Irish Stock Exchange Limited• The Irish Take-over Panel |

a. GENERAL

The rapid growth of the Irish economy in recent years has created a burgeoning stock market and, in turn, has increased attention to company law and corporate governance specifically. While many aspects of listed company practices in Ireland are inherited from the United Kingdom, Ireland has recently become more active in creating a legislative and regulatory framework to create an attractive environment for international business and investment.

The Irish Stock Exchange officially separated from the London Stock Exchange in 1995. Since that separation, it has established corporate governance practices similar to those of the London Exchange, including most recently a requirement that companies disclose individual directors' and executives' remuneration rather than the aggregated figure typically disclosed in other EU Member States.

Other recent efforts include a Company Law Consolidation initiative, aiming to create a single companies code containing provisions of both domestic and European Union commercial laws.

b. ROLE AND RESPONSIBILITY OF THE SUPERVISORY BODY

(1) Type of board system: *One-tier.*

Corporations formed under the Irish Companies Acts 1963-1999 adhere entirely to a unitary board system.

(2) Role, make-up and powers of the supervisory body.

The articles of association of companies incorporated in Ireland almost invariably include a provision delegating the management of the company to its board of directors. The Companies Act 1963, Table A, Art. 80 (a model form of articles of association incorporated into the articles of association of all companies, except to the extent that they are excluded or modified by the company's own articles of association) provides that the business of the company is to be managed by the directors. The board typically delegates day-to-day management to professional managers that it appoints.

Appointing and dismissing senior managers, including persons who become executive directors, is part of the board's responsibility to manage the business of the company.

(3) Duties of the supervisory body.

Under common law, the directors of a company incorporated in Ireland owe their duty to the company as a whole and not to individual shareholders. Although Companies Act 1990, § 52 requires the directors to have regard for the interests of the company's employees, the section makes it clear that this "duty" is owed to the company as a whole and not to the employees either as a group or as individuals.

Established case law (often English but cited with approval in the Irish courts) identifies the following fiduciary duties owed by directors to the company:

- To act in good faith in the interests of the company;
- To exercise powers for a proper purpose;
- To avoid placing themselves in a position where conflicts arise between their own interests and those of the company; and
- To avoid making improper profits.

The directors have responsibility for ensuring the company's compliance with all applicable laws and regulations. This responsibility is based on common law principles but is reinforced, in many cases, by legislation which may impose liability of the directors for the company's failure to comply with that legislation. The provisions of the Companies Act 1990, which deal with a company's accounts and records, also make non-compliance with those provisions an offence for which the relevant company's directors are liable. (Companies Act 1990, Part X)

c. ROLE AND RESPONSIBILITY OF THE MANAGERIAL BODY

(1) Role, make-up and powers of the managerial body.

Legal responsibility derives from a mix of common law and contract. As stated above, the articles of association of most companies delegate the management of the company's affairs to its directors. Under Irish law, articles of association take effect as a contract between the company and its members.

The roles of chairman and chief executive are usually separated at Ireland's top public companies. This is not legally mandated, but instead is the result of institutional investors who, as in the United Kingdom, have pressured companies in which they invest to separate the two roles. This separation is also consistent with the recommendations of Combined Code, which has been adopted by the Irish Stock Exchange.

(2) Duties of management members.

Under Irish law, the directors have responsibility for the management of the company and may further delegate to managers. The nature and extent of a manager's duties will depend upon the manager's particular circumstances and the contents of any contract of employment.

d. SHAREHOLDER RIGHTS

Shares in Irish companies usually adhere to the one-share/one-vote principle. However, companies are not prohibited by law or the Irish Stock Exchange from featuring voting restrictions or multiple-voting shares. Shares may be divided into different classes according to their value, the nature of rights granted or both. Different classes of shares may have different voting rights and different rights to receive dividends. All shares of the same class must be assigned the same value and accorded the same rights.

(1) Decisions reserved to shareholders and the general meeting.

The Irish Stock Exchange requires companies to disclose, along with their audited financial statements, details regarding their share structure and significant shareholders. Stock in Irish companies may be in either registered or bearer form.

The Companies Act of 1963 requires shareholder approval of the directors' report and annual accounts. Other decisions which require shareholder approval in Ireland include:

- Approval of dividends;
- Election of directors;
- Appointment of auditors;
- Approval of auditors' fees;
- Authorisation of share repurchases;
- Approval of dividend reinvestment plans;

- Amendment of articles of association;
- Approval of stock issues;
- Increase of authorised capital;
- Approval or amendment of stock option plans;
- Approval of directors' fees; and
- Approval of stock purchase plans.

(2) Shareholders' legal recourse.

Generally speaking, individual shareholders have no right of action against the directors for breach of their duties. Any rights arising from such a breach are rights exercisable by the company (in other words, the shareholders acting as a body) although there are exceptions to this rule. Irish law follows English law in this area (see the discussion of the rule in *Foss v. Harbottle* in the separate report on the UK).

Individual shareholders may, depending upon the nature of the conduct complained of, be able to commence and prosecute proceedings under Companies Act 1963, § 205, which deals with the oppression of minority shareholders.

(3) Duties of controlling shareholders.

Ireland does not impose any particular duties on controlling shareholders.

2. CORPORATE GOVERNANCE CODES

The Irish Association of Investment Managers ("IAIM") was among the first organisations in the Member States to issue a code document. Its Statement of Best Practice on the Role and Responsibilities of Directors of Public Limited Companies was issued in 1992. However, the IAIM has confirmed that this code and another code it previously issued -- Corporate Governance and Incentivization Guidelines (October 1998) -- have been superseded and replaced by the Corporate Governance, Share Option and Other Incentive Scheme Guidelines (March 1999), which endorse the U.K.'s Combined Code.

Ireland's adoption of the Combined Code was confirmed by Irish Stock Exchange and Central Bank representatives. The Combined Code has been annexed to the listing rules of the Irish Stock Exchange, requiring Irish listed companies to either comply with its recommendations or publicly explain their departure.

The OECD Principles of Corporate Governance are widely referenced in Ireland, as is the Irish Bankers Federation Code of Ethics and Practice (late 2000), a document that does not fit the definition of "corporate governance code" that is used in this Study.

There are no official reports analysing the way codes are applied in practice. However, the IAIM is reported to be working on a survey of Irish listed companies to determine whether the independence requirements of the Combined Code, now appended to the Irish Stock Exchange listing rules, are being complied with.

a. IAIM GUIDELINES

Code: Corporate Governance, Share Option and Other Incentive Scheme Guidelines

Issuing Body: Irish Association of Investment Managers (IAIM)

Date: March 1999

Official Language: English

(1) Background.

(a) Issuing Body: *Investors association.*

The IAIM is a representative body for institutional investors. Its members include most of Ireland's pension funds and many other large institutional investors.

(b) Legal Basis and Compliance: *Voluntary (now disclosure in line with the Combined Code's provisions).*

The Combined Code, endorsed by the IAIM, has been annexed to the listing rules of the Irish Stock Exchange ("ISE"). The ISE's listing rules take a "comply or explain" approach, requiring listed companies to disclose in their annual reports whether they are in compliance with the principles and recommendations of the Combined Code. If they are not in compliance, the listing rules require them to explain and justify this deviation in the annual report.

The IAIM Guidelines create a disclosure framework through their adoption of the Combined Code. The Guidelines use IAIM's position as the representative of institutional shareholders to influence companies to adopt their standards (especially regarding remuneration issues).

(c) Consultations.

The IAIM consulted with companies listed on the Irish Stock Exchange.

(d) Contributions.

These Guidelines endorse the U.K.'s Combined Code (below).

(e) Definition of Corporate Governance.

The Guidelines do not offer an express definition of the term "corporate governance."

(f) Objective: *Improve quality of board (supervisory) governance.*

"The IAIM endorses the Combined Code in its entirety. . . . In these revised Guidelines, . . . the IAIM has placed particular emphasis on the trend towards wider and deeper share ownership. This not only fosters increased employee commitment but also has been shown to enhance corporate performance and shareholder value." (Introduction)

IAIM's endorsement of the Combined Code includes the Combined Code's requirements regarding disclosure of director's remuneration, which the IAIM

Guidelines call “the area of single greatest difference between the corporate governance regimes of Ireland and the U.K.”

The Guidelines offer additional guidance to boards regarding issues of remuneration, namely share option and other incentive schemes. The Guidelines are stated to be “for the benefit of companies listed on the Irish Stock Exchange and are intended to give guidance to them on the attitude likely to be adopted by investment managers when such schemes are presented for approval at meetings of shareholders.”

(g) Scope: Listed companies.

The Guidelines are aimed at companies listed on the Irish Stock Exchange.

(2) Supervisory and Managerial Bodies.

(a) Rules/recommendations regarding the separate roles and responsibilities of supervisory and managerial bodies (including lines of responsibility).

The IAIM Guidelines contain a statement of endorsement of the UK’s Combined Code (see U.K. section, below) in its entirety. (Introduction, § 1) The IAIM Guidelines do not address this topic directly, but refer instead to the provisions of the Combined Code.

(b) Rules/recommendations regarding the accountability of supervisory and managerial bodies (including conflicts of interest).

These Guidelines do not address this topic directly, but refer to the provisions of the Combined Code.

(c) Rules/recommendations regarding the size, composition, independence and selection criteria and procedures of supervisory and managerial bodies.

These Guidelines do not address this topic directly, but refer to the provisions of the Combined Code.

(d) Rules/recommendations regarding the working methods of supervisory and managerial bodies (including information flows).

These Guidelines do not address this topic directly, but refer to the provisions of the Combined Code.

(e) Rules/recommendations regarding remuneration of members of supervisory and managerial bodies (including evaluation procedures).

In addition to endorsing those statements concerning remuneration set out in the Combined Code, the IAIM Guidelines contain detailed guidelines concerning share option and other long-term incentive schemes. The most significant of these guidelines concern the selection of appropriate performance measures (§ 1), the need for shareholders to approve share option plans and other long-term incentive schemes and any amendments to them (§ 3), the disclosure of information concerning share options schemes (§ 4) and “caps” on the number of shares which may be subject to share options schemes (§ 6).

The Guidelines state that the remuneration committee is expected to select appropriate performance measures for evaluations and remunerating top executives and to satisfy itself that relevant performance measures have been fully met. Further, it states that all share option and other long-term incentive schemes should require the satisfaction of measurement criteria which are based on sustained and significant improvement in the underlying financial performance of the company. (§ 1)

- (f) Rules/recommendations regarding the organisation and supervision of internal control systems and relations between supervisory bodies, managerial bodies and internal/external auditors.

These Guidelines do not address this topic directly, but refer to the provisions of the Combined Code.

(3) Rights of Shareholders/Stakeholders.

- (a) Rules/recommendations regarding protection of the rights of shareholders.

While it is not stated expressly, the 1999 Guidelines were published for the purpose of protecting the interests of institutional shareholders. The IAIM is a body representing institutional shareholders and it is therefore safe to assume that the Guidelines were published for their benefit.

- (b) Rules/recommendations regarding equal/fair treatment of shareholders.

These Guidelines do not address this topic directly, but refer to the provisions of the Combined Code.

- (c) Rules/recommendations regarding the rights of stakeholders.

The Guidelines discuss at length the appropriate form of various employee incentive schemes. (§§ 19-23)

The Guidelines state that share option and other incentive schemes involve making available some of the equity or profits of the company to employees/directors of the company, thus diluting the interests of shareholders. The Guidelines state that institutional shareholders, in voting to approve such scheme, should assure that enhanced performance is achieved in order to maximise return to their clients. (Introduction § 3)

Additional information about the IAIM Guidelines is included in the Comparative Matrix appended to this Report as Annex V.

I. ITALY

1. LEGAL SYSTEM OVERVIEW

| CIVIL LAW SYSTEM | |
|---|---|
| LEGAL/REGULATORY FRAMEWORK | ENFORCEMENT/ REGULATORY BODIES |
| <p>COMPANY LAW FRAMEWORK</p> <ul style="list-style-type: none"> • Civil Code, Book V, Chapter V. <ul style="list-style-type: none"> ➤ (See Shareholders' Meetings (Arts. 2363-2379); Role of the Board of Directors (Arts. 2380-2396); Board of Auditors (Arts. 2397-2409); Auditor's Report and Financial Statements (Art. 2429)) • Legislative Decree of 24 February 1998 n. 58, "Consolidated law on financial intermediation" ("T.U.F." or "Draghi Reform") Part IV -- Title III, Chapters 1 & 2. (Applies to listed companies; was promulgated among other things to protect minority shareholders and promote transparent management.) • Legislative Decree of 30 March 2000 n. 162. (Introduced new criteria for the composition of the board of auditors of listed companies.) | <ul style="list-style-type: none"> • Civil Courts |
| <p>SECURITIES LAWS/REGULATIONS</p> <ul style="list-style-type: none"> • Legislative Decree n. 58/98 -- ("Consolidated Law on Financial Intermediation") Part IV, Title II, Chapter II, §§ I & II; and Part IV, Title III, Chapter II, § II. • <i>Commissione Nazionale per le Società e La Borsa</i> (National Commission for Companies and the Stock Market) ("CONSOB") Regulation, 11520/1998 Part II -- Titles I & II -- Arts. 3-18; 11971/1999 as integrated and amended by Deliberation n. 12475 issued on 6 April 2000 and by Deliberation n. 13086 issued on 18 April 2001. (Prescribes company duties regarding the communication of information to CONSOB on significant transactions.) | <ul style="list-style-type: none"> • CONSOB (Italian Securities Regulatory Body) |
| <p>STOCK EXCHANGE LISTING RULES</p> <ul style="list-style-type: none"> • Rules of the Markets Organised and Managed by the Italian Stock Exchange (2 April 2001) (the "Stock Exchange Rules"). (Title 2.2 of the Stock Exchange Rules, particularly Art. 2.1.3, conditions for admission to listing & Art. 2.1.4, additional requirements for foreign issuers.) • Instructions Accompanying the Rules for the Markets Organised and Managed by the Italian Stock Exchange (2 April 2001) (the "Stock Exchange Instructions"). • Rules of the <i>Nuovo Mercato</i> Organised and Managed by the Italian Stock Exchange (11 October 2000). • Instructions Accompanying the Rules of the <i>Nuovo Mercato</i> Organised and Managed by the Italian Stock Exchange (11 October 2000). | <ul style="list-style-type: none"> • The Italian Stock Exchange and CONSOB |

a. GENERAL

Corporate governance has been the subject of considerable legislative reform activity in the past several years, beginning with the Draghi proposals, which called for enhanced transparency and minority shareholder protections for listed companies. The Consolidated Law on Financial Intermediation that resulted is commonly called T.U.F. or the "Draghi Reform." Following its promulgation, a technical committee was appointed and entrusted to draft a law amending various aspects impacting the governance of non-listed companies. The committee finished its work on February 15, 2000 and submitted a draft bill to the Parliament. The Government

approved the draft on May 26, 2000 (Mirone Reform). Further amendments were introduced to this bill and Law 340/2000 was passed at the end of 2000.

Note that the Milan Stock Exchange inaugurated a special STAR segment in April 2001 for companies with market capitalizations of less than Euro 800 million that agree to meet heightened standards for liquidity, transparency and corporate governance.

b. ROLE AND RESPONSIBILITY OF THE SUPERVISORY BODY

(1) Type of board system: *One-tier; board of auditors also required.*

The Italian corporation (*società per azioni* (“S.p.A.”)) is directed by a board of directors (*consiglio d’amministrazione*) which may be comprised of one or more members, depending upon its charter provisions. (Civil Code, Art. 2380) Note that Italy also requires that a separate board of auditors oversee the accounting and financial reporting functions of the company.

Board of statutory auditors: Each S.p.A. must have a board of statutory auditors (*sindaci*) consisting of either three or five members as well as two alternate members. (Civil Code, Art. 2397) The members of this body are not members of the board of directors and must be registered in the Registry of Accounting Inspectors (*registro dei revisori contabili*). (This requirement does not apply to those companies listed on a stock exchange.) The members are appointed to renewable three-year terms at ordinary general shareholders meetings (except for the first board, which is appointed at the incorporation meeting). The chairman of the board of statutory auditors must be appointed at the ordinary general shareholders meeting. (Civil Code, Art. 2398)

The duty of the board of auditors is to oversee the accounting and financial reporting functions of the company, as well as the company’s compliance with the laws and the bylaws. (Civil Code, Art. 2403) In listed companies, the duties of the board of auditors also include the company’s compliance with fair management principles and the adequacy of the company’s internal organisation, with specific reference to the internal control and reporting system. (T.U.F., Art. 149) In this role, the board of auditors monitors the company’s directors and its management, the internal control and accounting system, and compliance with the law, and serves to protect the interests of shareholders. The board of auditors has significant investigative powers and may request the courts to investigate when it has a well-founded suspicion of series irregularities in the performance of the board of director’s duties. In listed companies, the board of directors is required to inform the board of auditors promptly, at least every three months, about the company’s performance, financial position and related parties’ transactions. (T.U.F., Art. 150) In unlisted companies, the board of auditors is obliged to audit the accounts; in listed companies, the accounts must be audited by external auditing firms. In listed companies, the board of auditors and the external auditing firms must exchange data and information relevant to the performance of their respective duties. The board of auditors is required to meet at least once every three months. It is liable along with the company’s directors for any act or omission of the directors where the resulting injury to the company would not have occurred if the auditors had exercised reasonable diligence. (Civil Code, Art. 2407)

The board of auditors, though powerless in matters of corporate policy or strategy, must attend all meetings of the board of directors and all shareholders meetings. (Civil Code, Art. 2405) In listed companies they must also attend meetings of the executive committee. (T.U.F., Art. 149) In listed companies, the board of auditors must report on its oversight activities to the shareholders meeting called to approve the annual accounts and may make proposals to the meeting concerning the accounts, as well as other matters within its authority. (T.U.F., Art. 153) The board of auditors is also required to call the annual general shareholders meeting if the board of directors fails to do so; in listed companies, the board of auditors, with prior notice to the chairman of the board of directors, may also call meetings of shareholders, the board of directors and the executive committee. (T.U.F., Art. 151) All shareholders have the right to bring matters to the attention of the board of auditors that they consider to be in violation of accepted accounting practices or relevant laws. (Civil Code, Art. 2408)

The statutory auditors are required to fulfil their duties diligently; they are responsible for the truth of their statements and they are jointly liable with the directors for acts or omissions of the latter when the injury would not have occurred if they had exercised due care. The statutory auditors have a responsibility towards the company and the company's creditors, pursuant to Articles 2393 and 2394 of the Civil Code. In listed companies, minority shareholders have the right (to be set forth in the company's bylaws) to appoint at least one member of the board of statutory auditors when the board consists of three auditors and have the right to appoint at least two members when the board consists of more than three auditors. (T.U.F., Art. 148) In listed companies, the board of statutory auditors must inform CONSOB of any irregularity found in discharging their supervisory role. (T.U.F., Art. 149)

(2) Role, make-up and powers of the supervisory body.

The role of the board of directors is neither defined nor explicitly described in Italian company law. Its role is therefore derived from interpretation of a number of civil code articles and specifically defined in each company's charter. The Civil Code (Art. 2392(I)) states that directors must diligently fulfil duties imposed upon them by law and by their company's articles of association. This provision has been interpreted and applied by the Courts to require that such diligence be evaluated in the light of particular business circumstances.

The Civil Code governs some aspects of board function. In particular, Article 2381 enables the board to delegate some of its responsibilities to an executive committee composed of some of its members, while determining the limits of such delegation. Certain board responsibilities cannot be delegated. Responsibilities may also be delegated to a single member of the board (managing director).

The Italian board of directors serves the supervisory role common to boards in unitary board systems and is responsible for appointing and dismissing executive managers. It is also responsible for ensuring the integrity of the corporation's accounting, audit and financial reporting systems, and must exercise this responsibility consistent with the responsibilities of the board of auditors to supervise the preparation of accounts, pursuant to the Civil Code (Art. 2403) and the T.U.F. (Art. 149). The board must also submit draft financial statements to the board of auditors (*collegio sindacale*) for its

approval; listed companies must submit them to the external auditors for their approval, pursuant to the T.U.F. (Art. 155)

(3) Duties of the supervisory body.

The Civil Code provides that the board of directors owes three different responsibilities:

- Towards the company (Art. 2392) and the T.U.F. (Art. 129);
- Towards the company's creditors (Art. 2394); and
- Towards each shareholder and towards third parties (Art. 2395).

Italian law does not require the supervisory body to grant protection to any particular constituencies. However, in practice, through the system of shareholders' agreements or other agreements, members of the board of directors often act as representatives of the interests of particular shareholders.

The directors' duty to the company relates to leading the company and supervising the general conduct of its business. Directors are jointly liable for damages to the company caused by failure to uphold their duties except for functions which fall solely under the auspices of the executive committee managing directors. Regardless, directors are jointly liable if they fail to properly supervise the general conduct of the business or if, being aware of potential harm to the company, they fail to act.

Under the Civil Code (Art. 2394), directors can be held liable to creditors of the company for breach of their obligation to preserve the integrity of the company's worth. Directors can also be held liable to individual shareholders and third parties for the damages caused by failure to uphold their duties. (Art. 2395)

The Civil Code (Art. 2391), defines when a conflict of interests occurs between the board of directors and the company, and the manner in which such a conflict must be handled.

c. ROLE AND RESPONSIBILITY OF THE MANAGERIAL BODY

(1) Role, make-up and powers of the managerial body.

The managerial body to whom the board of directors has delegated certain authority in accordance with the Civil Code (Art. 2381), and the relevant bylaws, is subject to the same duties and liabilities applicable to the board itself.

(2) Duties of management members.

Italian law does not provide for a fiduciary relationship between the members of the board and specific constituencies. Such a duty exists toward all shareholders and towards the whole company, pursuant to the Civil Code (Art. 2392).

d. SHAREHOLDER RIGHTS

In Italy's share ownership structure, all ordinary (common) shares are in registered form. Italy adheres to a one share/one vote principle for common shares. Preferred or

privileged shares (*azioni privilegiate*) are also registered, but they only carry voting power at extraordinary general shareholder meetings. They have no vote at ordinary meetings. Saving shares (*azioni di risparmio*) can be either bearer or registered. They have no voting rights except relating to particular matters concerning their share class. These types of shares have preferential rights as regards the payment of dividends and the liquidation of assets. (T.U.F., Art. 145) Under Italian law, limited voting stock (including preferred and savings shares) can make up no more than one-half of a company's share capital.

(1) Decisions reserved to shareholders and the general meeting.

Routine ballot issues at an ordinary general shareholders meeting in Italy include:

- Approval of financial statements, setting of dividends and allocation of profits;
- Election of directors and approval of fees;
- Election of statutory auditors and approval of fees;
- Appointment of outside auditors and approval of fees;
- Election of shareholder representatives and approval of fees;
- Approval of use of or transfer of capital to reserves; and
- Authorisation of share repurchases.

Non-routine proposals, generally requiring an extraordinary meeting of shareholders, include:

- Increase of authorised capital;
- Issuance of shares with or without pre-emptive rights;
- Issuance of convertible bonds, warrants or other securities;
- Conversion of savings shares to ordinary stock;
- Approval of a merger or absorbing of a subsidiary; and
- Approval of legal action against a board member.

(2) Shareholders' legal recourse.

Shareholders may, pursuant to the Civil Code (Arts. 2392 & 2393), vote to have the company institute a derivative suit against members of the board who have breached their duties to shareholders. The T.U.F. also permits minority shareholders with more than five percent (5%) of the share capital (or a lower percentage set forth in the bylaws) to require the company to institute such a suit.

A liability action against a company's directors is brought by resolution of the general meeting, according to the regime provided by the Civil Code. If such resolution is adopted by the vote of one-fifth (1/5) of the total share capital, the directors against whom the action is brought are removed. A liability claim can be waived or settled by the company or the approval of four-fifths (4/5) of the share capital.

Recent financial reform legislation has implemented an additional procedure for bringing suits against directors, similar to derivative suits. Investors who have been registered as shareholders for six months and who represent at least five percent (5%) of the share capital can directly bring an action against the directors, board of auditors or general managers. This action must be brought on behalf of the company. The shareholders may withdraw their members from the board of directors pursuant to the Civil Code (Art. 2383). However, they may be liable to pay damages to the company in case this withdrawal occurs without proper justification (*e.g.*, in breach of the bylaws or other applicable laws).

(3) Duties of controlling shareholders.

Controlling shareholders are not deemed to owe any particular duties to other shareholders or to the company and, in exercising their voting rights, are entitled to pursue their personal interests. However, they may be held liable towards the other shareholders, if while pursuing their personal interest, the majority shareholders cause damage to the company or other shareholders.

The protection of minority shareholders is a general duty of the company, in accordance with the T.U.F. (Arts. 125, 135 & 148), and is not a duty specific to the controlling shareholders. Minority shareholders can defend their right to protection by bringing the breach to the attention of the board of auditors and/or the court, pursuant to T.U.F. (Art. 128). Italian law also provides for specific protections of minority shareholders, including foreign shareholders, in the following areas:

Merger and demerger: The T.U.F. (Art. 131), states that dissenting shareholders in mergers and demergers between listed and unlisted companies may withdraw from the company, pursuant to the terms and conditions of the Civil Code (Art. 2437).

Take-overs: Articles 102-112 of the T.U.F. provide minorities some protection in the event of tender or exchange offers. In particular, Article 106 (tender offers) provides that the offer must be extended in certain circumstances to the totality of the target's shareholders: for example, the acquirer is required to make an offer for the totality of the target's shares when its shareholding in the target exceeds thirty percent (30%). This rule enables all shareholders, not only those in control of the target, to benefit from the payment of a control premium and to exit from the company. Moreover, a shareholder whose shareholding exceeds ninety percent (90%) of a listed company is required to make an offer for the remaining voting shares at a price set by CONSOB unless the shareholder restores a public float sufficient to ensure normal trading. This rule protects squeeze-outs on terms which are unfair to the minority shareholders.

Other corporate transactions: Article 132 of T.U.F. provides that a company wishing to buy back its own shares or shares in its parent must do so by means of a public tender or exchange offer, in order to ensure equal treatment of shareholders.

2. CORPORATE GOVERNANCE CODES

Under the sponsorship of the Italian Stock Exchange, the Preda Report was issued in October 1999. It is linked to Stock Exchange listing requirements -- Italian listed companies must regularly disclose whether they comply with the Preda Report.

a. PREDa REPORT

Code: Code of Conduct for Listed Companies (Preda Report)
Issuing Body: Comitato per la Corporate Governance delle Società Quotate (Committee for the Corporate Governance of Listed Companies), sponsored by the Borsa Italiana (Italian Stock Exchange)
Date: October 1999
Official Language: Italian (English translation available)

(1) **Background.**

Citation Note: The document referred to as the Preda Report has two major parts: a “Report,” which contains general guidelines of corporate governance, and a “Code of Conduct,” which contains more specific provisions. Although the Preda Report is referred to throughout as “the Report,” parenthetical citations below to the “Report” refer to the general guideline segment, and citations to the “Code” refer to the Code of Conduct.

(a) **Issuing Body:** Committee related to a stock exchange.

The Committee for the Corporate Governance of Listed Companies was organised under the auspices of the Italian Stock Exchange (“Borsa Italiana”) for the purpose of issuing a code of corporate governance. The Committee was chaired by Stefano Preda, Chairman of the Exchange, and was made up of representatives of the Italian business and financial communities.

(b) **Legal Basis and Compliance:** Disclosure (comply or explain).

The Report’s introduction calls attention to “a debate in recent months between those who advocate a form of binding regulation and those who would leave organisational choices, in which corporate governance is a major factor, to companies’ discretion.” The Committee sides with the self-regulated approach. In that light, the provisions of this Report have not been made mandatory by any governmental body or stock exchange. (Report, § 2)

Italy’s Stock Exchange requires the boards of directors of companies listed on the markets that it regulates to provide information to shareholders, simultaneously with notices of general meetings, on their systems of corporate governance and compliance with the Report. The boards of directors of companies that have not implemented the recommendations of the Report, or have implemented only some of them, must provide information annually on the reasons for such decisions. The Exchange has begun to post corporate filings containing explanations of company compliance or non-compliance with the Preda Report on the internet. It has been reported that the Exchange will “study the filings in advance of a decision next year on whether to update Preda.” (Global Proxy Watch, October 19, 2001)

(c) Consultations.

The Preda Committee sent to all companies listed on the Italian Stock Exchange a detailed questionnaire regarding their systems of corporate governance. Nearly all of these companies responded.

(d) Contributions.

The Report drew on the experience of the Committee's members, drawn from some of Italy's leading companies, including Telecom Italia (telecoms); BNL; Sanpaolo IMI and Unicredito Italiano (banking); Pirelli (cables and tires); Assicurazioni Generali (insurance); IFI (financial services); Compart (diversified conglomerate); the Industrialists' Federation ("Confindustria"); the Bankers' Federation (*Associazione Bancaria Italiana*); the Italian Stock Exchange (*Borsa Italiana*); and leading academics from the Universities of Milan, Bologna and Genoa.

Italy's Securities and Exchange Commission ("CONSOB") and the Bank of Italy also contributed to the creation of the Report.

(e) Definition of Corporate Governance.

"Corporate Governance, in the sense of the set of rules according to which firms are managed and controlled, is the result of norms, traditions and patterns of behaviour developed by each economic and legal system. . . ."

(f) Objective: *Improve companies' performance, competitiveness and/or access to capital; Improve quality of governance-related information available to equity markets.*

"In drawing up the Code of Conduct, the Committee has endeavoured to align the proposed system of Corporate Governance with international standards, while taking adequate account of specific national features, so as to allow the competitiveness and the image of Italian companies to be appreciated in a global financial context."
(Report, § 1)

The Committee states that its primary goal is to enable Italian companies to increase access to, and lower the cost of, capital. It recognises that the flow of international investment capital is influenced by both the characteristics of individual firms and the general conditions of nations, stating that investors "not only assess economic factors but also the reliability and accountability of the legal system and the management of individual companies." (Report, § 1)

The Committee attempts to build upon the body of company law and securities and banking regulations that "have contributed decisively to enhancing the esteem of Italy's markets and companies and have laid the foundations for the specification of a model of Corporate Governance in line with those of the countries with the most highly developed financial systems." (Report, § 1)

(g) Scope: *Listed companies.*

The Report applies to listed companies only.

(2) Supervisory and Managerial Bodies.

(a) Rules/recommendations regarding the separate roles and responsibilities of supervisory and managerial bodies (including lines of responsibility).

The mission of the board is to set the company's strategic objectives and to ensure that these objectives are achieved. (Code § 1.1) It states that the board shall:

- Examine and approve the company's strategic, operational and financial plans and the corporate structure of the group it may head;
- Delegate powers to the managing directors and revoke them and specifying the limits to such delegation;
- Determine the remuneration of the managing directors (see below) and allocate the total amount to which the members of the board and the executive committee are entitled;
- Supervise the general performance of the company, with special reference to situations of conflict of interest;
- Examine and approve transactions having a significant impact on the company's profitability, assets and liabilities or financial position;
- Check the adequacy of the general organisational and administrative structure established by the managing directors of the company and the group; and
- Report to shareholders at the general meetings.

(Code § 1.2)

The Report states that a company's managers are to run the corporation pursuant to powers delegated to them by the board. The Committee recommends that "in addition to matters reserved to the board by law or the bylaws, the powers delegated to managing directors should not cover the most important operations . . . the examination and approval of which remains the exclusive responsibility of the board." (Code § 1.2) The board may revoke such delegation, specify the limits to such powers, the manner of exercising them and the frequency with which the managers must report to the board on the activity performed in the exercise of delegated powers. Such reports should, as a general rule, occur not less than once every three months. (Code § 1.2(b))

Although the Committee notes the importance of companies having "a strong executive leadership endowed with adequate powers and able to exercise them to the full," it stresses that the board should collectively supervise the running of the business. In addition to the matters reserved to the board by law or the bylaws, the power delegated to the managing directors should not cover the most important transactions (including those with related parties) the examination and approval of which remain the exclusive responsibility of the board. (Code § 1.2)

(b) Rules/recommendations regarding the accountability of supervisory and managerial bodies (including conflicts of interest).

In his introduction to the Report, Stefano Preda, former chairman of the Italian Stock Exchange, notes that the Report "is also a means of fostering the proper control of

business risks and dealing adequately with potential conflicts of interest, always liable to interfere in relations between directors and shareholders and between majority and minority interests.” (Introduction) Moreover, the Committee exhorts listed companies to pay “the necessary attention” to the prevention of conflicts of interest.

The Report seeks to prevent conflicts of interest by ensuring the representation of non-executive directors on the board. These directors must be independent in the sense that they “do not entertain business relationships with the company, its subsidiaries, the executive directors, or the shareholder or group of shareholders who controls the company of a significance able to influence their autonomous judgement” and that they “do not own, directly or indirectly, a quantity of shares such that they may control the company nor participate in shareholders’ agreements to control the company.” (Code §§ 3.a-3.b)

(c) Rules/recommendations regarding the size, composition, independence and selection criteria and procedures of supervisory and managerial bodies.

Size: Although the Code does not set a size for the board, it states that the board shall be made up of executive directors (*i.e.*, the managing directors, including the chairman and those directors who perform management functions) and non-executive directors, and that “the number and standing of the non-executive directors shall be such that their views can carry significant weight in taking board decisions.” (Code § 2.1) Executive directors normally outnumber non-executive directors on Italian boards. The Committee recommends that “each company should determine the number, experience and personal traits of its non-executive directors in relation to its size, the complexity and specific nature of its sector of activity, and the total membership of the board.” (Code § 2.2)

Selection criteria: While the Report does not lay out selection criteria for board members, it does lay out some self-selection recommendations. The Report calls on members of the board to “make a conscientious self-assessment of their ability to devote sufficient care and attention to the duties of the office.” (Report § 5.1) According to the Committee, each director is “responsible for assessing in advance his or her ability to play the role diligently and effectively.” Moreover, each director is “individually required to make an appropriate commitment to the position, so that companies can benefit from their expertise.” Moreover, all directors are required to apply independent judgement in the fulfilment of their duties. (Code § 1.3)

Election: It is envisaged that proposals for the election of directors will be put forward by majority or controlling shareholders, when they exist, or by minority or non-controlling shareholders in the case of companies with a broad shareholder base. In both instances, however, members of the board should be appointed through a transparent procedure. This means that shareholders have the right to know the personal traits and professional qualifications of candidates, as well as the position for which they are being considered, sufficiently in advance of the vote for them to be able to vote in an informed manner; this is particularly the case with institutional investors, which are often represented in shareholders’ meetings by proxies. (Code § 2.2) The Report (Code § 7.1) also states:

“Proposals for appointment to the position of director, accompanied by detailed information on the personal traits and professional qualifications of

the candidates, shall be deposited at the company's registered office at least 10 days before the date fixed for the shareholders' meeting or at the time the election lists, if provided for, are deposited."

The Report recommends that listed companies establish a nomination committee to propose candidates for election, especially when it is difficult for shareholders to make proposals, as may be the case in listed companies with a broad shareholder base. When the board is small, it may perform this function itself. The committee, which may receive proposals from shareholders as well as formulating its own, should have a majority of non-executive directors. (Code § 7.1)

Independence: The Report states that the board should be made of both executive and non-executive directors, and that the number and standing of the non-executive directors "shall be such that their views can carry significant weight in taking board decisions." (Report, § 5.1) It states that the presence on the board of directors of members who can be considered "independent" is the best way to guarantee the consideration of the interest of all the shareholders, majority alike. The report defines an "independent director" as one who:

- Does not entertain business relationships with the company, its subsidiaries, the executive directors or the shareholders or group of shareholders who control the company of a significance to influence their autonomous judgement; and
- Does not own, directly or indirectly, a quantity of shares such that they may control the company, nor participate in shareholders' agreements to control the company.

(Code § 3)

(d) Rules/recommendations regarding the working methods of supervisory and managerial bodies (including information flows).

Although the Committee expresses its opinion that some companies may consider it helpful to establish a nomination committee to propose appointments, it does not advise institutionalising such a committee because of the large proportion of companies with concentrated ownership. (Report, § 5.4.1) The Committee recommends that listed companies establish remuneration committees, institutionalising the practice adopted by Italian companies in conformity with the Civil Code (Art. 2389), in order to ensure the avoidance of conflicts of interest, adequate disclosure of information and transparency. (Report, § 5.4.2) Finally, the Committee recommends that listed companies set up internal control committees to identify, forestall and limit financial and operational risks and fraud at the companies' expense. These control committees should be provided with "adequate human and financial resources," consist of an "appropriate" number of non-executive directors and report regularly to the board of directors. (Report, § 5.4.3)

Managing directors are to ensure that the directors "are kept abreast of the main innovations in the legal framework within which the company operates, especially the legal provisions concerning the performance of the functions of director." (Code § 1.4)

Although the Code does not specify how frequently meetings should be held, the Report recommends that, in order to provide strategic and organisational guidance, “boards of directors must have regular and sufficiently frequent meetings. . . .” (Report, § 5.1)

The Report recommends that the executive committee and the managing directors report to the board on the activities performed in the exercise of their delegated powers. Moreover, bodies with delegated powers shall “provide adequate information on transactions that are atypical, unusual or with related parties” and shall “provide the board of directors and the board of auditors with the same information.” (Code § 5) The Committee notes that the proper interval between such reports depends on the importance of the delegated powers, the frequency with which they are exercised, the sector in which the company operates and the size of the company. (Code § 5)

(e) Rules/recommendations regarding remuneration of members of supervisory and managerial bodies (including evaluation procedures).

The Committee notes that remuneration packages should be able to “attract and motivate persons with adequate experience and ability, not only for the board but also for top management positions.” (Code § 8.1) The Report recommends that boards form remuneration committees, the majority of whose members should be non-executive directors, to submit proposals to them regarding remuneration. The committee members should be non-executive so that they are able to formulate the proposals without incurring conflicts of interest. The final decision rests, in conformity with Italian law, with the board, which may also hire the services of consultants to conduct market research about the appropriate form and amount of remuneration. (Code § 8.1)

The Report provides that the board shall “determine, after examining the proposal of the special committee and consulting the board of auditors, the remuneration of the managing directors and of those directors who are appointed to particular positions within the company. . . .” (Code § 1.2(c)) According to the Code, the managing directors are responsible for determining the levels of the remuneration of top management.

The Report recommends that “in determining the total remuneration payable to the managing directors, the board of directors shall provide for a part to be linked to the company’s profitability and, possibly, to the achievement of specific objectives laid down in advance by the board of directors itself.” (Code § 8.2) According to the Committee, one of the best means of aligning the interests of directors and shareholders is through the structuring of remuneration packages; in particular, systems of variable remuneration linked to results, including stock options, motivate management and promote loyalty. The Report leaves it to the discretion of each board to decide the extent to which it wishes to use such variable remuneration schemes. The Committee notes that remuneration packages should be able to “attract and motivate persons with adequate experience and ability, not only for the board but also for top management positions.” (Report, § 5.4.2)

The Committee urges listed companies to provide “adequate disclosure of information and transparency concerning fees and the manner of determining them.” (Report, § 5.4.2)

(f) Rules/recommendations regarding the organisation and supervision of internal control systems and relations between supervisory bodies, managerial bodies and internal/external auditors.

The Report states that the board has the ultimate responsibility within the company for ensuring compliance with applicable laws and regulations. As noted above, the Committee recommends that listed companies set up internal control committees to identify, forestall and limit financial and operational risks and fraud at the companies' expense. These control committees should be provided with "adequate human and financial resources," consist of an "appropriate" number of non-executive directors and report regularly to the board of directors. (Report, § 5.4.3)

The Report recommends that the committees "assess the adequacy of the internal control system, assess the work program prepared by the persons responsible for internal control and receive their periodic reports, assess the proposals put forward by auditing firms to obtain the audit engagement, the work program for carrying out the audit and the results thereof as set out in the auditors' report and their letter of suggestions, report to the board of directors on its activity and adequacy of the internal control system at least once every six months, at the time the annual and semi-annual accounts are approved, and perform the other duties entrusted to it by the board of directors, particularly as regards relations with the auditing firms." (Code § 10.2)

The board of auditors (internal auditors) is appointed by the shareholders. The Report recommends that the members of the board of auditors "act autonomously with respect to shareholders, including those that elected them." (Code § 13.2) The Committee notes that the members must "work exclusively in the interest of the company" and "create value for the generality of shareholders." The members are not "authorised to communicate information to third parties, especially the shareholders who elected them." (Code § 13.3)

The Committee recommends that the managing directors appoint one or more persons to run the internal control system, define suitable procedures to ensure its effectiveness and adequacy and "give the persons appointed to run the system resources and powers allowing them to perform their task effectively." Moreover, these persons should be "free from hierarchical ties with the persons subject to their control, in order to prevent interference with their independence of judgement." (Code § 9.3)

(3) Rights of Shareholders/Stakeholders.

(a) Rules/recommendations regarding protection of the rights of shareholders.

According to the Code, the creation of shareholder value "for the generality of shareholders" is the primary duty which the directors of listed companies must seek to fulfil. (Code § 1.3) Not only is this emphasis on shareholder value in tune with international norms and in conformity with Italian law; according to the Committee, "it is also the indispensable premise for a profitable relationship with the financial market." (Code § 1.3) Other stakeholders are expected to benefit indirectly from the pursuit of shareholder value, even though their interests are not directly taken into account by the board.

The Report recommends that the board should “actively endeavour to develop a dialogue with shareholders and institutional investors” and therefore that the board should designate “a person, or where appropriate, create a corporate structure to be responsible for this function.” (Code § 11) The Committee notes the importance of “complete and continuous communication with shareholders . . .” (Code § 11) However, dialogue with shareholders must not lead to the communication of important facts before they are communicated to the market. The information provided to the shareholders’ meeting should be sufficiently detailed “so as to allow the advantages they offer the company to be understood.” (Code § 1.2)

The Report states that “directors shall encourage and facilitate the broadest possible participation of the shareholders in shareholders’ meetings” and that such meetings are “an opportunity to provide shareholders with information on the company” while ensuring that price sensitive information is not disclosed to them prior to the public. (Codes, § 12.1-§ 12.3) The Committee notes that “in choosing the place, date and time for shareholders’ meetings, directors should bear in mind the objective of making it as easy as possible for shareholders to attend” and that directors should attend, especially those who can make a useful contribution to the discussion in the meeting in light of the duties with which they are entrusted. The Report also states that the board should “propose for the shareholders’ approval a set of rules to ensure the orderly and effective conduct of the company’s ordinary and extraordinary shareholders’ meetings, while guaranteeing the right of each shareholder to speak on the matters on the agenda.” (Code § 12.4) The Committee affirms the right of each shareholder to express an opinion on the matters under discussion.

(b) Rules/recommendations regarding equal/fair treatment of shareholders.

The Report states that “directors shall assess whether proposals should be submitted to the shareholders’ meeting to amend the bylaws as regards the majorities required for the approval of resolutions to adopt the measures and exercise the rights provided for to protect minority interests.” (Code § 12.5) Similarly, the Committee recommends that “directors should continuously assess the desirability of adapting [minimum percentages for the exercise of voting rights and the prerogatives of minorities] in line with the evolution of the company’s size and shareholder structure.” (Code § 12.5) In other words, the Code does not specifically express what rights minority shareholders are entitled to or the appropriate minimum percentages required to adopt certain board decisions.

(c) Rules/recommendations regarding the rights of stakeholders.

The Report states that the first key duty of the board is to act in the interest of the company. Although the Code does not state that the board should represent the interests of employees, it does point out that by seeking to enhance shareholder value the board will indirectly create beneficial effects for stakeholders other than shareholders -- such as employees, customers, creditors, consumers, suppliers, and local communities. (Report, § 4)

Additional information about the Preda Report is included in the Comparative Matrix appended to this Report as Annex V.

J. LUXEMBOURG

1. LEGAL SYSTEM OVERVIEW

| CIVIL LAW SYSTEM | |
|--|--|
| LEGAL/REGULATORY FRAMEWORK | ENFORCEMENT/ REGULATORY BODIES |
| COMPANY LAW <ul style="list-style-type: none">• Law of 10 August 1915 on commercial companies, as amended | <ul style="list-style-type: none">• Courts |
| SECURITIES LAW/REGULATION <ul style="list-style-type: none">• The Grand-Ducal Regulation of 28 December 1990 on the requirements for the drawing-up, scrutiny and distribution of the prospectus to be published where transferable securities are offered to the public or of listing particulars to be published for the admission of transferable securities to official stock exchange, amended by ministerial regulation of 22 December 1992 and by grand-ducal regulation of 28 June 1995.• The law of 4 December 1992 on the information to publish for the acquisition or disposal of significant shareholdings in listed companies.• The law of 5 April 1993 concerning the financial sector.• The Grand-Ducal regulation of 31 March 1996 concerning the concession and the general conditions of the Luxembourg Stock Exchange• The law of 23 December 1998 creating a supervision commission of the financial sector.• The law of 23 December 1998 concerning the supervision of the markets of financial assets. | <ul style="list-style-type: none">• Commission de Surveillance du Secteur Financier (Commission for the Supervision of the Financial Sector) |
| STOCK EXCHANGE LISTING RULES <ul style="list-style-type: none">• Ministerial regulation of 25 October 1996 granting approval of the Rules and Regulations (<i>Règlement d'Ordre Intérieur</i>) of the Luxembourg Stock Exchange, as amended.• Euronext-Luxembourg Stock Exchange cross membership and cross access agreement of 16 November 2000 | <ul style="list-style-type: none">• Luxembourg Stock Exchange |

a. GENERAL

Discussion of corporate governance in Luxembourg has not achieved the level of interest that the topic has achieved in other EU Member States.

b. ROLE AND RESPONSIBILITY OF SUPERVISORY BODY.

(1) **Type of board system: *One-tier.***

(2) **Role, make-up and powers of the supervisory body.**

The board of directors has the power to accomplish all the acts that are necessary or useful to realise the purpose of the company, except the acts that are reserved to the general meeting pursuant to the articles or statutory provisions. (Company Law, Art. 53, ¶ 1.)

The board of directors bears supervisory responsibility for:

- Appointing and dismissing senior managers: The board is responsible for the management and supervision of the company and has implied authority for the final decisions in hiring and firing senior managers. The board usually delegates day-to-day management of the company, and the representation of the company where such management and administration is concerned, to a general manager. The general manager is usually the most senior manager of the company and functions as the company's chief executive. The articles of association may provide rules concerning management appointment, dismissal and delegation. The delegation of the day-to-day management is subject to approval by the general meeting of shareholders, when said of delegation is made to a person who is on the board of directors.
- Ensuring the company's compliance with applicable laws and regulations: The board of directors is responsible for ensuring compliance with applicable laws and regulations. Directors are jointly responsible towards the company and third parties for violations of the Company Law and the articles of association (Company Law, Art. 59, ¶ 2). A director may be discharged from his responsibility if he has not taken part in the action which has resulted in the damages to the company and has informed the general meeting of shareholders that he has dissociated himself from the decision in question.
- Ensuring the integrity of the corporation's accounting, audit and financial reporting systems: Company Law expressly states that the board must prepare and present the annual balance sheet profit and loss account and the annual report of the statutory auditor.

(3) Duties of the supervisory body.

The board of directors is empowered to undertake whatever actions are necessary or useful to realise the purpose for which the company was organised. As a general principle, the board of directors must act in the best interest of the company. Directors do not have individual powers of representation (unless expressly provided in the articles of association).

The law of 6th May 1974 (installing mixed committees in private companies and organising the representation of employees in limited companies, as amended) sets up mandatory "mixed committees" with employee representatives for companies having more than 150 employees. Such committees have advisory, supervisory or co-decision powers in different areas. The law of 6th May 1974 also establishes labour representation with respect to public companies having more than 1,000 employees. (The law of 6th May 1974 provides for a similar system of labour representation for companies operating under a concession from the State.) These companies must have a board of directors of at least nine members, and employees are entitled to elect one third. However, as far as duties and liabilities are concerned, directors elected by employees have the same legal duties (to act in the best interest of the company) as any other director. Note that the European Union Directive on European Workers Council has been implemented in Luxembourg law.

Fiduciary duties are a common law concept that is difficult to translate into civil law. However, directors in Luxembourg corporations are recognised to owe duties that are similar to fiduciary duties of care and prudence (based on general principles of tort law and agency) and loyalty (based on the Company Law). Pursuant to general tort

law (providing for a general duty of care), every director must act with prudence and diligence in the interest of the company. The same standard of care that an agent would owe to a principal is applied. This implies that a director must perform his or her duties in good faith and with that degree of care which an ordinarily prudent person in like position would use under similar circumstances.

Note, however, that a claim for breach of duty against the directors can only be asserted by the company (acting through a decision of the general meeting of shareholders) and not by third parties. Thus, only the shareholders (in a general meeting) can initiate an action for negligence against the directors. Individual shareholders can only take direct action against the directors in so far as they can show that tortious or quasi-tortious action on the part of the directors has caused them loss or detriment which is independent and distinct from that inflicted on the company. Employees have no claim against directors for negligence in their duties.

Directors are jointly responsible towards the company and third parties for violations of the Company Law and the articles of association (Company Law, Art. 59, ¶ 2). A plaintiff (*e.g.*, the company, an employee, shareholder, stakeholder or other third party) needs proof of personal damage as well as proof of the causal link between his damage and the breach.

Company Law states that a director who has an interest in a transaction in conflict with that of the company must inform the board; disclosure of the director's interest must be made in the board minutes. The interested director cannot take part in any resolution relating to the transaction. If the transaction is approved by the board, the director's interest must be reported to the next general meeting of shareholders.

c. ROLE AND RESPONSIBILITY OF THE MANAGERIAL BODY.

(1) **Role, make-up and powers of the managerial body.**

The legal responsibility of the managers is indirectly based on the Company Law which empowers the board of directors to appoint and delegate authority for day-to-day management to one or more managers. The managers, under supervision of the board of directors, can by source of general contract law (*e.g.*, agency contract or employment contract) be held liable towards the company for negligence in the execution of that contract of delegation. Therefore, the responsibility that the manager assumes depends on the nature of the contract.

Managers can also be held liable towards third parties for any breach of the general duty of care deriving from general tort law insofar that the party has suffered personal damage or injury (see above).

(2) **Duties of management members.**

Members of management owe duties to the company that are dependent on the terms of their contract with the company. Managers owe no special duties to shareholders or to employees (but see above discussion of liability claims).

d. SHAREHOLDER RIGHTS.

(1) **Decisions reserved to shareholders and the general meeting.**

Shareholders' decisions are normally taken by a simple majority of the votes cast at the meeting. In principle, no quorum is imposed for general meetings of shareholders.

Special quorum and majority requirements are imposed in specific cases.

| <u>ISSUE RESERVED TO SHAREHOLDERS</u> | <u>QUORUM</u> | <u>% MAJORITY REQUIRED</u> |
|--|----------------------|-----------------------------------|
| Change of nationality or increase in shareholders liability | 100% of capital | 100 |
| Ordinary amendments to the articles of association | 50% of capital | 66.6 |
| Increase or reduction of capital | 50% of capital | 66.6 |
| Early dissolution or merger of the company | 50% of capital | 66.6 |
| Cancellation or limitation of the preferred subscription right | 50% of capital | 66.6 |
| Early dissolution of the company when 75% of the capital has been lost | 50% of capital | 25% |

Where several classes of shares exist and decisions reached by the general meeting could potentially affect their respective rights, the quorum and majority requirements noted above apply to each share category.

- **The right to convene (and adjourn) meetings:** In the event the board of directors fails to convene the annual general meeting on the specified date, any shareholder may file a motion in court to force the board to hold the meeting. Shareholders representing at least one-fifth of the share capital may require that a general meeting be held. The law also provides that shareholders representing at least one-fifth of the share capital can require any general meeting to be adjourned for four weeks.
- **Audit of the accounts:** Shareholders representing at least one-fifth of the share capital may request the commercial court to appoint one or several auditors to audit the company accounts with respect to specific points. Where the annual accounts and management report have not been prepared in accordance with the legal provisions, and there is no requirement for the company to use a professional external auditor, any interested party, including a minority shareholder, can ask the president of the commercial court to appoint an auditor to carry out the audits prescribed by law, with the attendant costs charged to the company.
- **Anti-dilution provisions:** In principle, where capital is increased by cash contribution, each shareholder has preferential subscription rights proportionate to the amount of capital which his shares represent.

The articles of association cannot, in principle, take away or restrict these rights. However, where there are several classes of shares, preferential subscription rights may be reserved for those holding the relevant share class issued with only residual allotment being available to the other shareholders. Furthermore, the Articles of Association may stipulate that preferential subscription rights do not apply to shares providing different dividend rights (*i.e.*, preference shares). Finally, provisions may

be made in the Articles of Association allowing the board of directors to revoke or restrict preferential rights where the capital is increased within the confines of an authorised capital clause which may be found in the deed of incorporation or any subsequent amending deed.

Aside from these instances, only the extraordinary general meeting, when summoned to consider any increase in capital or creation of authorised capital, and when acting in accordance with the requirements for amending the company's articles of association, can restrict or revoke preferential subscription rights. Any such proposal to revoke preferential rights, however, must be expressly indicated in the summons and covered by a detailed report which is prepared by the board of directors and focuses more specifically on the issue price.

- The right to share in the profits: The right to share in the profits by way of dividends, liquidation surplus, etc., is generally recognised by legal literature and indirectly established by law namely by precluding oppressive agreements, or “leonine conventions.” However, there are certain limitations.

Majority shareholders, in principle, can decide to allocate profits to the reserves unless such allocation is viewed as unjustified and, consequently, as an abuse of the law. Hence, minority shareholders have no formal right to require the award of dividends. Moreover, legal literature accepts that the company's articles of association may, in the last instance, stipulate that all profits be allocated to the reserves, leaving minority shareholders powerless to oppose such a provision.

In addition, preference shares, cumulative type shares, as well as preference shares in line with nominal, or par, redemption values, and/or liquidation surplus are allowed under Luxembourg law. These types of shares could potentially be used as a way of divesting minority shareholders of their rights without, however, giving rise to any breach of the *affectio societatis* principle or the Civil Code, Article 1855, which precludes “leonine” conventions. In which case, under the law, the clauses in question would be deemed not to have ever been written.

The right to extend the protection of minority shareholders by stipulating provisions in a company's articles of association is well recognised by legal literature in so far as the arrangement in question does not conflict with *ordre public* rules (e.g., the capacity to revoke directors *ad nutum* or the preclusion of leonine conventions). For example, it is possible to provide for the right of a minority coalition to propose directors, for a higher majority for “delicate” decisions, for approval clauses or for share transfer restrictions.

Note that shareholders have considerable rights to information about the corporation. These include the right to:

- Inspect the share register kept at the company's registry office at any time;
- Be informed in advance of any general meeting by a sufficiently detailed summons to attend;
- Inspect the balance sheet, profit and loss account, the list of shares and securities constituting the company's portfolio and auditors' report (the director's report only has to be submitted at the actual meeting) at the registry

office of the company fifteen days prior to the date of the annual general meeting;

- Receive replies to questions raised at the general meeting on items included in the agenda;
- Be informed each year of any benefits awarded to directors assigned to carry out the day-to-day administration of the company.

Shareholders also have the right to information about director conflicts of interests in certain situations. Where a conflict exists between a director's interests and those of the company concerning a transaction submitted for approval by the board, this conflict must be reported to the shareholders at the next general meeting.

(2) Shareholders' legal recourse.

The *Commission de Surveillance du Secteur Financier* (Commission for the Supervision of the Financial Sector) has, among other missions, the supervision of the markets of financial assets. Hence, the Commission deals with insider trading and other breaches of financial regulations, the declarations of significant shareholdings in the capital of listed companies, and the declarations relating to stock transactions.

The *Commission de la Bourse* (Stock Exchange Committee) of the Luxembourg Stock Exchange has, among other missions:

- The preparation and enforcement of the provisions and measures necessary to the proper operation of the markets;
- Scrutiny of applications for the admission of securities to official stock exchange listing;
- Assessment and sanction of infringements of the rules and regulations of the stock exchange;
- Temporary suspension or proposed cancellation of the listing of a security;
- Control of the regular information to be published by the companies the shares of which are admitted to official stock exchange listing.

The above includes control over the obligation of issuers of listed securities to assure equal treatment to all the shareholders subject to identical conditions.

The board of the Luxembourg Stock Exchange may suspend the trading in a security in the event that the proper operation of the market is temporarily disturbed or may be disturbed, or when this is required for the purpose of investor protection. The board can also de-list an issuer. The *Commission de Surveillance du Secteur Financier* also plays an active role especially in the control of financial information provided by companies, significant shareholdings declarations and public offerings. The actions undertaken by these institutions are listed in their annual reports.

(3) Duties of controlling shareholders.

Controlling shareholders owe a duty to the company through the principle of *affectio societatis* (the fact that each shareholder contributes to the share capital and must act in the interests of the company) and the obligation to execute contracts (such as the

corporate contract) in good faith. Shareholders can be held liable under tort law for breaching the general duty of care.

The general principle developed in case law forbidding abuse of rights also may limit the conduct of controlling shareholders. Majority shareholders may not act solely to the detriment of the minority shareholders (and vice versa). Abuse of rights (abuse of majority) is one of the most frequent grounds for actions against the controlling shareholders. Note that pursuant to Section 11 of the law of 10th August 1915 on Commercial Companies, as amended, the public prosecutor can bring an action against any shareholder, including a controlling shareholder, in cases of criminal offences.

Shareholders who claim abuse of rights can request a whole series of preliminary measures from the court, including:

- Postponement of a general meeting;
- Suspension of voting rights;
- A block on shares;
- Suspending the operation of a general meeting;
- Appointment of a receiver;
- Appointment of a legal consultant;
- Appointment of a provisional administrator.

A shareholder can start an action to annul a decision emanating from one of the corporate organs (including the general meeting of shareholders). A shareholder can also file a liability claim against other shareholders on a tortuous basis or start proceedings to wind up the company on just grounds (due to serious disagreement among shareholders, or more generally the absence of *affectio societatis*). (Note that, in order to bring an action in court, a plaintiff must demonstrate an interest in the proceedings.)

Issuers of listed securities have a general obligation to assure equal treatment to all the shareholders -- whether majority or minority shareholders, or domestic or foreign shareholders -- subject to identical conditions. (The law does not make any distinction between Luxembourg and foreign shareholders. It is likely that such a distinction would be unconstitutional on the basis of discrimination.)

Shareholders protection in the event of take-overs is low in that the regulations mainly concentrate on information requirements but do not provide for mandatory bids for instance in the event of change of control.

In Luxembourg the methods of acquisition vary greatly.

When a merger is effected in accordance with the set of regulations in the Company Law (§§ XIV and XV) dealing with mergers and split-ups, a decision of sixty-six percent (66%) of the shares present at the general meeting of shareholders in each company (of the target company and in principle also of the absorbing company) is necessary (like for any change of the articles of associations). A similar procedure

exists for mergers through the creation of a new vehicle absorbing the merging companies, and a simplified procedure exists for absorption of a company of which the absorbing company holds more than ninety percent (90%) of the shares.

A meeting of shareholders is not necessary for concentrations (*i.e.*, mergers through private agreements without absorption of the target company).

In the event of public offerings (a notion which is not defined under Luxembourg law), the offeror has mainly information duties, most of which are covered by the publication of a prospectus. (See the Company Law, Art. 33, Filing of Notice with the Trade Register.)

The law of 4 December 1992 on the information to publish for the acquisition or disposal of significant shareholdings in listed companies mandates the publication of holdings which become higher or lower than ten percent (10%), twenty percent (20%), one third (33.3%), fifty percent (50%) and two thirds (66.6%) of the voting rights.

2. CORPORATE GOVERNANCE CODES

Luxembourg has not promulgated any corporate governance codes of the type with which this Study is concerned.

Representatives from the Luxembourg Stock Exchange report that the Exchange supported a 1996 recommendation of the Stock Exchange Industry Association on corporate governance. This recommendation was based on a study entitled “International Corporate Governance” by the International Capital Market Group. The study emphasised the need for investors to have better means for understanding essential practices from nation to nation with regard to corporate governance. This Study was reviewed for the purposes of this Study, but it does not fit the definition of a “corporate governance code” as used in this Study.

K. THE NETHERLANDS

1. LEGAL SYSTEM OVERVIEW

| CIVIL LAW SYSTEM | |
|---|---|
| LEGAL/REGULATORY FRAMEWORK | ENFORCEMENT/ REGULATORY BODIES |
| COMPANY LAW FRAMEWORK <ul style="list-style-type: none"> • <i>Burgerlijk Wetboek</i> -- Civil Code, Book 2² • Structure Act of 1971 • Works Councils Act of 1950 (amended 1971) | <ul style="list-style-type: none"> • Civil Courts |
| SECURITIES LAWS/REGULATIONS <ul style="list-style-type: none"> • Act on the Supervision of the Securities Trade of 1995 (“Securities Trade Act”) • Civil Code, Book 2 | <ul style="list-style-type: none"> • The Securities Board of the Netherlands |
| STOCK EXCHANGE LISTING RULES <ul style="list-style-type: none"> • Euronext Amsterdam Listing Rules | <ul style="list-style-type: none"> • Euronext Amsterdam • The Securities Board of the Netherlands |

a. GENERAL

Although the legal framework grants considerable rights and powers to shareholders, discussion of corporate governance reform in the Netherlands must contemplate unique features that tend to diminish the role of shareholders, especially in large publicly traded companies: First, under the law applicable to some of the largest Dutch listed companies (companies subject to the structure regime), shareholders lack the power to elect members of the supervisory board; and second, mechanisms to reduce the voting power associated with common shares are relied on heavily. Both of these features have been criticised as serving to unduly entrench the bodies that supervise and manage the corporation.

Ongoing discussions in the Netherlands centre on how to address the issue of structure company governance and voting power disparities. Legislation has been drafted and is under review that would require supervisory boards of structure regime companies to propose nominees to the shareholders general meeting for election. Under the proposed new law, works councils would propose candidates for one-third of the supervisory board seats, and the board would include these on the slate it

² Book 2 of the Civil Code is divided into various chapters. Chapter 1 contains general provisions applicable to all legal entities. Chapters 4 and 5 deal with the two forms of Dutch corporations: joint stock companies (*naamloze vennootschap (NV)*) and closed limited liability companies (*besloten vennootschap met beperkte aansprakelijkheid (BV)*), respectively. Chapter 8 sets out rules with respect to the settlement of disputes among shareholders as well as judicial inquiries into corporate activities. Chapter 9 contains provisions regarding financial statements.

presents to the shareholders for vote. The outcome of the legislative process is uncertain; it is not expected to be completed before the end of 2002.

Note that some companies are beginning to voluntarily limit their use of shares associated with differential voting powers. Discussions among the regulatory agencies, listed companies and the Ministry of Finance are leading some companies to limit the use of management entrenchment and anti-take-over devices.

b. ROLE AND RESPONSIBILITY OF THE SUPERVISORY BODY

The Dutch Civil Code provides for three legal regimes that dictate the governance structure of corporations: the common regime (*Gewoon Model*); the structure regime (*Structuurmodel*); and the mitigated regime (*Verzwakt Structuurmodel*). Generally, the rules of the common regime apply to small- and medium-sized corporations, while the rules of the structure regime apply to larger corporations that meet certain criteria regarding number of employees and amount of subscribed capital. The rules of the mitigated regime pertain, for the most part, to multinational corporations and those that form part of a foreign holding structure.

It should be noted that companies with fifty or more employees must have a works council. The works council must be consulted about, and may object to, certain important corporate decisions, such as mergers.

Common Regime: Companies formed under the rules of the common regime must meet the minimum requirements of having a management board (*Raad van Bestuur*) and an annual general meeting of shareholders (*Algemene Vergadering van Aandeelhouders*). They are not required to have a supervisory board (although they frequently do).

Structure Regime: The structure regime applies to the larger Dutch companies and is the regime with which this legal overview is primarily concerned. According to the Civil Code, the structure regime applies if a company meets all three of the following criteria: (i) it, or any of its subsidiaries, has at least one hundred employees based in the Netherlands; (ii) it has issued capital and reserves exceeding Euro 12 million; and (iii) it, or any of its subsidiaries, has a works council. The governance of structure companies is regulated by the Structure Act of 1971. Structure companies are required to have a supervisory board. Note that in the structure regime, supervisory board members are *not* elected directly by shareholders but are self-selected by the supervisory board. (This “co-optation scheme” is the key difference between the governance of large Dutch companies and the governance of large companies in the rest of the EU Member States.) The shareholders meeting and the works council have the right to advise on the appointment of supervisory board members. Supervisory board members (or one or more representatives of the supervisory board) are obliged to attend at least two meetings per year held jointly with the management board and the works council.

Mitigated Regime: The mitigated regime is important for foreign corporations and/or multinationals that want to exercise full control over subsidiaries incorporated in the Netherlands. The mitigated form applies to a Dutch company when at least fifty percent (50%) of its shares are held by a foreign parent company and when a majority of the employees of the foreign parent company are based outside of the Netherlands.

(1) **Type of board system: *Two-tier.***

Whether or not listed, large Dutch corporations generally have an independent supervisory board and a separate management board made up of senior executives. It should be noted, however, that under the common regime, a supervisory board is not mandatory.

(2) **Role, make-up and powers of the supervisory body.**

Common Regime: Although a supervisory board is not mandatory for companies that operate under the rules of the common regime, it is typical practice to have one in medium-sized common regime corporations. The supervisory board's role is to oversee management, monitor the general course of affairs, and advise the management board. Unless the corporation's articles of association provide otherwise, the supervisory board also chairs the general meeting of shareholders and may suspend members of the management board.

Structure Regime: The structure regime mandates a two-tier board structure. The management board is composed entirely of current executives in the company. The supervisory board is composed entirely of persons who are not current executives of the company, and the size of the supervisory board is subject to a legal minimum of three members. Unlike the German co-determination model, the Dutch supervisory board has no labour representation. Under the structure regime, the supervisory board must approve:

- Nomination, appointment, suspension and dismissal of members of both the management and supervisory boards;
- Issuance and acquisition of shares and debt instruments by the corporation;
- Entry into, or termination of, any ongoing co-operation by the corporation or a subsidiary of the corporation with another legal entity or partnership, if such co-operation is of significance to the corporation;
- Investments in an amount of not less than a quarter of the company's shareholders' equity (own funds);
- Amendment of the articles of association or dissolution of the corporation;
- Filing for bankruptcy or application for a suspension of payments;
- Termination of the employment of a substantial number of employees simultaneously or within a short period of time;
- A drastic change in the employment conditions of a substantial number of employees of the corporation or subsidiary; and
- Reduction of the corporation's issued share capital.

Mitigated Regime: Under the mitigated regime, the supervisory board has fewer powers than under the structure regime. It does not have the power to appoint and dismiss members of the management board or to adopt the annual accounts of the corporation. Instead, these rights are entrusted to the shareholders (often a large foreign or multinational corporation). However, an independent supervisory board is still mandatory under the mitigated structure, and the two-tier structure is still in

place. In addition, the supervisory board retains the power to approve key management decisions.

The Dutch Civil Code provides the mitigated structure regime in order to encourage foreign investment in the Netherlands by supporting the position of the parent companies. Through the shareholders general meeting, parent companies can formally exert the power to influence the major decisions of their subsidiaries, including the appointment and dismissal of members of the management board.

(3) Duties of the supervisory body.

Under the Dutch Civil Code, supervisory board members are to be guided in the performance of their duties solely by the interests of the corporation and its enterprises. Supervisory board members are expected to exercise oversight of management with the interests of the company in mind. However, in principle, shareholders cannot file a legal action against supervisory board members directly for failure to do so; they can only file an action against the company generally.

c. ROLE AND RESPONSIBILITY OF THE MANAGERIAL BODY

(1) Role, make-up and powers of the managerial body.

A Netherlands corporation is managed by a management board (*Directie* or *Raad van Bestuur*) consisting of one or more executives. After the formation of the corporation, members of the management board are appointed and dismissed by the general shareholders meeting. A very important exception is in structure regime corporations; in those companies, management board members are appointed by the supervisory board.

The management board as a whole is responsible for the proper management of the corporation. Internally, its members may determine divisions of tasks among themselves in the exercise of the management board's duties. The management board also represents the company vis-à-vis third parties. In principle, each member of the management board has full power to represent and bind the corporation, but the articles may require that two or more directors acting together are required to effectively bind the company.

(2) Duties of management members.

As in the case of supervisory board members, members of Dutch management boards do not owe fiduciary duties directly to shareholders. The management board's duties run exclusively to the company, and shareholders' recourse for poor management of the company must come by suit directly against the company (see below).

d. SHAREHOLDER RIGHTS

In principle, Dutch company law (Dutch Civil Code, Book 2) grants considerable powers to shareholders. However, these powers can be -- and frequently are -- curtailed substantially by the company's articles.

There are a variety of ways in the Netherlands for shares to be issued lacking voting power or separating the economic benefits of shareholding from voting power. For

example, many Dutch companies issue ordinary shares, but remit them to a “trust office” which then issues depository receipts entitling the holders to the economic benefits (dividends, etc.), but not the voting rights normally associated with share ownership. The board of trustees of the trust office, often comprised of persons closely tied to management, will exercise the voting rights. (Subject to certain exceptions, receipt holders must be invited to the general shareholders meeting and are allowed to participate in deliberations, but are not allowed to vote. They also have the right to petition a court to engage in an inquiry into potential mismanagement.) Other circumstances may impede proportionate voting power. For example, special types of shares (*e.g.*, “priority” and “preference” shares) are often relied on to grant certain shareholders greater control or other rights than ordinary shareholders receive.

(1) Decisions reserved to shareholders and the general meeting.

Under the Dutch Civil Code, powers that are not conferred on management or another body are generally vested in the general meeting of shareholders, except as otherwise limited by law or the company’s articles.

Generally the law provides that the general meeting of shareholders exercises all decisions of the corporation which are not granted to other bodies under the articles of association, including:

- Appointing and removing members of the management board (except in the structure regime);
- Appointing and removing members of the supervisory board (except in the structure regime);
- Amending the articles of association;
- Adopting annual accounts;
- Declaring dividends;
- Agreeing to a merger;
- Filing bankruptcy requests;
- Converting the company into another legal structure;
- Appointing the company’s auditor; and
- Dissolving (winding up) the company.

However, some of these powers may be transferred to the supervisory board, by the articles of incorporation. Note that a company’s articles often include a list of decisions that the general meeting of shareholders must take or ratify.

Generally, a shareholders meeting may be called by the supervisory and management boards or by one or more shareholders representing one-tenth (1/10) of the issued share capital (or a smaller amount if provided by the articles). Note, however, that shareholders must apply to the court to convene such a meeting.

(2) Shareholders' legal recourse.

Shareholders (or holders of depository receipts) representing at least one-tenth of the issued capital or Euro 225,000) may petition for an investigation into the conduct of the business of a corporation. The petition must be filed with a special chamber of the Court of Appeals in Amsterdam. The investigation may be limited to a certain period of time, or to certain activities, of the corporation. The Court of Appeals will not accept a petition if the petitioners have not raised their objections beforehand with the corporation. If the petition is granted, the Court of Appeals will direct whatever investigation it may think appropriate by one or more experts selected by the court. If, after consideration of the expert(s) reports, the Court finds the complaints well-founded, a series of measures may be adjudicated, such as suspension or dismissal of sitting board members, provisional election of new managing or supervisory board members, suspension or annulment of any resolution of the corporation, or even dissolution of the corporation.

The law makes specific provision for the rights of corporations to defend themselves against false accusations. Persons filing frivolous complaints may be ordered to pay damages. Shareholders may attack decisions of the corporation's boards or the general meeting on the ground of violation of reasonableness and fairness or of the law or the articles. They may also demand to be bought out if they are seriously oppressed. Shareholders' rights to financial disclosure are also partially governed by the Securities Board of the Netherlands.

(3) Duties of controlling shareholders.

Netherlands law does not impose special duties on controlling shareholders. Of course, the supervisory board members elected by a majority shareholder are subject to the duties discussed above.

2. CORPORATE GOVERNANCE CODES

In 1997, the Peters Code was issued by a committee representing both listed companies and the Amsterdam Exchange. It has since achieved wide recognition, both within and outside the Netherlands. Although the Exchange was heavily involved in the Code's drafting, no additional listing requirements -- either to comply with the code or to disclose as to compliance -- have resulted. The sponsoring board of the Peters Code is expected to meet in special session in February 2002 to decide whether to review and update the Peters Code. In 1997, "Ten Recommendations on Corporate Governance in the Netherlands" were issued by Vereniging van Effectenezitters (VEB). In August 2001, another Dutch code was issued by the Foundation for Corporate Governance Research for Pension Funds ("SCGOP"). These codes are all discussed herein.

In 2000, the Amsterdam Stock Exchange integrated in part with the Brussels and Paris exchanges to form Euronext. The extent of regulatory and other integration is still in flux. Corporate governance codes have not been affected by the integration as of this time. Corporate governance policy remains local.

a. PETERS REPORT

Code: Forty Recommendations on Corporate Governance in the Netherlands (The Peters Report)
Issuing Body: Secretariat Committee on Corporate Governance
Date: June 1997
Official Language: Dutch (English translation available)

(1) Background.

- (a) Issuing Body: *Committee related to a stock exchange and a business, industry and/or academic association.*

The Secretariat Committee on Corporate Governance was appointed by both the Amsterdam Stock Exchange and the Association of Securities-Issuing Companies. The Committee, chaired by J.F.M. Peters, was made up of representatives from the Exchange and listed companies, as well as expert attorneys, accountants and academics.

- (b) Legal Basis and Compliance: *Voluntary (disclosure encouraged).*

Compliance with the Report is purely voluntary. Companies are not required, via listing rules or otherwise, to disclose whether they are complying with the Report's recommendations. The Amsterdam Stock Exchange (now Euronext Amsterdam) has not officially adopted the Report. However, the Committee did request that companies disclose in their annual reports for 1998 the extent to which they followed the recommendations, and proposed to monitor compliance of that one-time disclosure.

In 1998, a survey of compliance covering 159 of 208 Dutch listed companies was published (in Dutch) by the Tilberg Economic Institute. The survey, undertaken on behalf of the Corporate Governance Monitoring Committee set up jointly by the Amsterdam Stock Exchange and the Association of Securities Issuing Companies, is entitled "Monitoring Corporate Governance in the Netherlands." The survey found that fifty-five percent (55%) of companies fully disclosed the information called for in the Peters Report; thirty-six percent (36%) disclosed it in part and nine percent (9%) not at all. Generally, the survey indicated that the recommendations of the Peters Report are complied with as regards supervisory board processes but to a far lesser degree as regards shareholder rights.

- (c) Consultations.

A draft of the Recommendations was published, calling for all interested parties to submit their comments. Many organisations and bodies contributed by commenting on the draft, including institutional and private investors' representative organisations, the Netherlands Bar Association, the Association of Chartered Accountants (NIVRA) and the Association of Listed Companies.

(d) Contributions.

The Committee was made up of representatives from the Amsterdam Exchanges, investor associations, pension funds, securities-issuing companies, accounting firms and academia.

(e) Definition of Corporate Governance.

The Committee, for “the purpose of debate,” defines corporate governance as follows: “The concept of Corporate Governance has been understood to mean “a code of conduct for those associated with the company -- in particular, executives, Supervisory Board members and investors -- consisting of a set of rules for sound management and proper supervision and for a division of duties and responsibilities and powers effecting the satisfactory balance of influence of all the stakeholders.”

(f) Objective: Improve quality of board (supervisory) governance.

According to the Peters Report:

“The growing internationalisation of the Dutch economy and the increasing international attention for the role, position and influence of shareholders were the underlying reasons for setting up the Committee on Corporate Governance. . . . [The Committee] sees a certain convergence of ideas on corporate governance and believes that, with due regard for the specific rules and customs in this country, the Netherlands should stay in line with international developments in this respect.” (Introduction)

The Peters Report is focused “particularly on companies in which a separation exists between management and investment. The Committee’s attention has been directed mainly at the working of the Supervisory Board (supervision) and the Executive Board (management) as well as the role played by shareholders and holders of certificates of shares (investors).”

(g) Scope: Listed companies.

The Report’s recommendations are aimed primarily at companies listed on the Amsterdam Stock Exchange (now Euronext Amsterdam).

(2) Supervisory & Managerial Bodies.

(a) Rules/recommendations regarding the separate roles and responsibilities of supervisory and managerial bodies (including lines of responsibility).

The Peters Report reiterates that, in accordance with law, the supervisory board is bound in the performance of its duties by the interests of the company. Specifically, the supervisory board is responsible for the supervision of management policy and the general course of affairs of the company. In addition, the supervisory board advises the management board and acts as a body with collective responsibility “independent from subsidiary interests associated with the company.” (§ 2.1)

Under the structure regime, the supervisory board appoints the members of both the management board and the supervisory board. In companies not subject to that regime, the supervisory board nominates members of the management and supervisory boards for election by the general shareholders meeting. (§ 2.1)

The management board is responsible for the management of the company, *inter alia*, realising the company's objectives, its strategy and policy, and the ensuing development of results. (§ 4.1) The Peters Report encourages the management board to report in writing to the supervisory board on the company's objectives, strategy, associated financial risks and control mechanisms. The main points of this report should be included in the annual report. (§§ 4.2-4.3)

(b) Rules/recommendations regarding the accountability of supervisory and managerial bodies (including conflicts of interest).

According to the Peters Committee, capital contribution and influence should be joined in a company and capital providers are entitled to information. "The general principle should be that proportionality exists between capital contribution and influence. . . . A second principle is that the providers of risk capital should be able to demand from the management a clear and transparent account of the policy that has been pursued." (§ 5.1) Although the proportionality principle is subject to certain exceptions according to the Committee (continuity of decision-making and protection against hostile take-overs may justify a departure (§§ 5.1 & 5.4.1)), the Committee emphasises that under no circumstances should the principle of accountability to shareholders -- who provide the risk capital -- be relaxed. (§ 5.1)

The Peters Committee proposes specific practices to give concrete form to the obligation of supervisory and managerial board accountability. The management board and the supervisory board report, and are accountable, to the company's general shareholders meeting. The agenda of the general meeting should include presentations of company strategy, policy -- financial and otherwise -- and business results. (§ 5.2)

The Report contains a number of recommendations advocating additional disclosures to shareholders, including a recommendation that the basic outlines of a company's governance be explained in the annual report. In addition, "[t]he company should give a motivated explanation in the annual report of the extent to which it has complied with" the Recommendations. (§ 6.1)

The Report states that a supervisory board member with a conflict of interest should disclose it to the board chairman immediately. If the conflict concerns a "random incident," non-participation in the deliberations and decision-making on that issue will be sufficient for the board member to avoid a problem in the fulfilment of board duties. (§ 2.9)

The Report does not address directly conflicts of interest involving members of the management board. However, it does urge management board members to avoid deriving any personal gain from company activities other than through remuneration or increase in value of stocks and options. (§ 4.7) A similar provision applies to supervisory board members. (§ 2.14) (See the discussion of remuneration, below.)

(c) Rules/recommendations regarding the size, composition, independence and selection criteria and procedures of supervisory and managerial bodies.

The Peters Report advocates that supervisory boards establish a profile in consultation with the management board concerning its needs as relates to composition, duties, size and procedures. This profile should reflect the nature of the company's activities, and international scope, and the risks facing the company. The profile should be made available for inspection at the company's offices. (§ 2.2) In addition, the annual report should include basic information on supervisory board members, including their ages, occupations and nationality. (§ 2.4)

The Peters Report emphasises that the supervisory board's members should operate independently and critically in relation to each other and the managerial board (§ 2.3), and they should perform without a mandate from those who nominated them. (§ 2.6) To encourage this independence, the Peters Report advocates that no more than one supervisory board member should have served in the past as a company executive. (§ 2.5) Supervisory board members are also urged to limit the number of such appointments to ensure that they can devote the time and attention to discharge their responsibilities appropriately. (§ 2.10)

The Report notes the importance of selecting supervisory board members from a pool of candidates representing a broad spectrum of professional experience. One means of achieving this is through greater reliance on members from other countries. (§ 2.10) Selection criteria and nomination procedures for supervisory board members, management board members, and senior executive positions -- and periodic assessment of the size and composition of the supervisory and management boards -- should be conducted by a selection and nomination committee of the supervisory board. (§ 3.2)

In addition, the supervisory board should consider setting out rules for its contacts with the management board, the works council and shareholders -- and disclosing said rules in the company's annual report. (§ 3.1)

As to the selection of management, under the full structure regime (as discussed above), the law provides that the supervisory board is responsible for appointing the management board. In companies not subject to the full structure regime, the supervisory board nominates and the shareholders elect the management board. (§ 2.1)

(d) Rules/recommendations regarding the working methods of supervisory and managerial bodies (including information flows).

The Report states that it is the role of the supervisory board chairman to ensure that the supervisory board functions properly. The chairman is entrusted with specific duties regarding discussions on relevant issues, communications between the supervisory and management boards, and communications with the accountant and other external advisers appointed by the supervisory board. The supervisory board chairman should keep in frequent contact with the chairman of the management board and should take initiative whenever it seems appropriate. (§ 3.1)

The Report recommends that the supervisory board should consider whether to appoint a selection and nomination committee, an audit committee and a remuneration committee. Such committees would help organise the work of the supervisory board, and would submit reports and recommendations to the full board for consideration and decision. It is also recommended that the supervisory board report on the existence of such committees in the annual report. (§ 3.2)

The Report states that the supervisory board should meet according to a predetermined schedule. (§ 3.3) At least once a year, the supervisory board should discuss the company's strategy, risks, and results of the management board's assessment of the systems of internal control. (§ 3.4) Also, at least once a year the supervisory board should meet without members of the management board present to discuss its own performance, its relationship with the management board, and the composition, performance, remuneration and succession of the management board. (§ 3.5)

(e) Rules/recommendations regarding remuneration of members of supervisory and managerial bodies (including evaluation procedures).

The Report recommends that supervisory board member remuneration not be dependent on company performance. It disfavours grants of stock options to supervisory board members, as well as separate remuneration to supervisory board members for consulting services. (§ 2.13) Furthermore, the Report recommends that the annual accounts should explain any business relationships between a supervisory board member and the company.

The Report also emphasises that neither supervisory nor management board members "should derive . . . personal gain from the company's activities other than via their remuneration . . . or from capital growth resulting from shareholding or dividends." (§§ 2.14 & 4.7)

When supervisory board and management board members hold company shares, the Report recommends that the shares be viewed as long-term investments, and that the aggregate number of shares and options held by the entire supervisory board be published in the annual report. (§§ 2.12-2.13 & §§ 4.5-4.6)

Dutch company law prescribes that, except for structure regime companies, the general meeting of shareholders determines the remuneration of the members of the management board, unless the company's articles of association stipulate otherwise. However, in practice, the supervisory board determines the compensation and the shareholders simply ratify. (§ 4.4) In structure regime companies, the supervisory board determines management compensation. Note that employee stock option plans that reward long-term performance are favoured by the Report (§ 4.6), but should be disclosed in the annual report.

(f) Rules/recommendations regarding the organisation and supervision of internal control systems and relations between supervisory bodies, managerial bodies and internal/external auditors.

According to the Report, the management board bears primary responsibility for effective systems of internal control. The management board should report to the

supervisory board on the results of its assessment of the structure and functioning of the internal control systems, which are intended to provide reasonable certainty that the company's financial information is reliable. (§ 4.3).

The Report also emphasises that audit of the annual accounts is a key component of a sound governance system. (§ 6.3) The management board is responsible for preparing the annual accounts, but it is the auditor's responsibility to provide the report. The auditor is an independent expert (§ 6.3) and should meet with the supervisory board or audit committee at least once per year. (§ 6.4)

Note that the Report recommends that the supervisory board determine whether to ask the auditors to verify the company's reporting on the extent to which it follows the Recommendations. (§ 6.2)

(3) Rights of Shareholders/Stakeholders.

(a) Rules/recommendations regarding protection of the rights of shareholders.

As discussed above, Dutch company law grants considerable powers to shareholders in principle. However, for structure regime companies the law limits the influence of shareholders on key issues including the typical right of shareholders to elect the supervisory board. This "co-optation" system, which enables the supervisory body to be self-selecting, deprives shareholders of a right they normally enjoy. Company articles may also curtail shareholder powers in significant ways. For example, company articles frequently allow priority or preference shares to be issued -- or stipulate that the co-operation of the priority shareholder(s) is required for the adoption of resolutions in the general shareholders meeting. In addition, companies can deposit shares in a trust office, which in turn issues certificates that can be traded on the stock exchange without any voting rights. All of these mechanisms empower the management and the supervisory body at the expense of shareholders.

The Peters Report emphasises that investors should be able to exert real influence within the company. (§ 5.4.1) It urges supervisory and management boards to "have confidence" in the shareholders meeting, and rather vaguely recommends that "this be borne in mind when appointing board members." (§ 5.3) However, the Committee skirted recommending, as a basic principle, that shareholders appoint supervisory board members in all instances by stating:

"If companies comply with and implement these and the other, related recommendations by the Committee, then the co-optation system laid down in the 'structure company' regime should be able to continue functioning satisfactorily. Changes in legislation are therefore not deemed necessary, specifically because of the expectation that they would paralyse the discussion on Corporate Governance for a lengthier period of time."

(§ 5.3)

The Report goes on to emphasise that company management should not systematically ignore the opinions of investors, thereby depriving them of having real influence under the structure regime. (§ 5.4.1) It identifies a number of points against

which management should assess the influence of shareholders and determine if it would be beneficial to increase that influence. The most significant points are:

- The company's strategic policy (*e.g.*, potential for growth, sectors of activity, risk profile, profit targets);
- Major changes in the nature and size of the company;
- Dividend policy (the level of the dividend and the form it takes);
- Size and composition of share capital including, *e.g.*, classes of shares/certificates of shares, intended issues, buy-back of shares, option plans, aspects of marketability, and pre-emptive rights;
- Alteration of the company's articles of association; and
- Adoption and/or approval of annual accounts.

(§§ 5.4-5.6)

Clearly, this continues to leave considerable discretion with management for determining shareholder rights and influence within the company.

(b) Rules/recommendations regarding equal/fair treatment of shareholders.

As discussed above in the section on rules and recommendations regarding the accountability of supervisory and managerial bodies, the Report favours proportionality between capital contribution and influence. However, it asserts that the need for continuity of decision-making and protection from hostile take-overs may justify departing from the principle of "one share/one vote." (§§ 5.1 & 5.4.1)

The Report devotes considerable discussion to the practices of issuing trust certificates and priority and preference shares. (§§ 5.6.1-5.6.3)

As to certificates, which entrust voting to the board of the trust office, the Report recommends that appointment and dismissal of trustees should be regulated "in a manner that their independence is guaranteed in relation to [the company's management board] and that holders of certificates of shares are given a satisfactory opportunity to formulate their wishes with respect to appointment and dismissals." The Report also recommends that the trust office board "while observing the interests of the company and its stakeholders and the recommendation of [the Committee], should carefully form its own, independent opinion on the course of affairs in the company and on matters which are (or should be) discussed in the shareholders' meeting." (§ 5.6.1)

As to priority shares that grant special powers for the appointment and dismissal of supervisory and management board members, or for altering the company's articles or its share capital, the Report urges the holders of such shares, when exercising their powers, to "bear in mind" that the supervisory and management boards cannot perform satisfactorily over the long term without the "confidence" of the shareholders. Therefore, holders of priority shares should "take serious account of the interests and opinions" of other shareholders. (§ 5.6.2)

On the topic of preference shares, the Committee distinguishes between two types -- those used for financing and those used for protection from hostile take-overs. The Report urges that “financing preference shares” not be issued until the management board has explained to the general shareholders meeting the financial benefits to the company, giving attention to, among other things, the dilution of the voting rights of ordinary shares. Moreover, the transfer of these preference shares should not be subject to lasting contractual limitations or restrictions in the articles without explicit approval by the general meeting. As to “protective preference shares,” the Report recommends that they not be issued under normal circumstances. Moreover, holders of such shares “should be reticent in using [their special] voting rights when decisions are being taken that do not concern the protection of the company against an unfriendly acquisition of control.” (§ 5.6.3)

The Report recommends that shareholders and certificate holders have the opportunity to influence the agenda of the general meeting, subject to criteria relating to the percentage or value of shares or certificates represented. (§ 5.7)

The Report also calls for companies to establish efficient proxy solicitation systems, entrusted to a neutral body, in a manner that enables shareholder and certificate holders to communicate with one another about specific agenda items. (§ 5.9)

The Report recommends that minority shareholders be accorded satisfactory exit provisions in the event that a party obtains majority control of the company. (§ 5.10.)

(c) Rules/recommendations regarding the rights of stakeholders.

The Report does not address this topic.

Additional information about the Peters Report is included in the Comparative Matrix appended to this Report as Annex V.

b. VEB RECOMMENDATIONS

CODE: TEN RECOMMENDATIONS ON CORPORATE GOVERNANCE

IN THE NETHERLANDS

ISSUING BODY: VERENIGING VAN EFFECTENBEZITTERS (“VEB”)

DATE ISSUED: 1997

OFFICIAL LANGUAGES: DUTCH (ENGLISH TRANSLATION AVAILABLE)

(1) Background.

(a) Issuing Body: *Investors association.*

The VEB is an association of small, mostly individual, investors. It represents its members at annual general meetings every year, and analyses and appraises the activities and performance of supervisory board members, opposing board proposals when they are deemed adverse to the interests of investors. It also provides legal advice to members and files shareholder lawsuits.

(b) Legal Basis and Compliance: *Voluntary (association members recommended to apply to portfolio companies).*

The VEB is an investor group with no legal or regulatory authority. The VEB Recommendations do not impose any obligations of compliance or disclosure.

(c) Consultations.

The VEB Recommendations provide no information about consultations, and efforts to obtain such information from the VEB were unsuccessful.

(d) Contributions.

The VEB Recommendations provide no information about contributions, and efforts to obtain such information from the VEB were unsuccessful.

(e) Definition of Corporate Governance.

The Recommendations do not contain a definition of the term corporate governance.

(f) Objective: *Improve accountability to shareholders and/or maximise shareholder value.*

The VEB Recommendations begin from the proposition that “companies should maximise shareholder value in the long run, on the condition that other stakeholders are treated in a reasonable and responsible way.” (Recommendation 1) The Recommendations are clearly focused on that end.

(g) Scope: *Listed companies.*

While the Recommendations do not expressly specify the types of companies at which they are aimed, the content of the Recommendations and the make-up of the issuing body make it clear that they are aimed at listed companies.

- (2) Supervisory and Managerial Bodies.
- (a) Rules/recommendations regarding the separate roles and responsibilities of supervisory and managerial bodies (including lines of responsibility).

Recommendation 2 proposes that it should be the supervisory board's role to set the company's financial objectives and strategy, and that it is management's role to implement them.

- (b) Rules/recommendations regarding the accountability of supervisory and managerial bodies (including conflicts of interest).

The VEB Recommendations suggest that management be held accountable to both the supervisory board and to the shareholders for the implementation of the company's objectives and strategies. (Recommendation 2)

Both the supervisory board and the management board should bring to the shareholders, for their approval, any substantial changes to the company's business activities, risk profile, size or structure. (Recommendation 6)

The Recommendations also state that "shareholders should be able to file a resolution for a dismissal of a member of the executive board." (Recommendation 7) Adoption of such a resolution should require at least two-thirds support.

- (c) Rules/recommendations regarding the size, composition, independence and selection criteria and procedures of supervisory and managerial bodies.

The VEB Recommendations express concern about the automatic reappointment of supervisory board members and especially reappointment of underperforming members. Therefore, Recommendation 8 suggests that an individual's membership on the board be limited to a maximum of twelve years, "taking into account that reappointment after 8 years requires approval by 75 percent" of the shareholders' votes.

- (d) Rules/recommendations regarding the working methods of supervisory and managerial bodies (including information flows).

The VEB Recommendations do not discuss the working methods and information flows between the supervisory and management bodies in any detail. However, they do provide that the supervisory board should ensure that the company states, in written form, what its financial objectives and strategy are, so that management will have a clear understanding of its mandate. (Recommendation 2)

- (e) Rules/recommendations regarding remuneration of members of supervisory and managerial bodies (including evaluation procedures).

The Recommendations state that stock option plans should be described in a separate document and should be approved by shareholders. (Recommendation 9)

- (f) Rules/recommendations regarding the organisation and supervision of internal control systems and relations between supervisory bodies, managerial bodies and internal/external auditors.

The Recommendations do not address this topic.

- (3) Rights of Shareholders/Stakeholders.

- (a) Rules/recommendations regarding protection of the rights of shareholders.

To safeguard shareholders' right to timely information, the Recommendations encourage companies to reveal quarterly results and immediately disclose information that can influence the share price. (Recommendation 3)

Note that, in connection with the rights of shareholders, the VEB Recommendations discuss the rights of certificate holders. The Recommendations suggest that certification -- which effectively separates the voting control from the economic investment of shareholding, and lodges voting control in a trust office -- should be terminated or, alternatively, that certificate holders should be given a proxy to vote, and that the trust office should only vote on behalf of certificate holders in the event of a potential take-over. (Recommendation 4)

- (b) Rules/recommendations regarding equal/fair treatment of shareholders.

The Recommendations urge that, to prevent dilution of voting rights, financial preference shares should not be issued at a discount to the price of ordinary shares. (Recommendation 5)

Recommendation 10 proposes that if a shareholder's stake in the company exceeds one-third of shares outstanding, that shareholder should be obliged to bid for the remaining shares under reasonable conditions.

- (c) Rules/recommendations regarding the rights of stakeholders.

The VEB Recommendations view the wealth creating mission of the corporation as intertwined with the responsible treatment of stakeholders. Recommendation 1 states: "Companies should maximise shareholders' value in the long run, on condition that other stakeholders are treated in a reasonable and responsible way."

Additional information about the VEB Recommendations is included in the Comparative Matrix appended to this Report as Annex V.

c. SCGOP HANDBOOK & GUIDELINES

Code: Corporate Governance Handbook of the SCGOP
Issuing Body: Stichting Corporate Governance Onderzoek voor Pensioenfondsen (“SCGOP”) (Foundation for Corporate Governance Research for Pension Funds)
Date: August 2001
Official Languages: Dutch (English translation available)

Citation Note: The document referred to as the SCGOP Handbook & Guidelines consists of both general comments (“Handbook”) (pp. 1-15 & 21-30) and more specific recommendations (“Guidelines”). Parenthetical citations below distinguish between references to the Handbook and the Guidelines.

(1) Background.

(a) Issuing Body: *Investors association.*

The SCGOP is an association of twenty-seven institutional investors primarily from the Netherlands but with at least one Belgian member. It provides members with research, news and a forum for members to communicate with one other about corporate governance and other relevant issues of common interest.

(b) Legal Basis and Compliance: *Voluntary (disclosure encouraged).*

The SCGOP Handbook & Guidelines propose that companies in which its members invest voluntarily disclose whether they comply with the provisions of the Peters Report (1997), or explain why they do not. It also creates voluntary criteria that can be used by association members in investment selection and shareholder voting. (Reportedly, the SCGOP has hired Deminor to track compliance.)

(c) Consultations.

The SCGOP researched corporate governance theory and practice globally, and within the European Union. It also researched U.S. institutional investors’ codes and commissioned a study by Catholic University Brabant that compared the OECD Principles, the ICGN Statement, and certain French, German and U.K. codes.

(d) Contributions.

Association members were invited to contribute their opinions and recommendations on corporate governance issues. After providing research and other materials for its members’ consideration, the SCGOP consolidated and reflected its members opinions and practices in its Handbook & Guidelines.

(e) Definition of Corporate Governance.

According to the SCGOP Handbook & Guidelines, “[c]orporate governance concerns the way companies are managed and how management is supervised.” (p. 8)

- (f) Objective: *Improve accountability to shareholders and/or maximise shareholder value.*

The SCGOP sets forth eighteen Guidelines that its members can employ when implementing their respective governance policies regarding Dutch companies. These Guidelines, which are derived from the Peters Report and are in conformity with international standards, urge a “comply or explain” policy vis-à-vis observance of the provisions of the Peters Report.

- (g) Scope: *Listed companies.*

The SCGOP Handbook & Guidelines is aimed at the Dutch listed companies in which SCGOP members invest.

(2) Supervisory & Managerial Bodies.

- (a) Rules/recommendations regarding the separate roles and responsibilities of supervisory and managerial bodies (including lines of responsibility).

The SCGOP Guidelines indicate that “[t]he supervisory board is the body that, in keeping with the interests of shareholders, must watch over the actions of the executive board and general developments at the company and its holding company.” (p. 19)

The SCGOP Handbook states that “[t]he management -- or executive -- board is responsible for management of the company.” (p. 8)

- (b) Rules/recommendations regarding the accountability of supervisory and managerial bodies (including conflicts of interest).

The SCGOP Guidelines do not discuss issues of accountability directly. However, the SCGOP website states: “It is implicit that the [management board] and the supervisory board are prepared to render account to the shareholders about their exercise of duties.” (<www.scgop.nl>)

In relation to accountability, the SCGOP Handbook indicates that the SCGOP commissioned a comparative study of codes which revealed a consensus, with which the SCGOP concurs, that: (i) shareholders must be given timely access to financial information in order to judge whether a company’s actions are in line with its stated goals; (ii) important matters must be put to the approval of shareholders; (iii) shareholders must be allowed to vote at shareholders’ meetings; and (iv) the voting process must be simple. (p. 9) Moreover, unlike current practice under the structure regime, shareholders should appoint the members of the supervisory board and the management board, as well as the auditors. (p. 8)

The SCGOP Guidelines urge that a company’s shareholders and certificate holders -- and not only company management -- should have the right to submit topics for the agenda of annual meetings in order to enhance the role of these meetings as a forum for discussion between the boards and the company’s investors. (p. 16)

To avoid potential conflicts of interest, the Guidelines urge that former members of the management board should not be appointed automatically to the supervisory board or, if they are appointed, should not serve as its chairman. (p. 19)

- (c) Rules/recommendations regarding the size, composition, independence and other selection criteria and procedures of supervisory and managerial bodies.

The SCGOP Guidelines emphasise the need for the supervisory body to be independent of the managerial body: “The supervisory board is expected to provide independent expertise in carrying out its responsibility. The annual report must state whether each supervisory board member is independent from management and any majority shareholder.” In addition, as discussed above, the Report urges that retired management board members not automatically be appointed to the supervisory board; and should a retired manager be appointed to the supervisory board, he or she should not serve as chairman. (p. 19)

Regarding selection criteria, the Guidelines advocate making the profiles of supervisory board composition, as well as the rules and regulations the board has established, available to shareholders. (p. 20)

The SCGOP Guidelines call for evaluations of supervisory board members prior to any reappointments by shareholders. (p. 19)

- (d) Rules/recommendations regarding the working methods of supervisory and managerial bodies (including information flows).

The Handbook and Guidelines do not address this topic.

- (e) Rules/recommendations regarding remuneration of members of supervisory and managerial bodies (including evaluation procedures).

Like the Peters Report, the Guidelines assert that the “remuneration of supervisory board members should not be linked to the company’s profits. Supervisory board members must therefore not receive options.” (p. 19) Options are acceptable as a component of executive compensation, however, if shareholders approve the option scheme in advance at the general meeting. There should be “a clear relationship between achieving strategic goals and rewards in the form of options.” (p. 20) The Guidelines also offer the following recommendations about option plans for management:

- Dilution of earnings per share should be avoided as much as possible in the design of options plans. If this cannot be avoided, the company should strive to be as transparent as possible in explaining dilution aspects. (p. 20)
- Option plans should be reported in the annual accounts. Should options positions represent an off-balance sheet risk to the company, this risk should be quantified in the annual accounts. (p. 20)

- (f) Rules/recommendations regarding the organisation and supervision of internal control systems and relations between supervisory bodies, managerial bodies and internal/external auditors.

The Handbook & Guidelines do not address this topic.

(3) Rights of Shareholders/Stakeholders.

- (a) Rules/recommendations regarding protection of the rights of shareholders.

The Guidelines make a number of recommendations that have the goal of protecting shareholder rights. These recommendations generally relate to the procedure for conducting annual shareholders meetings and shareholder voting rights. They include the following:

- “To improve the role of annual shareholders meetings as a forum for discussion between the board and capital providers, the right to submit agenda topics should be enjoyed by shareholders and certificate holders, and not just management.” (p. 16)
- “Companies should introduce a ‘record date’ system so that the period of share deposition does not prevent shareholders from exercising their voting rights.” (p. 16)
- “A practical system of proxy voting should be introduced to allow institutional investors to vote at the shareholders’ meetings of all the companies in which they have shares.” (p. 16)
- “If the [AGM] suffers from absenteeism, to the extent that the attendees present cannot be seen to adequately represent the shareholders and financiers of the company as a whole, the company might want to certify its shares. For this reason, the trust office of the company should be independent. When it comes to voting, its management must act in the interests of holders of certificates, or depository receipts.” (p. 17)

- (b) Rules/recommendations regarding equal/fair treatment of shareholders.

The Guidelines make a number of recommendations that relate, either directly or indirectly, to equal treatment of shareholders. Some of these echo the concerns stated in the Peters Report about the undue separation of capital and voting rights.

- “The board should take pains to prevent an unbalanced relationship arising between the capital providers and voting right influence as a result of the issuance of preference shares.” (p. 17)
- “Major decisions should be approved at the annual general meeting of shareholders. This demonstrates how the interest of shareholders is weighted in relation to other interests, and also in relation to the interests of any majority shareholders.” (p. 16)
- “If in addition to the trust office there are other shareholders, and if the trust office wishes to vote differently from the majority of those other shareholders,

the trust office must justify its standpoint. The trust office must therefore not exercise its voting right before other shareholders have done so.” (p. 17)

- “The introduction of a practical and efficient proxy voting system and proxy solicitation will enable the practice of limiting voting rights to be abolished.” (p. 17)
- “To prevent an issue of ordinary shares from being used as an anti-take-over device, companies should limit the period during which the authority to issue shares is granted to 18 months.” (p. 17)

(c) Rules/recommendations regarding the rights of stakeholders.

The Handbook notes that works councils of large stock exchange-listed companies have a role to play in advising company management. (p. 8) Also, in passing, it states that in continental Europe the focus of corporate governance encompasses the interests of stakeholders rather than only those of shareholders. (p. 9) However, it also notes that the suppression of shareholder rights has been shown to have a negative influence on performance. (p. 15)

L. PORTUGAL

1. LEGAL SYSTEM OVERVIEW

| CIVIL LAW SYSTEM | |
|--|--|
| LEGAL/REGULATORY FRAMEWORK | ENFORCEMENT / REGULATORY BODIES |
| COMPANY LAW FRAMEWORK <ul style="list-style-type: none">Commercial Companies Code, Decree/Law 262/86 of 2 September 1986 (“Companies Code”) | <ul style="list-style-type: none">Commercial Courts<i>Comissão do Mercado de Valores Mobiliários</i> (CMVM) |
| SECURITIES LAWS/REGULATIONS <ul style="list-style-type: none">Commercial Companies Code, Decree/Law 262/86 of 2 September 1986 (“Companies Code”)Securities Market Code (Cód MVM), Decree Law No. 142-A/91 of 10 April 1991 | <ul style="list-style-type: none"><i>Comissão do Mercado de Valores Mobiliários</i> (CMVM) |
| STOCK EXCHANGE LISTING RULES <ul style="list-style-type: none"><i>Bolsa de Valores de Lisboa e Porto</i> (“BVL”) | <ul style="list-style-type: none">Listing rules of the BVL |

a. GENERAL

Although Portuguese law allows for a number of business forms, the predominant business form is the *sociedade anónima de responsabilidade limitada* (SARL). Regulation of Portuguese companies has risen along with the recent resurgence of the Portuguese stock market. After 1986, and through the influence of the European Community integration, a significant national securities market has emerged. This has led to greater public ownership of shares and a renewed interest in company law and securities regulation.

After a study of the behaviour of the stock market in 1991, the government approved a Securities Market Code that, among other things, created the *Comissão do Mercado de Valores Mobiliários* (CMVM), the Portuguese securities regulation body. The CMVM has taken an interest in corporate governance, and has issued Portugal’s only corporate governance code (see below).

b. ROLE AND RESPONSIBILITY OF THE SUPERVISORY BODY

(1) **Type of board system: *Predominantly one-tier; board of auditors also required.***

Portuguese companies are managed either by a unitary board of directors or by a hybrid two-tier structure of a “shareholders board” and a “directorate.” Most listed companies use the unitary board structure.

As in Italy, Portuguese companies are also required to have a statutory board of auditors (or, in some companies, a sole auditor). For purposes of this Report, the board of auditors is not considered a separate board tier: it is more analogous to an

audit committee and an outside auditor as an important part of the control function of the corporation.

As noted above, Portuguese companies have the option of using a type of two-tier model in which the company is managed by a directorate and also has a shareholders' board. This shareholders' board is a sort of additional "supervisory body" and has no managerial function -- it serves mainly to oversee the actions of the directorate. Thus, Portugal's hybrid two-tier structure bears little resemblance to that typified by the Austrian and German models.

The two-tier structure described above is rarely used in Portugal. However, details about both structures are discussed below.

(2) Role, make-up and powers of the supervisory body.

Board of Directors (one-tier): In the Portuguese one-tier system, the board of directors is charged with the duty of managing the corporation. In corporations where the capital is less than 20,000,000 escudos, the company may be managed by a sole director. The directors may be appointed according to the statutes (articles) of the corporation or may be elected by the shareholders. The shareholders also have the power to re-elect and replace directors. The term of a director may not exceed four years.

Directorate (two-tier): In the Portuguese two-tier system, the company is managed by a directorate having an odd number of directors to a maximum of five. Corporations having capital of less than 20,000,000 escudos may have a sole director under this system. These managing directors are elected by the "shareholders board" (see below) for terms not to exceed four years. The directorate is required to regularly inform the shareholders board of its policies and business strategies and the financial and competitive standing of the corporation and its business(es).

The shareholders board is composed of a maximum of fifteen members, with the exact number to be established in the company's statutes. The number of shareholders board members must be odd and must also exceed the number of managing directors. The members of the shareholders board must be shareholders of the corporation (no minimum shares requirement) and are either appointed according to the statutes or elected by the general shareholders meeting to terms not exceeding four years. Members of the shareholders board may be re-elected, depending on the company's statutes.

The shareholders board functions as the supervisory body and is empowered to appoint and dismiss managing directors, supervise the activities of the directorate and call general meetings of shareholders. Under the two-tier system, instead of a statutory board of auditors, the shareholders meeting is required to appoint a certified auditor. The duties of the certified auditor are the same as those of the statutory board of auditors (see below). The shareholders board is required to meet quarterly.

(3) Duties of the supervisory body.

Generally, whether under the unitary or two-tier board structure, the supervisory body must always act in the interests of the company. However, given the fact that some

directors are elected by important sets of shareholders, in practice some directors may try to protect the interests of these shareholders. Nonetheless, a director's legal duties run to the company solely.

c. ROLE AND RESPONSIBILITY OF THE MANAGERIAL BODY

(1) Role, make-up and powers of the managerial body.

The supervisory body may delegate day-to-day management of the corporation to a group of top executive managers.

(2) Duties of management members.

The duties of hired managers in Portuguese corporations are laid out by the company's charter and by the agreement pursuant to which they are employed by the board of directors.

d. SHAREHOLDER RIGHTS

Shares in Portuguese corporations may be in either registered or bearer form. All shares must have a par value, and each shareholder's liability is limited to the par value of the shares subscribed for and held. All shares are freely transferable. Preferred stock may be issued unless prohibited by the company's statutes. Preferential rights may be granted as to voting, dividend distribution and distribution of assets upon dissolution of the company. Preferential rights may not be altered without approval by a majority of affected shareholders. It is prohibited for one single preferred shareholder to hold more than ten percent (10%) of the total voting rights of the corporation.

(1) Decisions reserved to shareholders and the general meeting.

Annual or special shareholders' meetings are called by the board of directors. Special meetings may be called by the board at the request of minority shareholders representing at least five percent (5%) of corporate capital. Shares may be voted by proxy. Shares may be voting or non-voting shares -- owners of non-voting shares are entitled to the annual minimum dividend. The law requires that when a corporation reduces its share capital, non-voting shares may be affected by the reduction only to the extent that the amount of the reduction exceeds the par value of the regular shares.

(2) Shareholders' legal recourse.

According to Portuguese Company Law, directors may be held liable for carrying out acts which violate either the law or company statutes and result in damage to the company. They may be held responsible to the company, the shareholders and the creditors of the company. Action against the directors must be brought on behalf of the company itself rather than individual shareholders.

Directors may be removed by a vote of the annual general meeting. When the removal is the result of misconduct by the director, removal is effected automatically when a decision is made to bring an action against the director.

(3) Duties of controlling shareholders.

Portuguese law does not recognise any particular duties on the part of controlling shareholders.

2. CORPORATE GOVERNANCE CODES

Portugal's primary corporate governance code was issued by the Portuguese Securities Market Commission ("CMVM") in November 1999. Despite the fact that the Securities Market Commission Recommendations were created by a public agency that has regulatory authority over Portugal's financial markets, it meets this Study's definition of "corporate governance code" because it is advisory rather than mandatory in nature. Even the decision of whether to disclose compliance is left with the companies themselves rather than mandated by the Commission.

The CMVM has followed up on its recommendations by publishing two surveys on the corporate governance practices of listed Portuguese companies, most recently in October 2000. In its recent review of fifty-six listed corporations, the CMVM found that while compliance with the code has improved in certain areas, more than ninety-six percent (96%) of the companies are not following recommendations relating to proxy voting.

A representative of CMVM reports that the lack of independent corporate governance codes in the Portuguese business world is due to the fact that company law and securities law and regulation already respond to many of the problems posed by the governance of listed companies (*i.e.*, transparency, equal treatment of shareholders and good management practices).

a. SECURITIES MARKET COMMISSION RECOMMENDATIONS

Code: Recommendations on Corporate Governance
Issuing Body: The Portuguese Securities Market Commission (Comissão do Mercado de Valores Mobiliários)
Date: November 1999
Official Languages: Portuguese and English

(1) **Background.**

(a) Issuing Body: *Governmental/quasi-governmental entity.*

The Portuguese Securities Market Commission (“CMVM”) supervises and regulates securities (and other financial instrument) markets. CMVM is a public agency with administrative and financial autonomy and both supervisory and regulatory powers. It has two primary purposes: (1) the protection of investors in the securities markets and (2) the maintenance of the efficient and regular functioning of the securities markets.

(b) Legal Basis and Compliance: *Voluntary (disclosure encouraged).*

Although the Recommendations are issued by a regulatory/supervisory authority, they are not mandatory. “[I]t is recommended that listed companies and institutional investors include a mention in their annual reports of the adoption or degree of adoption of these recommendation with the grounds for this adoption.” However, such disclosures are not required.

(c) Consultations.

According to the Introduction, “these recommendations are intended to be understood as recommendations by and for the market. This is, therefore, a document open to assessment and suggestions and, as such, is subject to revision and amendment.”

(d) Contributions.

There is no indication that other parties contributed to these Recommendations.

(e) Definition of Corporate Governance.

According to the Recommendations:

“Corporate governance is used to describe the system of rules and procedures employed in the conduct and control of listed companies. Corporate governance has . . . an *internal* aspect and an *external* aspect: the first meaning is understood as the set of organisational rules within each listed company; external control, in turn, relates to the assessment of the performance of the company which is conducted through the normal function of market mechanisms, a domain in which the proceedings of institutional investors are of capital importance.” (Introduction)

- (f) Objective: *Improve companies' performance, competitiveness and/or access to capital.*

The Introduction states that “[t]his corporate governance analysis does not seek to impose rigid and uniform models. Its objective is to contribute to the optimisation of company performances and to favour all those people whose interests are involved in the work of the company -- investors, creditors and workers.” The Recommendations “aim[] to inaugurate a critical reflection in Portugal on corporate governance. . . .”

- (g) Scope: *Listed companies; encouraged to all companies.*

Although the majority of the governance issues addressed by these Recommendations are related to companies with listed shares and with institutional investors, CMVM states that “these recommendations may, naturally, be also followed by non-listed companies.”

(2) Supervisory and managerial bodies.

- (a) Rules/recommendations regarding the separate roles and responsibilities of supervisory and managerial bodies (including lines of responsibility).

The CMVM Recommendations state that the board of directors should “exercise effective control in its guidance of the company, reserving decisions on important matters. To pursue this objective, it should . . . ensure the supervision of the management of the company.” (§ 14) The Recommendations emphasise that “[i]nformation should be disclosed on the sharing of powers between the different bodies and departments or divisions of the company within the framework of the corporate decision process, particularly through flowcharts or functional maps.” (§ 1) “Information should be disclosed on the actual functions of each member of the board of directors and executive management of the company, as well as their positions in other companies.” (§ 2) This is advisable because “[i]t is important to prevent situations of conflict of interest between the sphere of influence of a member of the board of directors or executive management and the sphere of influence of the company in question.” (§ 2)

- (b) Rules/recommendations regarding the accountability of supervisory and managerial bodies (including conflicts of interest).

The CMVM recommends that, within the internal organisation of the company, “specific regulations be established aimed at regulating situations of conflict of interest between members of the board and the company, as well as the main obligations resulting from duties of diligence, loyalty and confidentiality of the members of the board, particularly regarding the prevention of improper use of business opportunities and company assets.” (§ 12)

- (c) Rules/recommendations regarding the size, composition, independence and selection criteria and procedures of supervisory and managerial bodies.

“The board should be composed of a number of members who provide effective guidance for the management of the company to its managers.” (§ 14) The Recommendations advocate that each board should balance the number of members

to maximise efficiency, taking into consideration that an excessive number of members may hamper the desired cohesion and contribution of each member in discussion and decision-making. In turn, “the efficiency of board meeting depends significantly on the diversity of opinions and the vitality of the deliberation process.” (§ 14)

“The inclusion of one or more members who are independent in relation to the dominant shareholders in the board is encouraged, as to maximise the pursuit of corporate interests.” (§ 15) The Recommendations explain that the composition of the board of directors “should be planned so that during the management of the company not only the interests of the group of shareholders with a majority of shares are considered. Independent members should exercise a significant influence on collective decision taking and should contribute to the development of the company strategy, thereby favouring the interests of the company.” (§ 15)

Regarding management composition, the Recommendations state that “[i]f an executive committee is created, its composition should reflect, insofar as it is possible, the balance existing in the board between directors linked to dominant shareholders and independent shareholders.” (§ 16)

- (d) Rules/recommendations regarding the working methods of supervisory and managerial bodies (including information flows).

The Recommendations state that, in order to exercise effective control in its guidance of the company, the board should meet at regular intervals, be duly informed at all times and ensure the supervision of the management of the company. (§ 14)

- (e) Rules/recommendations regarding remuneration of members of supervisory and managerial bodies (including evaluation procedures).

The Recommendations’ only comment in this area is that “the board is encouraged to create internal control committees with powers conferred for matters in which there are potential situations of conflicts of interest, such as analysis of the remuneration policy. . . .” (§ 17)

- (f) Rules/recommendations regarding the organisation and supervision of internal control systems and relations between supervisory bodies, managerial bodies and internal/external auditors.

The Recommendations encourage boards to create internal control committees with powers to deal with “matters in which there are potential conflicts of interests, such as the nomination of directors and managers, the analysis of the remuneration policy and assessment of the corporate structure and governance.” (§ 17) The function of such committees should be basically informative and consultative, since “they are not supposed to replace the board in decision taking but rather provide it with information, advice and proposals that may help it efficiently develop its function of supervision and increase the quality of its performance in these matters.” (§ 17)

(3) Rights of shareholders/stakeholders.

(a) Rules/recommendations regarding protection of the rights of shareholders.

The Recommendations attempt to improve accountability to shareholders by advocating that companies regularly disclose information regarding:

- The distribution of powers between the different bodies and departments or divisions of the company within the framework of the corporate decision process, particularly through flowcharts or functional maps (§ 1);
- The actual functions of each member of the board of directors and executive management of the company, as well as their positions in other companies (§ 2);
- The market behaviour and performance of the company's shares (§ 3);
- The dividend policy commonly adopted by the company (§ 4); and
- Any existing shareholder agreements regarding the exercise of rights in the company or regarding the transferability of shares. (§ 5)

The Recommendations address shareholder voting rights. They state that companies should take steps to stimulate the exercise of voting rights, whether directly or by representation. (§ 8) They also stress that companies should provide shareholders with sufficient information and voting instructions to assure their participation in the voting process. (§ 9)

Finally, the Recommendations comment on the role of institutional investors. They state that “[i]nstitutional investors should take into consideration their own responsibilities for diligent, efficient and critical use of the rights conferred by the securities of which they are holders or whose management has been entrusted to them.” (§ 10) They also state that institutional investors should disclose information on the practice followed regarding the exercise of voting rights on securities whose management has been entrusted to them. (§ 11)

(b) Rules/recommendations regarding equal/fair treatment of shareholders.

The Recommendations state that the company should maintain “permanent contact with the market,” respecting the principle of equality for shareholders and taking precautions against asymmetries in access to information among investors. For this purpose, the creation of an investor information department is recommended. (§ 7)

(c) Rules/recommendations regarding the rights of stakeholders.

The Recommendations do not address this topic.

Additional information about the Securities Market Commission Recommendations is included in the Comparative Matrix appended to this Report as Annex V.

M. SPAIN

1. LEGAL SYSTEM OVERVIEW

| CIVIL LAW SYSTEM | |
|--|---|
| LEGAL/REGULATORY FRAMEWORK | ENFORCEMENT/ REGULATORY BODIES |
| <p>COMPANY LAW FRAMEWORK</p> <ul style="list-style-type: none"> • <i>Ley de Sociedades Anónimas</i>, Corporations: Public Limited Companies Act RD 1564/1989, 1989 • Limited liability companies: Law 2/1995 • <i>Reglamento del Registro Mercantil</i>, Companies Registry Regulations 1996) | <ul style="list-style-type: none"> • Civil Courts |
| <p>SECURITIES LAWS/REGULATIONS</p> <ul style="list-style-type: none"> • <i>Ley del Mercado de Valores</i>, Capital Market Act 24/88 | <ul style="list-style-type: none"> • <i>Comisión Nacional del Mercado de Valores</i>, The Spanish Securities and Exchange Commission |
| <p>STOCK EXCHANGE LISTING RULES</p> <ul style="list-style-type: none"> • <i>Bolsa de Madrid</i>, Madrid Stock Exchange | <ul style="list-style-type: none"> • Listing rules of the <i>Bolsa de Madrid</i> |

a. GENERAL

The Spanish private sector, through the *Circulo de Empresarios* (Businessmen’s Association) played a key role in stimulating the modern discussion of corporate governance in Spain with two publications: “Reflections on the Reform of the Board of Directors” (October 1995) and “A Proposal for Regulations to Improve the Functioning of the Board of Directors” (November 1996). Private sector interest in corporate governance reform was influenced by a number of factors including:

- Concern that Spanish listed companies be posed to compete for equity investment capital with corporations from other EU Member States;
- A decline in State ownership and participation in business, and a related rise in shareholding; and
- Broad criticism about the effectiveness of boards in protecting minority shareholders from controlling shareholder self-interest.

Based in part on these concerns, the ensuing discussion of the reform proposals, and a petition from the *Comision Nacional del Mercado de Valores* (“CNMV” or National Commission of the Stock Market), the government supported the establishment of a “Special Commission for the study of an Ethical Code for Company Boards of Directors,” in February 1997.

b. ROLE AND RESPONSIBILITY OF THE SUPERVISORY BODY

(1) Type of board system: One-tier.

Under Spanish law there are three different ways to set up the supervisory body of the company. Responsibility may be entrusted to a board of directors (*consejo de administracion*), to a sole director, or to two directors acting jointly and severally.

(2) Role, make-up and powers of the supervisory body.

The supervisory body has general responsibility for the conduct of the company's business. Members of the supervisory body are elected at the shareholders meeting (or named in the articles of association at the corporation's genesis). They may be re-elected for an unlimited number of terms, but terms may not exceed five years.

The Spanish Public Limited Companies Act (§ 141), provides that the board of a Spanish company may delegate its management function to an executive committee. The board has the power to elect and dismiss these managers, and is responsible for evaluating the performance of management at regular intervals.

The supervisory body must ensure that the company complies with all laws and regulations in force. Failure to do so resulting in damages to the company may result in liability on the part of the directors. This would occur, for instance, in the case of violations of tax law.

The supervisory body must generate, sign and submit to the general meeting of shareholders the annual accounts. This is a board responsibility that may not be delegated. This is in line with the board's overall duty to control the corporation's accounting, audit and financial reporting systems. This duty is sometimes entrusted in the first instance to the audit committee of the board, which is given the specific task to ensure that the auditing system of the company works properly and that the external auditor is independent.

(3) Duties of the supervisory body.

The board of directors must always act in the interests of the company. However, given the fact that some directors are elected by important sets of shareholders, in practice some directors may try to protect the interests of these shareholders. Nonetheless, a director's legal duties run to the company solely.

c. ROLE AND RESPONSIBILITY OF THE MANAGERIAL BODY

(1) Role, make-up and powers of the managerial body.

The supervisory body may delegate day-to-day management of the corporation.

(2) Duties of management members.

The duties of hired managers in Spanish corporations are laid out by the company's charter and by the agreement pursuant to which they are employed by the board of directors.

d. SHAREHOLDER RIGHTS

Shares in Spanish companies may be in either bearer or registered form. Unless otherwise stated in a company's bylaws, shares are freely transferable. Shares may be divided into different classes according to their value, the nature of the rights granted, or both. Shares may have different voting rights and different rights to receive dividends. All shares of the same class must be assigned the same value and accorded the same rights.

(1) Decisions reserved to shareholders and the general meeting.

Annual or special shareholders meetings are called by the board of directors. Special meetings may be called by the board at the request of minority shareholders representing at least five percent (5%) of corporate capital.

Shares may be voted by proxy. A Spanish corporation may issue non-voting shares only for a par value not to exceed fifty percent (50%) of the paid-in regular share capital. Owners of non-voting shares are entitled to the annual minimum dividend. The law requires that when a corporation reduces its share capital, non-voting shares may be affected by the reduction only to the extent that the amount of the reduction exceeds the par value of the regular shares.

(2) Shareholders' legal recourse.

Directors may be held liable for any resulting damage to the company from acts that violate either the law or company statutes. They may be held responsible to the company, the shareholder and the creditors of the company. The source of this responsibility is the Public Limited Companies Act. Action against the directors must come in the form of a derivative action. It may be brought about by a majority decision of the shareholders meeting or by a minority of shareholders representing at least five percent (5%) of the corporate capital.

Directors may be removed by a vote of the annual general meeting. When the removal is the result of misconduct by the director, removal is effected automatically when a decision is made to bring an action against the director.

(3) Duties of controlling shareholders.

Spanish law does not recognise any particular duties on the part of controlling shareholders.

2. CORPORATE GOVERNANCE CODES

Corporate governance code-making in Spain was initiated by the government with the support of the CNMV and the private sector. Spain's Olivencia Report was drafted by a committee created by the Spanish cabinet on the advice of the Vice-President and the Minister of Economy and Finance. Although this code was the result of a government initiative, it fits this Study's definition of a code because it is neither statutory nor regulatory in nature. Based upon current information, there is no

indication that the Spanish government is preparing to create any mandatory framework based upon the Olivencia Report.

Neither of the publications from the *Circulo de Empresarios* fit this Study's definition of a code.

In a 1998 memorandum, the Spanish Securities and Exchange Commission analysed compliance with the Olivencia Report. The Memorandum set out a list of companies complying with the code and another list with companies that have expressed a willingness to comply. The Memorandum states that the Olivencia Report has been quite successful, especially considering its non-compulsory nature.

a. OLIVENCIA REPORT

Code: The Governance of Spanish Companies (Olivencia Report)
Issuing Body: Special Committee for the Study of a Code of Corporate Governance for Boards of Directors of Listed Companies
Date: February 1998
Official Language: Spanish (English translation available)

(1) **Background.**

(a) Issuing Body: *Committee (commission) organised by government.*

The Special Committee for the Study of a Code of Corporate Governance for Boards of Directors of Listed Companies, chaired by Manuel Olivencia Ruiz, was created by the Spanish Cabinet following a proposal of the Vice-President and the Minister of Economy and Finance to carry out two missions: (1) to draft a report on the problems affecting the boards of directors of Spanish listed companies “calling on financial markets” (primarily listed companies) and (2) to establish an ethical code of governance to be complied with voluntarily by such corporations.

The Special Committee consisted of ten well-known members of Spain’s business, legal and academic communities.

(b) Legal Basis and Compliance: *Voluntary.*

Compliance with the Olivencia Report is wholly voluntary. No disclosure has been mandated by the government or any Spanish stock exchange.

(c) Consultations.

The Report does not indicate whether any formal consultative process was undertaken. The Special Committee based much of its work on a previous inquiry made to a wide spectrum of Spanish boards of directors, using data from this survey to identify important areas for discussion. The Committee also requested data, background information, reports and other assistance from various public bodies and agencies in Spain.

(d) Contributions.

There is no record of any other contributions by parties outside the Committee in the preparation of the Report.

(e) Definition of Corporate Governance.

There is no definition of the term “corporate governance” in this Report.

(f) Objective: *Improve companies’ performance, competitiveness and/or access to capital.*

“[T]his Special Committee [has] a double assignment: drawing up a report on the problems affecting the Boards of Directors of all [Spanish] corporations calling on financial markets; and establishing

an Ethical Code of Governance to be complied with voluntarily by these corporations.”

(§ I.1)

The Committee states that the Spanish Government is aware of a widespread demand arising from business sectors and capital markets for a greater efficiency, flexibility, responsibility and transparency in the governance of listed companies. Through such improvements, the Committee states, greater reliability by companies and better protection of the interests of shareholders will be achieved.

By creating the Committee, the Government states that this measure is increasingly needed because of its policy of privatisation and sale of state-owned companies in Spain. This policy, which results in a remarkable growth of the number of private shareholders, will create a demand for more accountability to the interests of shareholders. To assist companies in meeting this demand, the Report advocates that companies should focus on achieving best practices for the board of directors -- specifically as it relates to board operation and the conduct of directors.

(g) Scope: *Listed companies and other privatised companies.*

The Olivencia Report is applicable to Spanish listed companies and other Spanish companies which have been privatised.

(2) Supervisory and Managerial Bodies.

(a) Rules/recommendations regarding the separate roles and responsibilities of supervisory and managerial bodies (including lines of responsibility).

The Olivencia Report states that the board of directors is often seen as a management body whose major function is to conduct the ongoing business of the company. It recognises that in most large companies managerial functions are entrusted to a management team, with the board serving in a supervisory function. Due to its discontinuous work, its collective structure and its deliberative character, the board is not generally the ideal body to directly manage companies. However, this supervisory function should not entail relegation of the board to an ornamental character. Quite the contrary, it should play an active role in defining the general strategy of the company. (§ II.1.1)

The Committee states that the board of directors has three main missions:

- Guiding the company’s policies and strategies;
- Controlling management; and
- Communicating with shareholders.

(§ II.1.1)

The Report states that the board should be basically set up as a monitoring and control tool, focused on aligning plans of those managing the day-to-day affairs of the company with the interests of those putting forth the resources and bearing the business risk (the shareholders). This does not mean that the board and the management of the company are to pursue shareholder interests at all costs, regardless

of or underlying concerns of other groups involved in the company or within the community where it is located. Rather, they are to be guided by the interests of the company and shareholders, but without ignoring the interests of other groups such as employees. (§ II.1.3)

(b) Rules/recommendations regarding the accountability of supervisory and managerial bodies (including conflicts of interest).

The Report states that the company's internal regulations should formally include a duty for directors to report in advance situations of conflicting interest and the board should establish a procedure for addressing such conflicts. (§ II.8.2) The Report states that to properly deal with the matter of conflicts of interest at least two essential rules must be clearly established:

- Directors should refrain from attending and taking part in deliberations on matters in which they have a personal interest, particularly concerning their own re-election or dismissal; and
- Boards must limit, and exercise extreme caution in, transactions (whether direct or indirect) between individual directors and the company.

Concerning directors' access to company information, the Report recommends "that internal operation rules of the company expressly include a duty of discretion and passivity." The duty of discretion imposes on directors not only the obligation to refrain from disclosing any deliberations of the board and board committees in which they participate, but also to refrain from revealing any information to which they have had access because of their position. The Report indicates that "[t]he duty of passivity obliges directors not to use the company's inside information for personal purposes." (§ II.8.3)

(c) Rules/recommendations regarding the size, composition, independence and selection criteria and procedures of supervisory and managerial bodies.

Regarding board size, the Report states that a minimum number of directors is necessary to provide the body with sufficient deliberative powers. However, a maximum limit should not be exceeded because a crowded board may foster passive attitudes. The Committee believes that it is not possible to provide a precise guideline regarding the size -- it depends on the circumstances of the company, but for most companies board size should number between five and 15. (§§ II.2.3 & III.4)

The Report states that every board should have a significant number of non-executive directors (to examine management performance impartially). (§§ II.2.1 & III.2-3) There should be two kinds of non-executive directors: independent and proprietary directors. (§ II.2.1-2.2) According to the Report, independent directors are non-executives who are chosen because of their professional qualifications. (§ II.2.1) Proprietary directors are directors who are shareholders or represent important shareholdings. (§ II.2.2)

The independent directors must be professionals with experience and knowledge, so that they can make valuable contributions to the company. (§ III.2) The Report states that it is not advisable to select independent directors exclusively from among the significant executives of other companies, although this experience might qualify

them in directing the strategy of the company. It is advisable and convenient to incorporate individuals with other professional backgrounds, so that the board may benefit from an exposure to different points of view and experiences. (§ II.5-2)

The Report points out that, although the legal power of appointing directors falls on the general shareholders' meeting, the board plays a prominent role in this process. The board's ability to fill vacant posts and to submit appointment proposals to the consideration of the shareholders (and the fact that the free floating capital does not usually participate in the general meeting) vests the board with significant power in nominating directors. To achieve a transparent procedure, the Committee recommends forming a nomination committee, whose mission is to ensure the integrity of the process of appointing directors. (§ II.5.1) To this end, the Report states that the nomination committee should be entrusted with the following functions:

- Defining and reviewing the criteria to be followed in determining the composition of the board and the process of selection of candidates;
- Submitting appointment proposals to the board, so that it can either appoint them directly or relay those proposals to the general shareholders' meeting; and
- Proposing directors to serve on each committee.

(§ II.5.1)

(d) Rules/recommendations regarding the working methods of supervisory and managerial bodies (including information flows).

The Report states that the board should meet often enough to maintain a constant presence in the life of the company. (§ II.4.1) The Report does not set out a general rule regarding meeting frequency, but it states that this is an important issue and that the board should determine the minimum amount of time it should devote to its activities. (§ III.10) The Report also discusses the importance of proper preparation for the board's meetings. This task should be carried out considering two essential elements of productive meetings -- information and time. (§ II.4.2) According to the Report, data indicates that board meetings in Spain are often called without directors having enough information. The Report emphasises that it is critical that the directors be provided with sufficient information in due time, so as to provide directors an opportunity for study prior to board meetings. (§ III.9)

(e) Rules/recommendations regarding remuneration of members of supervisory and managerial bodies (including evaluation procedures).

The Committee favours schemes linking a significant part of directors' remuneration -- particularly those of executive directors -- to the company's performance, because such schemes can align director and shareholder interests. The Report therefore states that incentive plans, including payment in stock or purchase or sale options, should be used. (§ II.7.3)

Regarding the level of remuneration for directors, the Report states that companies should be cautious, should be guided by market conditions, and should consider the

responsibility and degree of commitment of each director. Moderation should rule decisions in this area. Remuneration should be calculated in such a way as to offer incentives for dedication without compromising independence. (§ II.7.2)

Transparency of director remuneration is a delicate but important issue, according to the Olivencia Report. The Report notes the current legal requirement that the annual report include the aggregate salaries, allowances and remunerations earned by supervisory body members, as well as any obligations taken on by the company in the form of pensions or insurance premium payments for both former and current directors. The Report notes, however, that when applied in practice, this requirement satisfies neither shareholder nor market interests, and may be a source of misunderstanding. Thus, the Report recommends that director remuneration information policies be grounded on a principle of maximum transparency, greater than that required by law, including disclosure of itemised information about the remuneration of each individual director. (§ II.7.4)

(f) Rules/recommendations regarding the organisation and supervision of internal control systems and relations between supervisory bodies, managerial bodies and internal/external auditors.

The Report states that the board of directors must supervise the company's compliance with applicable laws and regulations. (§ II.11.1) To achieve that objective, the Committee proposes the creation of an audit committee with the following powers:

- Verifying the adequacy and integrity of internal control systems;
- Proposing the auditors, terms and conditions of the audit agreement and, as the case may be, revocation or non-renewal thereof;
- Reviewing the company's accounts, watching over the compliance with legal requirements and properly applying generally accepted accounting principles and criteria; and
- Acting as a communication channel between the board and the auditors and evaluating the results of each audit and the management team's response to their recommendations.

(§ II.11.1)

The Report also proposes the creation of a compliance committee, which might be integrated into the audit committee, whose mission would be to watch over the company's compliance with the company's governance rules, reviewing results from time to time and making reform proposals to the board when appropriate. (§ II.11.1)

The Report states that external auditors should verify the financial statements prepared by the management team and that, in this respect, they take on a great responsibility. (§ II.10.2) The board must take the necessary steps to ensure that auditors carry out their mission effectively and, particularly, that they are able to work without any interference from the company's executives. (§ II.11.1)

(3) Rights of Shareholders/Stakeholders.

(a) Rules/recommendations regarding protection of the rights of shareholders.

The Report points out that the general meeting of shareholders is subject to many structural limitations. Most ordinary shareholders do not attend general meetings. The Report attributes this to problems of “rational apathy” (the cost of taking part in the meeting is often greater than the benefits obtained) and “collective action” (the difficulty of co-ordinating the actions of scattered shareholders and the insufficient incentives to make efforts that will disproportionately benefit others). (§ II.9.1) Thus, although the Report casts doubts on the effectiveness of certain policies directed towards the reactivation of the general meeting, it welcomes any action directed at increasing the efficiency of shareholder control. The Report refers to measures aimed at making voting by proxy a more transparent procedure, at increasing communications between the company and its shareholders and at activating those shareholders who can contribute the most to shareholder control -- institutional investors. (§ III.18)

The Report also states that the shareholders have a general right to information, as stated in the Public Limited Companies Act (§ 48). Additionally, the general meeting has a specific right to request information about the issues included in the agenda (Public Limited Companies Act, § 112). The Report suggests additional disclosure: it recommends that boards address a letter to all shareholders summarising the discussions and outcomes of board meetings. It also proposes that the board issue semi-annual or quarterly reports. The creation of “shareholder information offices” is, according to the Report, a particularly interesting initiative. (§ II.9.3)

(b) Rules/recommendations regarding equal/fair treatment of shareholders.

The Report notes that Spanish law generally supports a one-share one-vote principle. The Report focuses on voting by proxy, given that the free-floating capital generally participates in the general meeting by proxy. The Report expresses concerns about the proxy process, however, because it is managed by trustees and by the management body of the company, which may lead to bureaucracy and cause conflicts. The Report proposes that the proxy process should be more transparent and keep shareholders informed of their voting options. (§§ II.9.2 & III.18)

The Report also states that in the event of a proposal to introduce defensive measures against hostile take-over bids, the board of directors is in a conflict of interest situation. The Report suggests that shareholders should be made aware of the fact that the recommendations of the board on these matters could be partial. (§ II.9.2)

(c) Rules/recommendations regarding the rights of stakeholders.

The Report does not address this topic directly. However it does indicate that the board and management should consider the interests of employees and other groups in determining the interests of the company.

Additional information about the Olivencia Report is included in the Comparative Matrix appended to this Report as Annex V.

N. [SWEDEN](#)

1. [LEGAL SYSTEM OVERVIEW](#)

| CIVIL LAW SYSTEM | |
|--|---|
| LEGAL/REGULATORY FRAMEWORK | ENFORCEMENT / REGULATORY BODIES |
| COMPANY LAW FRAMEWORK <ul style="list-style-type: none"> • Act 1975: 1385 on Companies, as amended (“Companies Act”). | <ul style="list-style-type: none"> • Ministry of Justice (courts) |
| SECURITIES LAWS/REGULATIONS <ul style="list-style-type: none"> • The Exchange and Clearing Operations Act • The Trading in Financial Instruments Act • The Securities Operations Act | <ul style="list-style-type: none"> • Ministry of Finance and the Swedish Financial Supervisory Authority |
| STOCK EXCHANGE LISTING RULES <ul style="list-style-type: none"> • Listing Rules of the Stockholm Stock Exchange, LLC | <ul style="list-style-type: none"> • The Stockholm Stock Exchange |

a. GENERAL

Ownership and control is highly transparent in Sweden. Control tends to be highly concentrated -- even very large firms tend to be family controlled. (It has been estimated that one family controls companies that account for approximately one-half of the market value of the Stockholm Stock Exchange.) Families rely on pyramidal holding structures and dual-class shares to retain control. In addition, large commercial banks have played a key role in the finance of Swedish corporations, and in some instances hold large blocks in client firms through closed-end investment funds. Foreign investment into Sweden has increased greatly in recent years. Foreign ownership restrictions were abolished in 1993; now foreigners own more than one-third of the outstanding equity of the Stockholm Stock Exchange.

There is only one form of limited liability joint stock company in Sweden, the *aktiebolag*. The basic rules regulating the *aktiebolag* are contained in the Swedish Companies Act of 1975. The provisions of the Companies Act, however, apply equally to public and private limited liability companies. In only a few cases does the Companies Act contain provisions which apply only to listed companies.

In 1990 the Swedish government set up a Company Law Committee to carry out a comprehensive review of the Companies Act. This panel worked for a decade, during which time it issued seven reports to the government. The Committee’s final report, “A New Companies Act,” was submitted in January 2001. (The New Companies Act is expected to enter into force on January 1, 2004.) The Committee’s other reports covered:

- Restricted and unrestricted shares;
- The Companies Act and the requirements of the EU;

- The organisational structure of the *aktiebolag*;
- The capital structure of the *aktiebolag*;
- The distribution of profits in an *aktiebolag*; and
- The winding up of an *aktiebolag*.

b. ROLE AND RESPONSIBILITY OF THE SUPERVISORY BODY

(1) Type of board system: *One-tier.*

Sweden's Companies Act mandates what is essentially a unitary board system, but with significant differences from the one-tier system of United Kingdom.

Swedish limited liability joint-stock companies must have a board of directors. In companies in which share capital is at least SKr 500,000 (EURO 52,900), the board of directors must elect a managing director. This managing director is recognised under the Companies Act as a separate legal organ and this may explain why some commentators describe Sweden as having a two-tier board system. However, the managing director is an individual (not a board), and he or she may be a member of the board of directors. Moreover, there is no strict division of responsibilities between the board of directors and the managing director. The Companies Act imposes both managerial and supervisory functions on the board of directors. (In listed companies, the supervisory functions tend to dominate, and the day-to-day affairs are delegated to the managing director and his executives.) Hence the Swedish governance structure, despite having two recognised governance organs, is functionally closer to the unitary board model than to the two-tier board model. Note that, in smaller companies, a managing director is not mandatory, but is available as an option.

(2) Role, makeup and powers of the supervisory body.

The board must consist of at least three directors, with the exact number normally stated in the articles of association. Employees are guaranteed representation on Swedish boards. In companies with at least 25 employees, Swedish law gives employee representatives the right to appoint two directors and two deputy directors to the board. In larger companies, labour unions are accorded the right to appoint three directors and three deputies. However, these provisions are not to result in employee representatives holding a majority of board seats: in companies with only three directors, employee representatives may only take one seat. Moreover, those elected to represent employees must not be in the employ of the company.

Except for employee representatives, directors are elected by the general meeting unless the articles of association provide otherwise. In the public company, the majority of board members must be elected by the general meeting. When electing the directors, the candidate receiving the largest number of votes is elected. Therefore, shareholders holding more than half of the voting rights of the company's shares may gain complete control over the makeup of the board. There are no rules that require minority representation on boards.

Directors' terms of office shall be specified in the articles of association. Terms are normally one year in length, and the Companies Act prohibits terms of more than four years.

The Stockholm Stock Exchange listing rules require listed companies' boards to be composed in a way that "answers to the demands on a publicly listed company." The rules require that boards have a majority of directors who are independent of management. In a vast majority of Swedish companies the chief executive officer is the only executive manager on the board of directors. Furthermore, at least two members of the board must be independent of the major stockholders (those owning more than ten percent (10%)) of the company.

Under the Companies Act, the board of directors is responsible for the organisation of the company and the management of its affairs, with the day-to-day management delegated to the managing director. The board issues written rules of procedure annually relating to the division of responsibilities between the board members, how often board meetings shall be held, and how deputies shall take part in the work of the board. The board also issues written instructions describing how responsibilities are to be divided between the board and the managing director. The board also maintains responsibility for ensuring the company's compliance with applicable laws and regulations.

(3) Duties of the supervisory body.

Directors of the board may not deal with matters relating to agreements between themselves and the company. They also must not deal with matters relating to agreements between the company and third parties if they have a significant interest therein. Additionally, the board of directors may not pass any resolution likely to give an undue advantage to a shareholder or a third party to the detriment of the company or other shareholders. Resolutions passed by the board that are contrary to this rule are invalid under the Companies Act.

It should be noted that the duties of directors appointed by the labour union(s) to represent employee interests (see above) are the same as those of other directors.

Note that the auditors play an important supervisory role under Swedish company law. The auditors are considered to be an independent organ of the company. A listed company must have at least one authorised auditor, and at least one of the auditors must be appointed by the general meeting. The mandate period is four years. The auditors can be held under the same criteria as the board and the managing director(s). Strict rules are in place to guarantee the independence of the auditors. Thus, neither the auditor nor a person closely related to him may be a shareholder, member of the board, managing director or debtor of the company. Furthermore, the auditor may not be employed in the same firm as someone who professionally assists the company in its bookkeeping, financial management or the company's control thereof.

c. ROLE AND RESPONSIBILITIES OF THE MANAGERIAL BODY

(1) **Role, makeup and powers of the managerial body.**

As stated above, the managing director is appointed by the board of directors. It is the responsibility of the managing director to manage the day-to-day business of the company. His or her duties must be specified in a written instruction from the board. The notion of day-to-day management is normally considered to be quite wide, but does not authorise the managing director to bind the company on matters not considered day-to-day management without the prior approval of the board. (The managing director may undertake actions outside the scope of general day-to-day business in cases of imminent danger, informing the board of such actions without undue delay.)

(2) **Duties of management members.**

The managing director, like the board, owes a fiduciary duty to the company and all its shareholders as a body. The managing director is excluded from dealing with matters relating to agreements between himself and the company under the same conditions as the members of the board are so excluded.

d. SHAREHOLDER RIGHTS

The general meeting of shareholders is the most important decision-making body of Swedish companies. Shareholders may vote at the general meeting of shareholders in person or through a proxy.

All Swedish shares are bearer shares and must carry voting rights. Shares with differential voting rights are very common. However, no share can have more than ten times the voting power of another share. Voting caps can be laid down in the articles of association. Note that a number of Swedish companies have adopted one-share/one-vote systems after cross-border mergers, or have otherwise eliminated certain classes of shares most associated with differential voting rights.

A shareholder can vote through a representative with a dated proxy in writing. However, proxy voting is rare, as proxies may not be solicited at the company's expense. New provisions to increase proxy-voting possibilities are proposed under the new Companies Act.

(1) **Decisions reserved to shareholders and the general meeting.**

Under Swedish law, the general meeting of shareholders may decide on all company matters, unless the law explicitly refers the subject to another company body.

The ordinary general meeting typically deals with, among other matters:

- Election of directors;
- Appointment of auditors;
- Adoption of the profit and loss statement;
- Annual discharge of the directors from liability;

- Amendment of the articles of association;
- Increase of authorised capital; and
- Issuance of convertible debt instruments.

Various provisions are designed to grant minority shareholders a certain amount of influence. A minority of one-tenth of outstanding capital can delay decisions as to adoption of profit and loss statement, adoption of the balance sheet and, as mentioned above, discharge from liability of the company officers.

(2) Shareholders' legal recourse.

Shareholders may institute an action on behalf of the company alleging damages to the company. In general, actions against directors of the board and managing directors on behalf of the company pre-suppose that at least a minority representing one-tenth of the capital has voted against a liability discharge. If this is the case, an equal minority can initiate proceedings in the name of the company. Action may be brought against the board or managing director even after they have been discharged of their liability, if the decision was based on statements in the annual report or the auditor's report, which were in an essential respect incorrect or incomplete. Directors and managing directors are liable directly to shareholders for damages caused to the shareholders through the violation of the Companies Act, the Act on Annual Accounts or the articles of association.

(3) Duties of controlling shareholders.

Swedish law does not impose any special duties on controlling shareholders. It does, as mentioned above, have certain provisions designed to protect minority shareholders.

Controlling shareholders do not owe any fiduciary duties to either the company as a whole, or to the minority. However, the Companies Act contains a general loyalty clause that prohibits the general meeting (and hence a controlling shareholder) from taking any decision that could render a shareholder or a third party an undue advantage to the detriment of the company or other shareholders. Furthermore, a shareholder can be held liable for damages to the company, another shareholder or a third party when he infringes the Companies Act, the Act on Annual Accounts or the articles of association through gross negligence.

2. CORPORATE GOVERNANCE CODES

The scarcity of Swedish codes may be explained by the detailed corporate governance requirements provided by Sweden's laws and listing rules. For example, Sweden's Companies Act expressly prohibits an individual from serving as both company chairman and chief executive officer (or managing director), and the listing requirements of the Stockholm Stock Exchange expressly require listed companies to have a certain number of independent directors. (Although the latter provision applies to all listed companies, several commentators noted that its enforcement is focused on newly-listed companies.) In Sweden, the managing director is usually the only

executive of the company represented on the board. Thus, the best practice of having a significant majority of non-executive directors is met.

Note that the Board Academy of Stockholm is reported to be drafting a tentatively-titled “Code of Best Practice for Boards.” The target completion date is before year end, 2002.

a. SWEDISH SHAREHOLDERS ASSOCIATION POLICY

Code: Corporate Governance Policy
Issuing Body: The Swedish Shareholders Association
Date: November 1999
Official Language: Swedish (English translation available)

(1) **Background.**

(a) Issuing Body: *Investors association.*

The Swedish Shareholders Association is an association of individual small investors, with approximately 100,000 members.

(b) Legal Basis and Compliance: *Voluntary (association members recommended to apply to portfolio companies).*

Compliance with the Policy is purely voluntary, and there is no requirement, via listing rules or otherwise, that companies disclose whether they are complying with the Policy's recommendations.

(c) Consultations.

The Policy does not indicate whether any formal consultative process was undertaken.

(d) Contributions.

There is no record of any contributions by parties outside the Association in the preparation of the Policy. The Policy contains a section that summarises the international developments in corporate governance that influenced the Policy's principles. It mentions many national and international codes, including the OECD Principles of Corporate Governance, the International Corporate Governance Network's Corporate Governance Principles, the U.K.'s Cadbury Report, France's Viénot I Report, and the Report of the Blue Ribbon Report on Audit Committees in the U.S. (sponsored by the New York Stock Exchange and the National Association of Securities Dealers at the request of the U.S. Securities & Exchange Commission).

(e) Definition of Corporate Governance.

The Policy does not offer a definition of the term "corporate governance."

(f) Objective: *Improve accountability to shareholders and/or maximise shareholder value.*

"The aim of the . . . guidelines is to increase the individual shareholder's confidence in the boards and corporate management of companies traded on the stock market, through ensuring there are satisfactory control mechanisms and transparency." (Introduction -- Background)

(g) Scope: Listed companies.

The Policy is primarily applicable to “[c]ompanies whose stocks are quoted on the stock market, but should also be applicable to other companies with a spread ownership.”

(2) Supervisory and Managerial Bodies.

(a) Rules/recommendations regarding the separate roles and responsibilities of supervisory and managerial bodies (including lines of responsibility).

The Policy states that the administration of the company’s business is entrusted to the board by the general meeting. (§ 2) The members of the board should “act with great thoroughness and care in the best interests of the company and all the shareholders.” (§ 2.2)

According to the Policy, the shareholders shall see to it that the board takes responsibility for:

- Formulating and developing the strategic leadership of the company, including business strategy, risk analysis, budgeting, major investments, acquisitions and spin-offs;
- Appointing, guiding, instructing, evaluating (on a yearly basis), compensating and, when necessary, dismissing management, especially the managing director and deputy managing director;
- Overseeing internal and external auditing; and
- Assuring that there is an open and correct flow of information from the company to the owners and other interested parties.

(§ 2.2)

The Policy contains no recommendations concerning the managing director other than some very detailed and technical provisions concerning remuneration, particularly incentive schemes. (See below)

(b) Rules/recommendations regarding the accountability of supervisory and managerial bodies (including conflicts of interest).

The Policy states simply that the board should act “with great thoroughness and care in the interests of the company and all the shareholders.” (§ 2.2)

(c) Rules/recommendations regarding the size, composition, independence, selection criteria and procedures of supervisory and managerial bodies.

According to the Policy, the board should be composed of capable members representing all-around competence. The Policy advocates a board size of six to nine members. Generally, board members should be independent from management, although no specific percentage of independent directors is indicated. No employee other than the managing director should be included on the board, and former managing directors should not be elected to the board. (§ 2.1)

The Policy states that candidates for the board should be selected by a nominating committee for election by the shareholders. (Presumably this recommendation applies only to the selection of those directors who are not elected by the company's employees.) The nomination committee should have three to five members, the majority of whom "represent the company's owners" with at least one representing the smaller owners. The chairman of the board should be a member of the nominating committee.

(d) Rules/recommendations regarding the working methods of supervisory and managerial bodies (including information flows).

The Policy recommends that each board should have an audit committee (see below), a nomination committee and a remuneration committee (§§ 1.2.1 - 1.2.3). (Commentators note that remuneration committees are the most common types of board committees in Swedish listed companies; audit committees are relatively uncommon.) The Policy also states that "[i]n order to fulfil their responsibilities, the members of the board should have access to correct, relevant and current information." (§ 2.2)

(e) Rules/recommendations regarding remuneration of members of supervisory and managerial bodies (including evaluation procedures).

According to the Companies Act, it is the responsibility of the shareholders' meeting to decide upon the remuneration of the board. However, the Policy states that the board "has the ultimate responsibility for the company's remuneration policy and the total costs for this." (§ 2.4.2) According to the Policy, the remuneration committee, elected by the shareholders, should give a proposal to the shareholders' meeting regarding compensation.

According to the Policy, non-executive members of the board should not take part in incentive programs (stock options, etc.). Such programs, it states, should only apply to employees and executive members of the board.

Regarding executive remuneration, the Policy states that the remuneration committee should be responsible "for ensuring that comprehensive and well thought through contracts are drawn up with the managing director and other key executives." The remuneration committee should also be responsible for "ensuring that principles for salary structures and other terms of employment are additionally drawn up for other people in the corporate management" because "[t]his increases the likelihood that these matters will receive a balanced and thorough treatment." (§ 2.4.2) It should be "the remuneration committee and ultimately the board that decides on salary levels and other terms of employment for the company's key executives, in the first place the managing director and that person's deputy." (§ 2.4.3)

(f) Rules/recommendations regarding the organisation and supervision of internal control systems and relations between supervisory bodies, managerial bodies and internal/external auditors.

The Policy advocates that boards appoint an audit committee composed of non-executive board members. The duties of the audit committee are to:

- Maintain contact with the auditors on an ongoing basis throughout the year, with aims that include checking that the company’s internal and external auditing fulfils the requirements incumbent on a company;
- Discuss the scope and focus of the auditing work;
- Deal with any differences of opinion between the corporate leadership and the auditors; and
- Ensure that important observations made by the auditors are brought to the attention of the whole board.

(§ 1.2.2)

The Policy recommends that the audit committee have at least three members and be accountable to the board of directors. Among other tasks, the audit committee is charged with nominating the external auditors to the general meeting and monitoring the work of both internal and external auditors. (§ 1.2.2)

(3) Rights of Shareholders/Stakeholders.

(a) Rules/recommendations regarding protection of the rights of shareholders.

The entire Policy is aimed at improving companies’ responsiveness to shareholders and maximising shareholder value. Its specific recommendations relate to improving the flow of information from the company to its shareholders. The Policy’s primary recommendation regarding the general meeting of shareholders is that shareholders should receive sufficient information well in advance of the meeting.

(b) Rules/recommendations regarding equal/fair treatment of shareholders.

The Policy does not address this topic.

(c) Rules/recommendations regarding the rights of stakeholders.

The Policy states that, for employees not covered by existing legislation concerning security of employment, there is a “need for special employment contracts.” Such contracts should regulate the manner in which companies may remove people from employment. (§ 2.4.1)

The Policy also states that “[a]ll stakeholders need information so they can form an opinion of the company’s financial standing and development, thereby giving them a basis for a true evaluation of the company’s stock. This information must therefore be open, correct, relevant and current, and its contents must be clear, true and fair.” (§ 4)

Finally, the Policy states that shareholders should “ensure that the board takes responsibility for . . . communication between the company’s owners and other stakeholders” (§ 2.2) and that incentive programs should be designed to allow employees to become shareholders in the company. (§ 3.7)

O. UNITED KINGDOM

1. LEGAL SYSTEM OVERVIEW

| COMMON LAW FOUNDATION | |
|--|---|
| LEGAL/REGULATORY FRAMEWORK | ENFORCEMENT/ REGULATORY BODIES |
| COMPANY LAW FRAMEWORK <ul style="list-style-type: none"> • Companies Act 1985 (and amendments) • Company Directors Disqualification Act 1986 • Insolvency Act 1986 | <ul style="list-style-type: none"> • Department of Trade and Industry • Financial Services Authority |
| SECURITIES LAWS/REGULATIONS <ul style="list-style-type: none"> • Financial Services Act 1986 • Public Offerings of Securities Regulation 1995 • City Code on Take-overs and Mergers | <ul style="list-style-type: none"> • Financial Services Authority (“FSA”) • Panel on Take-overs and Mergers |
| STOCK EXCHANGE LISTING RULES <ul style="list-style-type: none"> • Listing Rules of the London Stock Exchange | <ul style="list-style-type: none"> • Financial Services Authority • London Stock Exchange |

a. GENERAL

The United Kingdom has been described as “the first country in which industrialisation on a massive scale made corporate governance important.” (J. Charkham, *Keeping Good Company* (1994) at 248.) As an early comer to the field, the U.K. has had a long period to experiment and adjust in response to the inevitable corporate governance failures. In the 1990s, after a series of corporate financial failures and scandals, the United Kingdom gained a reputation as a global leader in efforts to reform corporate governance. Together with Ireland, it was an early EU Member State to issue codes of best practice aimed at encouraging voluntary improvements in response to perceived failings of corporate governance. The United Kingdom also has a number of organisations active in promotion governance reform -- the Association of British Insurers, the National Association of Pension Funds, the Institutional Fund Managers Association, the Institute of Chartered Accountants in England & Wales, the Institute of Chartered Secretaries & Administrators, and others.

In addition to the development of codes discussed herein, in the late 1990s the United Kingdom began a sweeping review of its company law. The United Kingdom is a common law nation with a well-developed framework of company and securities laws. Strictly speaking, there are three legal systems in the United Kingdom with English law applying in England and Wales and each of Scotland and Northern Ireland having its own separate legal system. (For the purposes of this Study, the differences between the various systems of law are not material.) English company law is derived from both common law and legislation, principally the Companies Act of 1985.

In March 1998, the Department of Trade and Industry announced a wide-ranging review of company law and appointed an independent steering group with members appointed from outside government to oversee the project. The Company Law Review Steering Group consulted widely and published nine consultation documents. On July 26, 2001, it published its final report entitled “Modern Company Law For a Competitive Economy.” The 559-page report recommends numerous changes to English company law, including:

- Simplifying the rules relating to small, privately held companies;
- Creating a statutory statement of directors’ duties to clarify that, in promoting the success of their company, directors must take account of long-term (as well as short-term) consequences and the importance of the company’s relations with stakeholders, the community and the environment;
- Clarifying the rules relating to directors’ conflicts of interest;
- Limiting the length of executive directors’ employment contracts;
- Improving disclosure on directors’ training, qualifications and other relevant information;
- Preserving the strengths of the Combined Code and its “comply or explain” approach to the extent possible;
- Requiring greater transparency of institutional investors’ exercise of their powers;
- Clarifying the rights of minority shareholders; and
- Improving the quality, timeliness and accessibility of company reporting.

The Government is now considering the report before introducing related legislation. Commentators have suggested that implementation of a majority of its recommendations would require a new Companies Act and it is possible that the report will result in a radical and far reaching overhaul of English company law.

The Financial Services and Markets Act of 2000 (the “FSMA”) may also affect the development of corporate governance standards in the United Kingdom, especially in relation to companies carrying on businesses which are regulated by the FSMA. The primary purpose of the FSMA is to create a single regulator of banking, securities and insurance business and to replace the self-regulatory system established under the Financial Services Act of 1986. The bulk of the FSMA and various regulations made under it came into effect on November 30, 2001.

The recently issued Myners Report will also impact corporate governance practices in the United Kingdom. Chancellor of the Exchequer, Gordon Brown, commissioned Paul Myners, chairman of Gartmore Investment Management, to investigate institutional investing practices (especially pension fund investing) to identify weaknesses and propose solutions. Upon release of the Myners Report on March 6, 2001, the Chancellor announced that he accepted the recommendations of the Report in full and was prepared to introduce new legislation to achieve its aims.

The Report recognises, *inter alia*, that pension fund trustees often lack resources and expertise to make decisions relating to corporate governance. They may be

disinclined to intervene in companies where they own substantial shareholdings, even where this would be in their clients' financial interests. The central proposal of the Report is a short set of clear principles of investment decision-making, emphasising the duty of institutional investors to actively oversee their investments on behalf of the best interests of their shareholders. The principles would apply to pension funds and their trustees and, eventually, other institutional investors. The principles would not be mandatory, but, where a fund chose not to comply with them, it would have to explain to its members why not.

The Report recommends abolishing the UK's Minimum Funding Requirement (MFR), which has been blamed for constraining fund managers in their investment decisions, and strengthening the role of pension fund trustees by requiring more professional competency of them, including, *inter alia*, that they (i) know about the issues on which they decide, (ii) state an investment objective for the fund, and (iii) get paid for their services. (The Myners Report, which has been generally well received, can be downloaded at <www.hm-treasury.gov.uk/press/2001/p29_01.html>.)

b. ROLE AND RESPONSIBILITY OF THE SUPERVISORY BODY

(1) Type of board system: *One-tier.*

Companies in the U.K. employ a one-tier system (a single board of directors that directs and monitors the company's activities). The management of the company is delegated by the board to senior officers and executives of the company, some of whom may sit on the board of directors.

(2) Role, makeup and powers of the supervisory body.

The articles of association of companies incorporated in the U.K. almost invariably include a provision assigning the management of the company to its board of directors. The Companies Act 1985, Table A, Article 70 (a model form of articles of association that is incorporated into the articles of association of all companies except to the extent that it is excluded or modified by the company's own articles of association) provides that "the business of the company shall be managed by the directors who may exercise all the powers of the company."

Typically, the board of directors delegates to senior managers (who may or may not also be members of the board) authority for managing the daily operations of the company.

In addition to strategic guidance of the company, the board of directors bears supervisory responsibility for:

- Hiring and firing top managers: The board is responsible for engaging and dismissing the chief executive officer and other executive directors, as part of its broader responsibility to manage the business of the company. The board also determines executive compensation. The chief executive usually is given responsibility for engaging and dismissing other senior managers.
- Ensuring the company's compliance with applicable laws and regulations: The board is responsible for ensuring that the company complies with all

applicable laws and regulations (based on common law principles, but reinforced, in many cases, by legislation that may impose liability on directors for the company's failure to comply with that particular legislation);

- Ensuring the integrity of the corporation's accounting, auditing and financial reporting systems: The provisions of the Companies Act of 1985 that deal with a company's accounts and records also provide that non-compliance with those provisions is an offence for which a company's directors may be held liable (Companies Act 1985, Part VII, Chapter 1).

The board also nominates directors for election by the shareholders, usually for staggered three-year terms. Note that company bylaws may allow an executive-director (usually the chairman/CEO) to stay on the board indefinitely once first elected by shareholders. However, this practice is disfavoured by shareholders and appears to be diminishing.

(3) Duties of the supervisory body.

United Kingdom company law recognises shareholders as owners of the company. Company law makes it clear that companies are owned by, accountable to and governed by shareholders. Under common law, the directors of a corporation owe fiduciary duties to the company and not to individual shareholders. According to the leading case authority addressing this issue, "the phrase 'the company as a whole' does not . . . mean the company as a commercial entity distinct from the corporators: it means the corporators as a general body."³ Companies Act 1985, § 309, requires the directors to have regard for the interests of the company's employees. However, the section makes it clear that this "duty" is owed to the company as a whole and not to the employees, either as a group or as individuals.

The directors' fiduciary duties include duties to:

- Act in good faith in the interests of the company;
- Exercise their powers for a proper purpose;
- Avoid placing themselves in a position where conflicts arise between their own interests and those of the company; and
- Avoid making improper profits (*i.e.*, taking personal benefits at the expense of the company).

The law in this area is developing, with significant developments occurring in the context of certain claims⁴ that may be made against the directors of a company that has been the subject of an insolvent liquidation and cases concerning disqualification proceedings against directors. In the latter context, recent judgements have suggested

³ *Greehalgh v. Arderne Cinemas Ltd.* [1951], Ch. 286. "Corporators" is a synonym for shareholders.

⁴ Claims against directors for "wrongful trading" under the Insolvency Act 1986, § 214, require the court to consider not only the general knowledge, skill and experience that a director possesses, but also "the general knowledge, skill and experience that may reasonably be expected of a person carrying out the same functions as are carried out by the director in relation to the company."

a relationship between the duties owed by a director and the remuneration that that director derives or may derive from his office.⁵

As noted above, the report recently published by the Company Law Review Steering Group recommended the adoption of a statutory statement of directors' duties. The primary duty of a director, if adopted, would be to "act in the way he decides, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole." The Review recommends that in arriving at decisions in accordance with this duty, the board will "take in account" a number of factors, such as the impact on corporate reputation and the environment. In circumstances where it is more likely than not that the company will be unable to pay its debts as they fall due, this primary duty would be replaced by a duty to achieve a reasonable balance between the risk that the company will be unable to pay its debts and the promotion of the success of the company, and by a duty to take every step to minimise loss to creditors where there is no reasonable prospect of the company avoiding an insolvent liquidation.

c. ROLE AND RESPONSIBILITY OF THE MANAGERIAL BODY

(1) Role, make-up and powers of the managerial body.

The legal responsibility of the directors for the management of a company is derived from a mix of contract and common law. As stated above, the articles of association of most companies delegate the management of the company's affairs to its directors. Executive directors are appointed by the board of directors.

(2) Duties of management members.

As stated above, the directors of a company have responsibility for its management. Individual managers owe duties to the company. The nature and extent of those duties will depend upon the manager's particular circumstances and the contents of any contract of employment.

d. SHAREHOLDER RIGHTS

In the U.K. registered shares are far more common than bearer shares. Companies mail annual meeting notices and financial statements to shareholders or their nominee/custodian. Shareholders are not required to deposit or block shares for a period prior to voting to prove share ownership.

Although the one share/one vote principle generally applies, there are some exceptions. For example, although very rare and only with shareholder approval, shares can issue having multiple voting rights, or the ability to block mergers or take-overs (for example, golden shares). In addition, there has been some discussion about the British practice of allowing votes to be cast at the general meeting by a show of hands. This "one shareholder/one vote" approach gives small, individual shareholders -- rather than large, powerful ones -- an opportunity for some disproportionate influence on a show of hands. The other difficulty with the hand vote is that it

⁵ *In re Barings plc* (No. 5) [1999], 1 BCLC 433.

disproportionately favours persons in actual attendance over those who have relied on proxies. Note, however, that shareholders can demand a formal count, and this is happening with increasing frequency.

(1) Decisions reserved to shareholders and the general meeting.

The division of powers between the shareholders of a company and its directors is effected by a mix of common law and statutes, as well as articles of association and, sometimes, contracts. The key decisions typically reserved to the shareholders include:

- Electing directors;
- Approving non-executive directors' fees;
- Accepting (or "receiving") financial statements;
- Appointing and removing auditors and approving their fees;
- Approving the final dividend;
- Altering the company's articles;
- Authorising share issues and repurchases (beyond the authority already granted to the board);
- Disapplying (statutory) pre-emption rights on the issue of new shares; and
- Increasing or reducing a company's share capital.

A simple majority vote is sufficient for most matters to pass. However, certain proposals -- for example, amending the articles or disapplying shareholders' pre-emptive rights -- generally require a supermajority vote (75%).

Shareholders are allowed to submit proposals for consideration and may force an extraordinary meeting, although the subject matter for proposals is restricted and the process can be complicated.

The Companies Act 1985 requires every company to hold a general meeting at least annually, although a private company is able to dispense with this requirement if its shareholders pass an "elective resolution." Under the Companies Act 1985 (§ 388), holders of ten percent (10%) or more of a company's outstanding shares may requisition a meeting by lodging a formal request with the board. Also, shareholders are entitled to receive annual financial statements comprised of an audited balance sheet and profit and loss account as well as reports by directors and the companies' auditors.

(2) Shareholders' legal recourse.

Because the duties owed by directors are owed to the company as a whole, the common law precludes individual shareholders from commencing proceedings to enforce directors' duties. English law takes the view that the correct party in such proceedings is the company itself or the shareholders as a collective body.

To mitigate the harshness to individual shareholders that might result from the operation of this rule, the courts have developed a number of exceptions to it,

including the prevention of acts that are *ultra vires*, actions constituting fraud by the majority shareholders at the expense of the minority shareholders, and infringement of individual rights (such as the right to vote or receive notices).

In some circumstances, the failure by a company to fulfil its duties to shareholders may give rise to a claim under Companies Act 1985, section 459, which deals with unfair prejudice to minority shareholders. The court has wide powers under section 459, but the great majority of cases result in an order that the majority buy out the minority at fair value.

The U.K. does not have one authority with specific responsibilities for the protection of shareholder rights. Each of the following bodies is actively involved in matters that affect shareholder rights:

- Financial Service Authority (“FSA”) -- a government regulator responsible for the regulation of the banking, insurance and securities business and the listing rules of the London Stock Exchange;
- Department of Trade and Industry (“DTI”) -- a government department responsible for supporting and regulating most aspects of trade and industry; and
- Take-over Panel -- an independent body made up of representatives of financial institutions and professional bodies that is responsible for the enforcement of the City Code of Take-overs and Mergers.

(3) **Duties of controlling shareholders.**

Controlling shareholders in the U.K. do not owe any affirmative legal duties to minority shareholders or to the company. The general principle under English law is that a voting right is personal property, which each shareholder is entitled to exercise in his own interests. However, this general principle is subject to certain exceptions, and the exercise of voting rights will usually be subject to challenge where the result is to deprive minority shares of value, for example, by dilution. In such circumstances, the minority is also likely to have grounds for a claim under section 459 of the Companies Act 1985, which deals with conduct that is “unfairly prejudicial” to some part of a company’s shareholders and, as noted above, generally results in the minority being bought out at fair value.

The Take-over Code, although non-binding, is for practical purposes adhered to by all publicly listed companies in the U.K. It has detailed provisions designed to ensure equality of treatment among shareholders in a take-over situation.

2. **CORPORATE GOVERNANCE CODES**

In response to public outcry prompted by several scandals in the late 1980s, a committee headed by Sir Adrian Cadbury -- and sponsored by the London Stock Exchange, the Financial Reporting Council and the accountancy profession -- issued a groundbreaking report on the “Financial Aspects of Corporate Governance,” which has come to be known as the “Cadbury Report.” The Cadbury Report, issued in 1992, was the U.K.’s first code of corporate governance practice to advocate disclosure by

listed companies of compliance with a code of best practice. The Cadbury Report has been highly influential not only in the U.K., but throughout the entire world. It is the first code to rely on a disclosure (“comply or explain”) means of encouraging companies listed on an exchange to follow best practice recommendations. (The London Stock Exchange required listed companies to include a statement of compliance with the Cadbury Code of Best Practice in reports and accounts for reporting periods ending after June 30, 1993.)

In 1998, the London Stock Exchange Committee on Corporate Governance combined elements of the Cadbury Report with recommendations from the Greenbury Commission and the Hampel Commission in “The Combined Code: Principles of Good Governance and Code of Best Practice” (the “Combined Code”). Section 1 of the Combined Code was introduced into the listing rules of the London Stock Exchange in June 1998 on a disclosure (“comply or explain”) basis. *The Combined Code thereby supersedes the Cadbury Report, the Greenbury Report, and the Hampel Report, all of which are discussed herein due to their historic influence.* A company listed on the London Stock Exchange (and incorporated in the U.K.) must include in its annual report and accounts a narrative statement of how it applies the principles set out in Section 1 with explanation to enable shareholders to evaluate how the principles have been applied. It must also include a statement as to “whether or not it has complied throughout the accounting period with the Code provisions set out in Section 1 of the Combined Code. A company that has not complied with the Code provisions, or complied with only some of the Code provisions or (in the case of provisions whose requirements are of a continuing nature) complied for only part of an accounting period, must specify the Code provisions with which it has not complied, and (where relevant) for what part of the period such non-compliance continued, and give reasons for any non-compliance. . . .” (London Stock Exchange Rules § 12.43A(b))

Note that the investor codes that have been issued in the U.K., in particular the PIRC Shareholder Voting Guidelines and the Hermes Statement, urge companies to adopt best practices in addition to, or arguably more rigorous than, those advocated by the Combined Code. (For example, the PIRC Shareholder Voting Guidelines contain a definition of director “independence” that is considerably more rigorous than the Combined Code’s definition.)

It should also be noted that another corporate governance document, the Commonwealth Association for Corporate Governance (CACG) Guidelines (“Principles for Corporate Governance in the Commonwealth”), was published in November 1999. The CACG’s treatment of U.K. corporate governance is entirely based upon the Combined Code, and, thus, it does not appear to add original content to the body of codes in the U.K. For this reason, as well as the fact that it applies to the Commonwealth (of which only the U.K. is a member among EU nations), it has not been included in this Study.

In addition to the codes discussed below, the Association of British Insurers has published several sets of guidelines relating to corporate governance, including:

- Statement of Voting Policy and Corporate Governance Good Practice (July 1999): this Statement responds to the Hampel Report’s proposal that “the ABI and the NAPF should examine the problem caused by the existence

of different and incompatible shareholder voting guidelines.” The Statement advises institutional shareholders to make considered use of their voting powers but also emphasises that voting is only part of the dialogue that should exist between investors and boards of directors. It discusses the various areas of corporate governance that should be of concern to institutional investors, including the composition of the board of directors, emoluments of directors and senior managers, and take-over bids.

- Combined Code Monitoring Checklist: for use by companies in determining whether they are in compliance with the Combined Code.
- The Responsibilities of Institutional Shareholders - A Discussion Paper (March 1991)
- Role and Duties of Directors - A Discussion Paper (June 1990)

These are important documents, but have not been analysed herein.

The strong interest in continually improving the U.K. corporate governance landscape has been supported by U.K. institutional investors. The attention that major U.K. investors have paid to the governance practices of the companies in which they invest has both influenced the U.K.’s notions of good governance and extended those ideas to foreign markets as well. These institutional investors have also created a number of relevant codes, which are of interest not only to U.K. companies, but to any enterprise seeking to attract investment from British or like-minded international investors.

A number of reports have been issued analysing the way various U.K. codes are applied in practice. In May 1995, the Committee on the Financial Aspects of Corporate Governance issued a report entitled “Compliance with the Code of Best Practice.” It surveyed the disclosure mandated by the London Stock Exchange concerning listed company compliance with the Cadbury Code. In a review of the reports from the top 500 listed companies, plus a one in five random sample of other listed companies, it found that every report contained a compliance statement. (In only one case did an auditor find the statement inadequate for not specifying areas of non-compliance.) It concluded:

- “All listed companies whose accounts have been examined are complying with the London Stock Exchange listing requirement to make a statement in their report and accounts on the extent of their compliance with the Code of Best Practice. Statements of full compliance are most likely to be made by companies in the top 500, whilst the smaller the company the higher the percentage of statements disclosing limited compliance.”
- “Although not a requirement of the Code, the majority of companies have split the roles of Chairman and Chief Executive, and where the roles are combined, there is more often than not an independent element of non-executive directors on the board, as recommended in the Report. There is a relationship between the size of a company and the number of non-executives on the board, with the larger companies most likely to have three or more. There has been a marked increase in the disclosure of Audit, Nomination and Remuneration Committees since the publication of the Code. The larger the company, the more likely it is to have three or more non-executive directors on the Audit

Committee, but there has also been an increase in the disclosure of Audit Committees comprising two non-executives, particularly in smaller companies.”

- “The majority of companies of all sizes have boards on which all or the majority of non-executive directors are independent. The larger the company, the more likely it is to have three or more independent non-executives on the board.”
- “While larger companies have disclosed compliance with the requirement to have formal terms of appointment for non-executive directors, such disclosure decreases in relation to company size. However, high levels of compliance with both the requirement to have a schedule of matters reserved to the board and to have an agreed procedure for independent advice were found in companies of all sizes. There is a higher incidence in all the sample groups of rolling as opposed to fixed-term three-year contracts. The incidence of contracts in excess of three years (either rolling or fixed-term) is very low.”

(Report of the Committee on the Financial Aspects of Corporate Governance (Cadbury Committee), “Compliance with the Code of Best Practice,” p. 13 (May 24, 1995))

The National Association of Pension Funds (U.K.) has a Voting Issues Service that tracks compliance with the Combined Code by the 350 largest listed U.K. companies. It notes that compliance with the disclosure requirement is high and compliance with substantive provisions of the Combined Code is increasing in many areas. Nevertheless, listed companies remain free to deviate from the Combined Code’s substantive recommendations, and many companies have decided to do so, at least in some respect. According to *Company Reporting (U.K.)*, an Edinburgh-based accounts analyst with a significant electronic database, in January 2000, only nine percent (9%) of the U.K. listed companies represented on its database fully complied with *all* the substantive recommendations of the Combined Code. The remaining ninety-one percent (91%) cite at least some exception to the recommended practices. The Co-operative Insurance Society (U.K.) has surveyed compliance with remuneration requirements of the Combined Code and found that three-fifths of FTSE 100 index companies do not have remuneration committees that are made up of predominantly independent directors. Finally, Pensions & Investment Research Consultants (PIRC) publishes an annual Corporate Governance Survey. The most significant observation in the most recent survey is that a few listed companies have not separated the roles of chairman and chief executive and that a number of companies have less than the recommended number of independent non-executive directors.

a. INSTITUTE OF CHARTERED SECRETARIES AND ADMINISTRATORS CODE

Code: Good Boardroom Practice: A Code for Directors
Issuing Body: The Institute of Chartered Secretaries and Administrators (ICSA)
Date: February 1991
Official Language: English

(1) Background.

(a) Issuing Body: *Business, industry and/or academic association or committee.*

The ICSA is a professional association for company secretaries and corporate administrators founded in 1891. The ICSA is an independent, self-regulating body. (Note that the ICSA has issued numerous publications that relate to various aspects of corporate governance. However, this Study only includes “Good Boardroom Practice” because it is the only ICSA publication covering, with sufficient breadth, the specific topics this Study covers.)

(b) Legal Basis and Compliance: *Voluntary.*

Compliance with this Code is wholly voluntary; no disclosure requirements are imposed.

(c) Consultations.

The Code does not indicate whether any formal consultative process was undertaken.

(d) Contributions.

The Code offers no indication of contributions from other parties. ICSA’s membership would indicate, however, that input was received from the secretaries and administrators of a wide array of British companies.

(e) Definition of Corporate Governance.

The ICSA Code does not provide a definition of the term “corporate governance.”

(f) Objective: *Improve quality of board (supervisory) governance.*

“ICSA has formulated this Code for directors and company secretaries as a guide to the matters which it believes should be addressed and, wherever applicable, accepted formally by boards of directors in recognition of a commitment to adhere to an overall concept of best practice.” (Introduction)

(g) Scope: *Listed companies; encouraged to all companies.*

The ICSA Code does not indicate that it is limited to any particular set of companies. It is assumed to aim at improving the practices of listed British companies with application to other companies as well.

(2) Supervisory and Managerial Bodies.

- (a) Rules/recommendations regarding the separate roles and responsibilities of supervisory and managerial bodies (including lines of responsibility).

The Code recommends that the board identify matters that require its prior approval and lay down procedures to be followed. (¶ 4) All material contracts, and especially those not in the ordinary course of business, should be referred to the board for decision prior to the commitment of the company. (¶ 6)

Under U.K. law and practice, the board of directors delegates to senior officers and executives of the company the authority to manage the day-to-day activities of the corporation.

- (b) Rules/recommendations regarding the accountability of supervisory and managerial bodies (including conflicts of interest).

While not stated explicitly, the accountability of a company's top managers to its board of directors is at the heart of the Code's recommendations.

- (c) Rules/recommendations regarding the size, composition, independence, and selection criteria and procedures of supervisory and managerial bodies.

The Code does not address this topic.

- (d) Rules/recommendations regarding the working methods of supervisory and managerial bodies (including information flows).

The Code recommends that each director, upon election to the board, be given sufficient information to enable him to perform his duties. The Code emphasises the need for a free flow of information between management and the board as well as between executive and non-executive directors.

The Code recommends that the board agenda should be formed by the chairman with assistance from the company secretary, who is responsible to the chairman for administration of the meetings of the company, the board and any board committees. (¶ 8) Notwithstanding the absence of a formal agenda item, the chairman should permit any director or the company secretary to raise, at any board meeting, any matter concerning the company's compliance with this Code or other legal or regulatory requirements. (¶ 13)

The minutes of meetings should be recorded and distributed. (¶ 10)

According to the Code, when the articles of association allow the board to delegate any of its powers to a committee, the board should give its prior approval to the membership of such committee, its term of reference and the extent of any powers granted to it. (¶ 9)

The Code emphasises that all directors should receive the same information at the same time, and each director should be given sufficient time in which to consider any such information.

- (e) Rules/recommendations regarding remuneration of members of supervisory and managerial bodies (including evaluation procedures).

The Code does not address this topic.

- (f) Rules/recommendations regarding the organisation and supervision of internal control systems and relations between supervisory bodies, managerial bodies and internal/external auditors.

The Code states that “[t]he board should establish written procedures for the conduct of its business which should include the matters covered in this Code. A copy of these written procedures should be given to each director. Compliance should be monitored, preferably by an audit committee of the board, and breaches of the procedures should be reported to the board.” (Annex ¶ 1)

(3) Rights of Shareholders/Stakeholders.

- (a) Rules/recommendations regarding protection of the rights of shareholders.

The Code does not address this topic.

- (b) Rules/recommendations regarding equal/fair treatment of shareholders.

The Code does not address this topic.

- (c) Rules/recommendations regarding the rights of stakeholders.

The Code does not address this topic.

b. INSTITUTIONAL SHAREHOLDERS COMMITTEE STATEMENT OF BEST PRACTICE

Code: The Role and Duties of Directors -- A Statement of Best Practice

Issuing Body: Institutional Shareholders Committee

Date: April 1991

Official Language: English

Perspective Note: The Institutional Shareholders Committee Statement of Best Practice is an important document primarily from a historic perspective. It has influenced other code efforts but is otherwise of little direct influence today.

(1) **Background.**

(a) Issuing Body: *Investors association.*

The Institutional Shareholders Committee (“ISC”) that drafted the Statement of Best Practice was made up of representatives of the Association of British Insurers, the Association of Investment Trust Companies, the British Merchant Banking and Securities Houses Association, the National Association of Pensions Funds Ltd. and the Unit Trust Association. The Committee was charged with creating a document on corporate governance with recommendations for governance practices from an institutional shareholder’s viewpoint.

(b) Legal Basis and Compliance: *Voluntary (association members recommended to apply to portfolio companies).*

Compliance with the Statement of Best Practice is wholly voluntary, and it imposes no disclosure requirement. The Statement seeks to persuade companies to adopt its recommendations by expressing the will of major institutional investors. It is presumed that some ISC members may decide to vote against resolutions that were inconsistent with its Statement.

(c) Consultations.

The Statement does not indicate whether any formal consultative process was undertaken.

(d) Contributions.

The Statement does not discuss any specific contributions by outside parties. However, the membership of the Committee is such that the views of a large number of institutional investors in the U.K. can be assumed to have been taken into account.

(e) Definition of Corporate Governance.

The Statement of Best Practice does not provide a definition of the term “corporate governance.”

- (f) Objective: *Improve quality of board (supervisory) governance.*

“The Institutional Shareholders’ Committee (ISC) feels that a Statement of Best Practice such as this which summarises the views of institutional shareholders will enable these shareholders to give a more coherent and consistent response when their views and votes are solicited by companies. . . . ISC believes that certain basic principles of good boardroom practice can be considered to be universally applicable. . . . Accordingly, ISC has formulated this Code for directors and company secretaries as a guide to the matters which it believes should be addressed and, wherever applicable, accepted formally by boards of directors in recognition of a commitment to adhere to an overall concept of best practice. . . . This Code was intended as a statement by the leading U.K. institutional investor associations of their views on certain corporate governance issues (principally the combination of the role of chairman and chief executive, the role of non-executive directors and directors’ service contracts).” (Introduction)

- (g) Scope: *Listed companies.*

The Statement of Best Practice is aimed at companies listed on the London Stock Exchange.

(2) Supervisory and Managerial Bodies.

- (a) Rules/recommendations regarding the separate role and responsibilities of supervisory and managerial bodies (including lines of responsibility).

The ISC Statement is emphatic: “The ISC supports the United Kingdom system of unitary boards. All directors have an equal responsibility in helping to provide their company with effective guidance and leadership, and it is recognised that they must, and in almost all cases do, act at all times entirely in the best interests of the company.” (p. 1)

The ISC Statement recommends that the roles of Chairman and Chief Executive not be combined. In circumstances where the roles are combined, the ISC Statement recommends that there be a “strong body of independent non-executive directors who are aware of their overall responsibilities to shareholders.” (p. 2)

- (b) Rules/recommendations regarding the accountability of supervisory and managerial bodies (including conflicts of interest).

While it is not expressly stated, the ISC Statement is clearly intended to assist in improving the board’s accountability to shareholders.

The ISC Statement deals with the issue of conflicts of interest in the context of management buyouts (which had been popular in the period preceding the publication of the ISC Statement in 1991). Recommendations in relation to proposed management buy-outs include providing sufficient information to shareholders, the appointment of a separate committee of non-executive directors to advise on the

merits of the offer, and the denial of access to the company's professional advisers by the management team.

(c) Rules/recommendations regarding the size, composition, independence, and selection criteria and procedures of supervisory and managerial bodies.

The ISC Statement describes the usual arrangements for selection of directors under the Companies Act of 1985 and the articles of association of the relevant company. Specifically, it states that:

- The articles should provide for a minimum and maximum number of directors;
- One-third of the directors should be subject to retirement by rotation each year -- they can stand for re-election if they choose; and
- The articles should provide that a director may be dismissed by written resolution of all co-directors, who should obtain shareholder approval at the next general meeting for their course of action.

(p. 2)

The ISC Statement also recommends the selection of non-executive directors who should be "sufficient in number and calibre for their views to carry significant weight on the board." (p. 3) The ISC notes that this is particularly necessary where the roles of chairman and chief executive are combined. "Institutional shareholders strongly support the presence of independent directors on boards of companies. There has been growing awareness of the value of audit committees and the importance of non-executive directors has become evident, particularly in matters concerning top management succession, remuneration of the senior management and in circumstances where there is potential for conflict of interest such as management buy-outs. They have a primary function to comment on corporate strategy where they can bring an objectivity and independence of view borne by their outside experience." (pp. 2-3)

(d) Rules/recommendations regarding the working methods of supervisory and managerial bodies (including information flows).

Aside from its comments on the need for non-executive directors (discussed both above and below), the ISC Statement does not make recommendations regarding the working methods of supervisory or managerial bodies.

The ISC Statement assigns the following specific tasks to non-executive directors:

- To contribute an independent view to the Board's deliberations;
- To help the Board provide the company with effective leadership;
- To ensure the continuing effectiveness of the executive directors and management; and
- To ensure high standards of financial probity on the part of the company.

(p. 3)

It also makes the following recommendations regarding non-executive directors:

- Non-executive directors should be sufficient in calibre and number for their views to carry significant weight;
- Non-executive directors should acknowledge a particular duty to monitor the performance of the Board as a whole and to report to shareholders if they are not satisfied;
- Non-executive directors should be independent, *i.e.*, free from bias, involvement or partiality;
- In order to preserve their impartiality, non-executive directors should not, under normal circumstances, be offered participation in share option schemes, or in any company pension schemes, and they should not be entitled to compensation for loss of office; and
- Non-executive directors should not hold other directorships in the same industry, except with the approval of the board.

(p. 3)

- (e) Rules/recommendations regarding remuneration of members of supervisory and managerial bodies (including evaluation procedures).

The ISC Statement recommends the appointment of a remuneration committee comprised primarily of non-executive directors. The remuneration committee should determine the remuneration packages of executive directors, including participation in share options, profit sharing and extent of remuneration schemes. The ISC Statement recommends that the composition of the compensation committee be disclosed in the company's annual report, as well as a summary of any "performance linked remuneration schemes," *ex gratia* payments, and "all types of share option and other incentive and profit sharing and bonus schemes." (p. 5).

The ISC Statement also recommends that all employment contracts of executive directors be approved by the compensation committee, that such contracts should not continue for a period of more than three years, and that executive directors should be prohibited from engaging in any business similar to that carried on by the company. (p. 4)

- (f) Rules/recommendations regarding the organisation and supervision of internal control systems and relations between supervisory bodies, managerial bodies and internal/external auditors.

The ISC Statement does not address this topic.

(3) Rights of Shareholders/Stakeholders.

- (a) Rules/recommendations regarding protection of the rights of shareholders.

The ISC Statement is intended to be a statement of "the reasonable expectation" of institutional shareholders in various matters. (p. 1) Insofar as it advocates particular "best practices," this can be assumed to be the level of protection required by institutional shareholders. The ISC Statement does not expressly deal with specific

issues of shareholder rights, such as shareholder voting rights and procedures, although it does deal with problems arising from inequality of information in management buy-out situations. In these situations, the ISC Statement recommends steps including providing adequate information to shareholders, appointing an independent committee of non-executive directors to consider management's offer, and prohibiting management from engaging the company's usual professional advisers. (pp. 5-6)

(b) Rules/recommendations regarding equal/fair treatment of shareholders.

The ISC Statement does not address this topic.

(c) Rules/recommendations regarding the rights of stakeholders.

Note that the ISC is a body that represents institutional shareholders. The general introduction to the ISC's statement makes it clear that the statement was produced in response to numerous enquiries from companies and their advisors, and it should therefore be seen as a statement of the types of board practices that are approved of by institutional shareholders. It is, of course, implied throughout the statement that directors should have due regard for the interests of shareholders. It also states that directors should appreciate the significance of the role played by a company's workforce "and should always consider the interests of all those involved in working together to improve their company's performance." (p. 5)

c. CADBURY REPORT

Code: Report of the Committee on the Financial Aspects of Corporate Governance (Cadbury Report)
Issuing Body: Committee established by the Financial Reporting Council and the London Stock Exchange
Date: December 1992
Official Language: English

Perspective Note: The Cadbury Report is an extremely important document from an historic perspective and as one of the leading explanations of what good governance entails. It has proven highly influential, both in the U.K. and abroad, and continues to be referred to. However, the Combined Code, which has incorporated many of its provisions, has superseded it in terms of influence on disclosure by the companies listed on the London Stock Exchange.

Citation Note: The Cadbury Report has two major parts: a “Report” containing general guidelines on corporate governance, and a “Code of Best Practice” (pp. 58-60 of the Report), which contains formal principles of corporate governance. Parenthetical citations to the “Report” refer to the former, and citations to the “Code” refer to the latter.

(1) **Background.**

(a) Issuing Body: Committee related to a stock exchange and a business, industry and/or academic association.

The Committee on the Financial Aspects of Corporate Governance, chaired by Sir Adrian Cadbury, was established in May 1991. The Financial Reporting Council, one of two institutions which established the Committee, was set up in 1990 to establish and support the two bodies under its aegis, the Accounting Standards Board (which makes, amends and reviews U.K. accounting standards) and the Financial Reporting Review Panel (which focuses on material departures from accounting standards by public and large private companies), and to promote good financial reporting generally.

(b) Legal Basis and Compliance: Disclosure (comply or explain).

The Cadbury Report was the first code to recommend a “comply or explain” approach. The Cadbury Report includes a Code of Best Practice (pp. 58-60), which it urged the London Stock Exchange and institutional investors to exercise their powers to implement. (The London Stock Exchange required listed companies to include a statement of compliance in reports and accounts for reporting periods ending after June 30, 1993.) The Code of Best Practice has since been consolidated into the Combined Code, which is annexed to the listing rules of the London Stock Exchange. Listed companies must either comply with the provisions of the Combined Code or publicly disclose their reasons for failing to do so. (The Combined Code is discussed below.)

In May 1995, the Cadbury Committee issued a report, “Compliance with the Code of Best Practice,” based on review of more than 700 company reports of compliance. It concluded:

- “All listed companies whose accounts have been examined are complying with the London Stock Exchange listing requirement to make a statement in their report and accounts on the extent of their compliance with the Code of Best Practice. Statements of full compliance are most likely to be made by companies in the top 500, whilst the smaller the company the higher the percentage of statements disclosing limited compliance.”
- “Although not a requirement of the Code, the majority of companies have split the roles of Chairman and Chief Executive, and where the roles are combined, there is more often than not an independent element of non-executive directors on the board, as recommended in the Report. There is a relationship between the size of a company and the number of non-executives on the board, with the larger companies most likely to have three or more. There has been a marked increase in the disclosure of Audit, Nomination and Remuneration Committees since the publication of the Code. The larger the company, the more likely it is to have three or more non-executive directors on the Audit Committee, but there has also been an increase in the disclosure of Audit Committees comprising two non-executives, particularly in smaller companies.”
- “The majority of companies of all sizes have boards on which all or the majority of non-executive directors are independent. The larger the company, the more likely it is to have three or more independent non-executives on the board.”
- “While larger companies have disclosed compliance with the requirement to have formal terms of appointment for non-executive directors, such disclosure decreases in relation to company size. However, high levels of compliance with both the requirement to have a schedule of matters reserved to the board and to have an agreed procedure for independent advice were found in companies of all sizes. There is a higher incidence in all the sample groups of rolling as opposed to fixed-term three-year contracts. The incidence of contracts in excess of three years (either rolling or fixed-term) is very low.”

(Report of the Committee on the Financial Aspects of Corporate Governance (Cadbury Committee), “Compliance with the Code of Best Practice,” p. 13 (May 24, 1995))

(c) Consultations.

The Committee consulted widely throughout the U.K.’s business, accounting, finance and academic communities. (The list of individuals and organisations consulted is contained in Appendix 7 of the Cadbury Report.) The Committee considered a large number of written submissions and published a draft report upon which it requested, received and considered numerous comments.

(d) Contributions.

The Committee was made up of executives from major U.K. companies, partners from international accounting firms, and academics with expertise in business, finance and accounting.

(e) Definition of Corporate Governance.

The Cadbury Report's definition of corporate governance is often quoted: "Corporate Governance is the system by which companies are directed and controlled." (Report, ¶ 2.5)

(f) Objective: *Improve quality of board (supervisory) governance; Improve quality of governance-related information available to equity markets.*

"At the heart of the Committee's recommendations is a Code of Best Practice designed to achieve the necessary high standards of corporate behaviour. The London Stock Exchange intends to require all listed companies . . . to state whether they are complying with the Code and to give reasons for any areas of non-compliance. This requirement will enable shareholders to know where the companies in which they have invested stand in relation to the Code." (Report, ¶ 1.3)

The Cadbury Report discusses the following issues related to financial reporting and accountability and makes recommendations on good practice:

- The responsibilities of executive and non-executive directors for reviewing and reporting on performance to shareholders and other financially interested parties, and the frequency, clarity and form in which information should be provided;
- The role and composition of audit committees;
- The responsibilities of auditors and the extent and value of the audit; and
- The relationships between shareholders, boards and auditors.

(g) Scope: *Listed companies; encouraged to all companies.*

The Cadbury Report was directed primarily towards companies listed on the London Stock Exchange. However, the Report states that the Committee "would encourage as many other companies as possible to comply with its requirements." (Report, ¶ 3.1)

(2) **Supervisory and Managerial Bodies.**

(a) Rules/recommendations regarding the separate roles and responsibilities of supervisory and managerial bodies (including lines of responsibility).

The Cadbury Report states: "Corporate governance is the system by which companies are directed and controlled. Boards of directors are responsible for the governance of their company. The shareholders' role in governance is to appoint the directors and the auditors and to satisfy themselves that an appropriate governance structure is in place." (Report, ¶ 2.5)

Paragraph 2.5 of the Cadbury Report further states that the “responsibilities of the board include setting the company’s strategic aims, providing the leadership to put them into effect, supervising the management of the business and reporting to shareholders on their stewardship. The board’s actions are subject to laws, regulations and shareholders in general meeting.” The Cadbury Report clearly states that it is the board’s duty, on behalf of the shareholders, to both report on the effectiveness of the company’s system of internal control (Code, ¶ 4.5) and to assess the company’s position in a clear manner (Code, ¶ 4.1).

The Cadbury Report recommends the division of the roles of chairman and chief executive officer. It accepts that, in certain cases, the chairman might also be the chief executive officer, but notes that “it is essential that there should be a strong and independent element on the board.” (Report, ¶ 4.9)

(b) Rules/recommendations regarding the accountability of supervisory and managerial bodies (including conflicts of interest).

The Report provides that “[b]oards of directors are accountable to their shareholders, and both have to play their part in making that accountability effective. Boards of directors need to do so through the quality of the information which they provide to shareholders, and shareholders through their willingness to exercise their responsibilities as owners.” (Report, ¶ 3.4)

The Report further contains a section entitled “Accountability of Boards to Shareholders,” which includes the following recommendations:

- The formal relationship between shareholders and directors is that shareholders elect directors, directors report on their stewardship to the shareholders and the shareholders select the auditors to provide an external check on the directors’ financial statements. Thus, the shareholders as owners of the company elect the directors to run the business on their own behalf and hold them accountable for its progress. (Report, ¶ 6.1)
- Shareholders can make their views known to the board by communicating with them directly and through their attendance at general meetings. (Report, ¶ 6.5)
- While shareholders cannot be involved in the day-to-day management of the company, they can call the directorship to book if they appear to be failing in their stewardship, and they should use this power. The accountability of boards to shareholders will therefore be strengthened if shareholders require their companies to comply with the Code. (Report, ¶ 6.6)

(c) Rules/recommendations regarding the size, composition, independence and selection criteria and procedures of supervisory and managerial bodies.

Within the Cadbury Report is a Code of Best Practice, which recommends that the board should “include non-executive directors of sufficient calibre and number for their views to carry significant weight in the board decisions.” “Non-executive directors should bring an independent judgement to bear on issues of strategy, performance, resources, including key appointments, and standards of conduct.” (Code, ¶ 2.1)

The Report also indicates that in order to ensure the independence of the board, non-executive directors should not participate in share option schemes or company pension plans. (Report, ¶ 4.13)

According to the Code of Best Practice and the Report, the selection procedure for non-executive directors should be a formal process (directed by the board as a whole) that ensures that directors are appointed to the board on the basis of merit and not patronage. (Code, ¶ 2.4; Report, ¶ 4.30)

The Report states that a minimum of three non-executive directors (including the chairman if he or she is not also an executive) are needed for these purposes, and that two of these directors should be independent of the company. The Report defines independent directors as those who, apart from their directors' fees and shareholdings, are independent from management and free from any business or other relationship that could materially interfere with the exercise of their independent judgement. The Report states that, in each particular case, it is the duty of the board to decide whether this definition of independence is met. (Report, ¶ 4.12) The Report makes it clear that, in order for a company to operate in an effective manner, the board must include this combination of executives and outside directors, as well as a chairman who adheres diligently to the duties and responsibilities of the post. (Report, ¶ 4.1)

(d) Rules/recommendations regarding the working methods of supervisory and managerial bodies (including information flows).

The Report states that “[t]he effectiveness of the board is buttressed by its structure and procedures.” (Report, ¶ 4.21) Specifically, the Report recommends that:

- The board should meet regularly, with due notice of the issues to be discussed supported by the necessary paperwork; (Report, ¶ 4.23)
- The board should have a formal agenda of matters specifically reserved to it for decision to ensure that the direction and control of the company is firmly in its hands (Report, ¶ 4.23); and
- It is the task of the board chairman to ensure that the non-executive directors receive timely, relevant information tailored to their needs and that they are properly briefed. (Report, ¶ 4.8)

The Report indicates that, by the nature of their position, non-executive directors lack the “inside knowledge” of the company held by their executive counterparts, but have no less of a right of access to this information. Since their effectiveness is based upon the quality of the information they receive, the Report recommends that boards regularly review the form and extent of information provided to all directors. (Report, ¶ 4.14)

The Cadbury Report also recommends the creation of nomination and audit committees. Both committees should be made up of a majority of non-executive directors. The Report indicates that the transparency of board appointments is assisted by the creation of a largely non-executive nomination committee lead by the chairman or a non-executive director. According to the Report, the nomination committee is responsible for proposing all new appointments to the board. (Report, ¶ 4.3)

The Code of Best Practice also states that the audit committee be given clear directives regarding its authority and duties. (Code, ¶ 4.3) The Report recommends that the committee consists of no less than three non-executive directors. (Report, ¶ 4.35.b) In addition, it recommends that the committee meet at least twice a year. (Report ¶ 4.35.a) According to the Report, the duties of the audit committee should include:

- Making recommendations to the board on the appointment of the external auditor;
- Reviewing the half-year and annual financial statements before submission to the board;
- Discussing with the external auditor the nature and scope of the audit, as well as any additional concerns the auditor may have, and co-ordinating auditors if more than one firm is involved;
- Reviewing the external auditor's management letter;
- Reviewing the company's statement on internal control systems prior to an endorsement by the board; and
- Reviewing any significant findings of the internal investigations.

(Report, ¶ 4.35.e)

The Report also notes that where an internal audit function exists, it is the committee's duty to ensure that it has the proper resources. (Report, ¶ 4.35.f)

- (e) Rules/recommendations regarding remuneration of members of supervisory and managerial bodies (including evaluation procedures).

The Cadbury Report recommends the appointment of a remunerations committee consisting wholly or mainly of non-executive directors. The purpose of the committee is to recommend to the board what the remuneration of executive directors should be. Unlike subsequent reports (notably the Greenbury Report, see below, Section III.O.2.d), the Cadbury Report does not recommend the disclosure of individual director's remuneration packages, although it does note that a disclosure of such information "will need to be reviewed in the light of experience." (Report, ¶ 4.46) However, the Code does state that "there should be full and clear disclosure of [executive] directors' total emoluments and those of the chairman and highest-paid UK director, including pension contributions and stock options." (Code, ¶ 3.2) And the directors' pay should be based upon the recommendations of the remuneration committee. (Code, ¶ 3.3)

The Report states that the "overriding principle in respect of board remuneration is that of openness. Shareholders are entitled to a full and clear statement of directors' present and future benefits, and of how they have been determined." (Report, ¶ 4.40)

The Code also indicates that executive "directors' service contracts should not exceed three years without shareholders' approval." (Code, ¶ 3.1)

- (f) Rules/recommendations regarding the organisation and supervision of internal control systems and relations between supervisory bodies, managerial bodies and internal/external auditors.

The recommendations of the Cadbury Report, as set out in its Code of Best Practice, include recommendations that the board “present a balanced and an understandable assessment” of the company’s position, maintain “an objective and professional relationship” with its auditors, and “report on the effectiveness of the company’s system of internal controls.” (Code, ¶¶ 4.1 & 4.5) Some of the Cadbury Report’s recommendations on these issues were considered too vague to be of any practical benefit and were the subject of criticism, particularly from the accounting profession.

The Cadbury Report recommends the appointment of a board audit committee to which the external auditors should have direct access. The Cadbury Report specifically notes that this arrangement was designed to ensure that the relationship between auditors and management remained objective. The Cadbury Report specifically rejected a proposal that audit firms be prohibited from providing services to their audit client. It did, however, approve of the disclosure of fees paid for non-audit work and recommended that regulations requiring such disclosure be reviewed and amended as necessary. The Cadbury Report’s recommendation that directors report on the effectiveness of their company’s system of internal controls led to much criticism and ultimately to the publication of the Turnbull Report (which gives guidance to directors on compliance with their obligations in relation to internal controls).

(3) Rights of Shareholders/Stakeholders.

- (a) Rules/recommendations regarding protection of the rights of shareholders.

One of the central tenets of the Cadbury Report, as discussed above, is that “the shareholders as owners of the company elect the directors to run the business on their behalf and hold them accountable for its progress.” (Report, ¶ 6.1) The Report states, then, that the “issue for corporate governance is how to strengthen the accountability of boards of directors to shareholders.” The Cadbury Report focuses on the role that shareholders can play in ensuring proper board accountability. It recommends that shareholders should make their views known by communicating with the board directly and through AGMs. The Report also emphasises that voting rights are an asset, and that it is of particular importance that institutional investors disclose their policies on the use of such rights. (Report, ¶ 6.12)

The Report also states that “the way in which institutional shareholders use their power to influence corporate governance is of fundamental importance. Their readiness to do this turns on the degree to which they see it as their responsibility as owners -- to bring about changes in companies when necessary, rather than selling their shares.” (Report, ¶ 6.10) To this end, the Report endorses the ISC Statement.

- (b) Rules/recommendations regarding equal/fair treatment of shareholders.

The Report does not address this topic.

(c) Rules/recommendations regarding the rights of stakeholders.

The Report does not address this topic.

Additional information about the Cadbury Report is included in the Comparative Matrix appended to this Report as Annex V.

d. PIRC SHAREHOLDER VOTING GUIDELINES

Code: PIRC Shareholder Voting Guidelines 2001
Issuing Body: Pensions Investment Research Consultants Limited
("PIRC")
Date: April 1994; Updated March 2001
Official Language: English

(1) **Background.**

(a) Issuing Body: *Investor advisor.*

PIRC is an investor group and corporate governance adviser with more than U.K. £150 billion in assets under investment.

(b) Legal Basis and Compliance: *Voluntary (institutional investors recommended to apply to portfolio companies).*

The PIRC Guidelines do not impose any compliance or disclosure requirements. However, PIRC's clients are encouraged to use the PIRC Guidelines in both their investment selection and shareholder voting decisions. In an attempt to further influence companies, PIRC sends its reports on specific companies' corporate governance practices to both the companies concerned (both pre- and post-publication) and to PIRC's institutional investor clients.

(c) Consultations.

The Guidelines do not indicate whether any formal consultative process was undertaken.

(d) Contributions.

PIRC communicates on a regular basis with its institutional investor clients and has conducted formal surveys among them, such as "A Guide to the Guidelines: A Survey of Institutional Shareholder Corporate Governance Policies" (August 1997); and "Proxy Voting: 1993-1998" (December 1998). The Guidelines also state that PIRC welcomes feedback from companies, clients and other interested parties on the issues raised by the PIRC Guidelines.

(e) Definition of Corporate Governance.

While not offering a concrete definition of corporate governance, the Guidelines state that:

"[W]e recognise that the definition of the scope of corporate governance is subject to debate. One major change is the growth of interest in corporate responsibility and the accompanying concept of accountability to stakeholders . . . [W]e consider that social and environmental reporting, and particularly the disclosure of information on the management of stakeholder relationships is part of good corporate governance. An essential element of governance is accountability, which is itself dependent on full disclosure." (p. 2)

- (f) Objective: Improve accountability to shareholders and/or maximise shareholder value.

“These Shareholder Voting Guidelines contain our current views on best practice in relation to the main corporate governance issues affecting companies and shareholders in the U.K. market. They underpin the voting recommendations made to clients of PIRC’s Corporate Governance Service. In setting out the general principles, we seek to ensure consistency and fairness in determining voting advice. However, special circumstances are always considered where appropriate.” (p. 2)

PIRC’s Shareholder Voting Guidelines contain its current views on best practices in relation to the main corporate governance issues affecting companies and shareholders in the U.K. market. They underpin the voting recommendations made to clients of PIRC’s Corporate Governance Service.

- (g) Scope: Listed companies.

PIRC’s Guidelines are aimed at the companies in which PIRC’s institutional clients invest.

(2) Supervisory and Managerial Bodies.

- (a) Rules/recommendations regarding the separate roles and responsibilities of supervisory and managerial bodies (including lines of responsibility).

The PIRC Guidelines state that the role of the board is to lead and control the business. It is the role of the board to “establish corporate strategy, set appropriate policies for its implementation, ensure reporting and decision-making procedures are effective, select and monitor key executives, manage potential conflicts of interest for the executives, manage relations with stakeholders, determine risk management systems and hold the executives accountable for their actions.” (p. 4)

Given the distinct and important role of the board, PIRC advocates that the positions of chairman and chief executive should be held by separate individuals. Generally, the board chairman should be a non-executive who leads the work of the board and is not involved in operational responsibilities. (p. 6)

- (b) Rules/recommendations regarding the accountability of supervisory and managerial bodies (including conflicts of interest).

The Guidelines state that all directors are equally responsible for the board’s actions and all are equally accountable to the shareholders. Directors should act in the interests of the company as a whole and not be beholden to a particular shareholder. PIRC states that all directors should be accountable to shareholders by facing regular re-election.

“[T]he legal position [is] that all directors are equally responsible for the board’s actions and all are equally accountable to the shareholders.” (p. 4) “In reporting on their risk control policies and processes, the guidelines consider that directors should

go beyond the basic requirements and identify the significant areas of risk and how the company manages these.” (p. 12)

According to the Guidelines, it is one of the roles of the board to manage potential conflicts of interest for the executives through board committees consisting of independent directors. (p. 5) The Guidelines also note that the issues of conflicts of interest continue to exist with respect to remuneration, even after the establishment of remuneration committees.

(c) Rules/recommendations regarding the size, composition, independence and selection criteria and procedures of supervisory and managerial bodies.

PIRC recognises that “[t]he composition and effectiveness of the board is a crucial element in determining corporate performance. . . . [B]oards with large numbers of directors may become unwieldy.” Therefore, PIRC recommends that fifteen directors is “probably the maximum upper limit if the board is able to function effectively.” (p. 4)

PIRC also emphasises that non-executive directors are central to an effective and accountable board structure. For the board to fulfil its primary roles of leading the company and holding executive management accountable, PIRC considers it best practice for a clear majority of the directors to be non-executives. PIRC also advocates widening the experience represented on boards by extending their search for non-executives “beyond the boards of other listed companies to include individuals with a greater diversity of backgrounds. International candidates, those with relevant experience in the public, academic or voluntary sectors, or at divisional level in other companies, may well fulfil the task.” (p. 5)

The PIRC guidelines explicitly indicate over sixteen points that must be met for a director to be considered independent. Due to the strictness of the criteria, the Guidelines do not expect independent non-executive directors to fulfil both advisory and supervisory functions. (p. 5)

(d) Rules/recommendations regarding the working methods of supervisory and managerial bodies (including information flows).

The Guidelines recommend that audit, remuneration and nomination committees should be established, have a minimum of three members and be comprised solely of independent non-executive directors. It states that, while “it may be appropriate for these committees to invite executive directors to be present at certain meetings,” committees should “meet without executives present at least once a year.” Additionally, it states that “committee membership, frequency of meetings and attendance records, should be disclosed in annual reports.” (p. 5)

(e) Rules/recommendations regarding remuneration of members of supervisory and managerial bodies (including evaluation procedures).

The Guidelines state that “the way in which [director] remuneration is handled can be seen as an indicator of the overall integrity, accountability and governance standards applied by the board.” Therefore, the Guidelines emphasise that remuneration policy should be authorised directly by the shareholders. (p. 8)

The PIRC Guidelines state that executive remuneration should be determined by a formal and independent procedure. Executive director remuneration policy should be proposed by a remuneration committee that is free from executive influence and the members of which are fully independent as defined by PIRC Guidelines. The Guidelines also state that “[w]hen considering pay policy, remuneration committees will be held accountable for breaches of best practice on remuneration issues or failure to seek shareholder authorisation.” The remuneration committee should have access to independent advice. (p. 8)

- (f) Rules/recommendations regarding the organisation and supervision of internal control systems and relations between supervisory bodies, managerial bodies and internal/external auditors.

PIRC agrees with the Turnbull Committee that “a sound system of internal control contributes to safeguarding the shareholder’s investment and the company’s assets,” and that it is the board’s responsibility to set internal control policies. (p. 12) The Guidelines also state that directors should “go beyond” the basic requirements for risk control disclosure and identify the significant areas of risk and analyse how they are managed. (p. 12)

PIRC affirms the Cadbury Committee recommendation that companies establish an audit committee to review the financial statements provided to the auditors and considers that audit committees play an important role in corporate governance procedures. In addition, the Guidelines recommend that “[a]ll members of the audit committee should be independent directors.” (p. 12)

(3) Rights of Shareholders/Stakeholders.

- (a) Rules/recommendations regarding protection of the rights of shareholders.

According to the PIRC Guidelines, the company’s share structure should be clearly disclosed, including voting and other rights attached to each class of shares. Shareholders who have the same financial commitment to the company should have the same rights. Dual share structures with differential voting rights may disadvantage many shareholders and should be reformed. All information provided to shareholders should be true and fair, even where contentious issues are at stake. The Guidelines list the following principles regarding shareholders:

- Shareholders should receive proper notice of resolutions and be able to vote on all substantive issues;
- Shareholders should receive adequate information on all directors and resolutions;
- All ordinary shares should have equal rights;
- Voting by shareholders should be democratic and transparent; and
- Shareholders should have the opportunity to vote on remuneration issues.

(pp. 15-17)

The Guidelines emphasise that the annual report is the most important channel of communication between a company and its shareholders and other stakeholders.

Therefore, the Guidelines suggest that financial reporting requirements provide additional information on a wider range of issues which reflect the directors' stewardship of the company, including:

- A statement of future corporate strategy and corporate governance arrangements;
- Key performance drivers and sensitivities;
- Identification of significant opportunities and risks;
- A clear explanation of dividend policy;
- Investment and research development policies and activities;
- Treasury policies, particularly regarding derivatives;
- Environmental policy, implementation and targets;
- Community relations and charitable donations policies;
- Ethical trading policies, codes of conduct and policies on human rights issues;
- Policies on business ethics; and
- Employment policies.

(p. 12)

(b) Rules/recommendations regarding equal/fair treatment of shareholders.

PIRC advocates that all ordinary shares should have equal rights. There should be no differential voting rights between classes of shares. There should be no controlling shareholder. Controlling shareholders pose a threat to the rights of other shareholders. No persons should have the special right to designate directors to the board. Directors should act in the interest of, and be accountable to, all shareholders. Directors designated or appointed by a particular shareholder will face a conflict of interest. Any agreements or article provisions allowing for designation should be removed.

(p. 17)

Voting by shareholders should be democratic and transparent. All voting should be conducted by poll on the basis of "one share/one vote." (p. 17)

(c) Rules/recommendations regarding the rights of stakeholders.

Although the prime focus of the PIRC Guidelines is on the board and accountability to shareholders, the Guidelines advocate that directors identify their key stakeholders and report on (and are held accountable for) the quality of relationships with key stakeholders "since they underpin long-term business success. . . . [C]ompanies should identify their key stakeholder relationships and adopt an appropriate format to report on each. The Report notes that "[c]orporate governance is an issue of concern to a wider audience than institutional investors since it relates to the exercise of power and the success of business and the wider economy." The Guidelines pay particular attention to the Disclosure of Stakeholder issues in the annual report. (p. 12)

Specifically in relation to stakeholder issues, companies should disclose policies for managing relationships, lines of accountability, methods and scope of engagement,

performance targets and measurement systems, and any external independent verification procedures.” The Guidelines also consider the importance of discussing social and environmental reports at the annual general meeting. (p. 12)

Additional information about the PIRC Shareholder Voting Guidelines is included in the Comparative Matrix appended to this Report as Annex V.

e. GREENBURY REPORT

Code: **Directors' Remuneration: Report of a Study Group Chaired by Sir Richard Greenbury (the "Greenbury Report")**
Issuing Body: **Committee established in January 1995 on the initiative of the Confederation of British Industry**
Date: **July 1995**
Official Language: **English**

Perspective Note: The Greenbury Report is an important document from a historic perspective. However, the Combined Code, which has incorporated many of its provisions, has superseded it in terms of influence on disclosure by the companies listed on the London Stock Exchange.

Citation Note: The document referred to as the Greenbury Report has two major parts: a "Report" which contains general provisions on corporate governance, and a "Code of Best Practice," which contains formal principles of corporate governance. Parenthetical citations below to the "Report" refer to the former, and citations to the "Code" refer to the latter.

(1) Background.

(a) Issuing Body: *Business, industry and/or academic association or committee.*

In 1995, the Confederation of British Industry -- the U.K.'s largest independent employers' association representing both public and private companies -- convened the Study Group on Director's Remuneration, chaired by Sir Richard Greenbury (Chairman of Marks & Spencer p.l.c.). The Study Group was made up of top executives from several British companies and U.K. branches of international investment banks, as well as lawyers and a representative from the Institute of Directors. The Study Group also had several professional advisers.

(b) Legal Basis and Compliance: *Disclosure (comply or explain) (now disclosure required in line with the Combined Code's provisions).*

Compliance with the substantive provisions of the Greenbury Report was voluntary; however, certain aspects of it were incorporated into London Stock Exchange disclosure requirements, and other aspects were included in an Annex to the listing rules entitled "Best Practice Provisions: Directors' Remuneration." The following disclosures were required:

- A report by the company's Remuneration Committee giving prescribed details relating to directors' remuneration and terms of employment, *i.e.*, remuneration policy and all the numerical disclosures;
- A statement in the Remuneration Committee's report that the committee has given full consideration to section B of the Best Practice Provisions, *i.e.*, remuneration policy, design and purpose of LTIP arrangements, service contracts, etc.

- A statement as to whether or not the company has complied throughout the period with section A of the Best Practice Provisions, *i.e.*, remuneration committee composition, reporting lines, etc.

The Combined Code, which incorporates many of the recommendations of the Greenbury Report, now supersedes the Greenbury Report in its relation to the listing rules of the London Stock Exchange. Listed companies must either comply with the Combined Code or publicly disclose their reasons for failing to do so. (*See below*, Combined Code.)

(c) Consultations.

The Report does not indicate whether any formal consultative process was undertaken.

(d) Contributions.

While it is not clear whether any outside contributions took place, the Committee's composition and panel of advisers is likely to have brought a variety of viewpoints to the Report.

(e) Definition of Corporate Governance.

The Greenbury Report does not offer a definition of the term "corporate governance."

(f) Objective: *Improve quality of board (supervisory) governance; Improve quality of governance-related information available to equity markets.*

The Committee's terms of reference were: "To identify good practice in determining Directors' remuneration and prepare a Code of such practice for use by UK PLCs." (Report, ¶ 1.2) The reporting group was set up "in response to public and shareholder concerns about the pay and other remuneration of company directors in the United Kingdom." (Report, ¶ 1.1)

Because of its terms of reference, the Greenbury Report was not concerned with corporate governance in general, but was only concerned with those aspects of corporate governance that affected directors' remuneration. In that context, the Greenbury Report comments on the need for proper allocation of responsibility for determining directors' remuneration (they recommended that this be delegated to a committee of non-executive directors), proper reporting to shareholders (they recommended that the remuneration committee publish a report to shareholders explaining their approach to executive remuneration), and transparency (which, presumably, resulted from the recommended practices).

(g) Scope: *Listed companies; encouraged to all companies.*

The Committee's work "focused on the larger listed companies whose remuneration packages have attracted most public attention. But the principles apply also to smaller listed companies. We hope that non-listed companies, too, will find our Report helpful."

(2) Supervisory and Managerial Bodies.

(a) Rules/recommendations regarding the separate roles and responsibilities of supervisory and managerial bodies (including lines of responsibility).

The Greenbury Report emphasises that the role of the board of directors is to strengthen accountability and to encourage and enhance the performance of top management. Decisions regarding executive and director remuneration should be delegated to a board committee comprised exclusively of non-executive directors. This task is to be carried out by a board remuneration committee within agreed terms of reference from the full board.

(b) Rules/recommendations regarding the accountability of supervisory and managerial bodies (including conflicts of interest).

The Report focuses on accountability in the context of the work of the remuneration committee. It states that “the key to strengthening accountability lies in proper allocation of responsibility for determining directors’ remuneration, proper reporting to shareholders and transparency.” (Report, ¶ 1.14) It states that the requirements for this are that:

- Boards of directors need to delegate responsibility for determining executive remuneration to a group of people with a good knowledge of the company and responsive to shareholders’ interests, but with no personal financial interest in the remuneration decisions they are taking.
- The same group of people needs to submit a full report to the shareholders each year explaining the company’s approach to executive remuneration and providing full disclosure of all elements in the remuneration of individual directors.

Accountability for the remuneration of directors and top executives is achieved through the remuneration committee and, more specifically, the obligation of that committee to report to shareholders. The Report recommends that the names of the members of the remuneration committee be published. It also recommends that when members of the remuneration committee stand for re-election as directors, the proxy card should identify them as members of the remuneration committee. The recommendation (incorporated in the suggested Code of Best Practice) of a report by the remuneration committee to shareholders is clearly designed to foster the accountability of the members of the remuneration committee to shareholders.

(c) Rules/recommendations regarding the size, composition, independence and selection criteria and procedures of supervisory and managerial bodies.

The Greenbury Report recommends that the remuneration committee consist exclusively of non-executive directors “with no personal financial interest other than as shareholders in the matters to be decided, no potential conflicts of interest arising from cross-directorships and no day-to-day involvement in running the business.” (Code, ¶ A4) The Report also notes that the directors on the committee should “have a good knowledge of the company and its executive directors, a keen interest in its progress and a full understanding of shareholders’ concerns; and have a good

understanding, enhanced as necessary by the appropriate training or access to expert advice, of the areas of remuneration committee business.” (Report, ¶ 4.8)

(d) Rules/recommendations regarding the working methods of supervisory and managerial bodies (including information flows).

The Report recommends that all listed companies should have remuneration committees, and that those which do not should explain in their next annual report why they do not and what alternative arrangements they have made. Regarding support for the remuneration committee, the Report recommends:

- Although executive directors should not be members of the remuneration committee, the company’s chairman and/or chief executive should normally be invited to attend meetings to discuss the performance of the other executive directors and make proposals as necessary. (Report, ¶ 4.14)
- The committee should also be supported by a senior executive of the company with suitable expertise and independent access to the committee chairman. (Report, ¶ 4.15)
- The committee should have access to reliable, up-to-date information about remuneration in other companies and should judge the implications carefully. (Report, ¶ 4.16)
- Should the committee need to rely on outside advice, the company’s management will normally hire outside consultants, but the committee should be consulted about such appointments and should be free to retain its own consultants in case of need. (Report, ¶ 4.17)

(e) Rules/recommendations regarding remuneration of members of supervisory and managerial bodies (including evaluation procedures).

The Report is based upon the premise that “[t]he key to encouraging enhanced performance by Directors lies in remuneration packages which:

- Link rewards to performance, by both company and individual; and
- Align the interests of Directors and shareholders in promoting the company’s progress. (Report, ¶ 1.15)

The Report expressly rejects any form of statutory controls on the remuneration of directors in favour of enhanced accountability and performance-based remuneration. The Code of Best Practice published in the Report contains recommendations on issues such as long-term bonuses, benefits under long-term incentive schemes and notice periods in contracts and employment. Particular recommendations include:

- Shares granted under a share option scheme should not vest within three years and directors should then be encouraged to hold their shares for a further period;
- New long-term incentive schemes should either replace existing schemes or incorporate existing schemes and should, in any event, be approved as a whole by shareholders;

- Grants under incentive schemes, including share option schemes, should be subject to challenging performance criteria; and
- Share options issued to executives should never be issued at a discount.

The Greenbury Report recommends that the remuneration committee's report be annexed to the company's annual report and accounts. It should set out the company's policy on executive remuneration and include comparative figures with other companies. The Report recommends that the remuneration committee's report should include details of all elements of a director's remuneration, including, base salary, benefits-in-kind, annual bonuses and long-term incentive schemes.

- (f) Rules/recommendations regarding the organisation and supervision of internal control systems and relations between supervisory bodies, managerial bodies and internal/external auditors.

The Report does not address this topic.

(3) Rights of Shareholders/Stakeholders.

- (a) Rules/recommendations regarding protection of the rights of shareholders.

As noted above, the Greenbury Report recommends that the remuneration committee report to the shareholders on its activities. The Report also notes that shareholders rights include approval of new long-term incentive schemes available to directors and executives. (Code, ¶ B12) The report of the remuneration committee is to be attached to the (annual) report and accounts of the company to shareholders.

- (b) Rules/recommendations regarding equal/fair treatment of shareholders.

This subject area is not relevant to the terms of reference of the Greenbury Report.

- (c) Rules/recommendations regarding the rights of stakeholders.

This subject area is not relevant to the terms of reference of the Greenbury Report.

Additional information about the Greenbury Report is included in the Comparative Matrix appended to this Report as Annex V.

f. HERMES STATEMENT

Code: Statement on U.K. Corporate Governance & Voting Policy 2001
Issuing Body: Hermes Investment Management Limited, in agreement with eight other institutional investors, PriceWaterhouseCoopers and BP Amoco
Date: March 1997; Updated January 2001
Official Language: English

(1) **Background.**

(a) Issuing Body: *Investor in association with other investor groups.*

Hermes is a pension fund manager (U.K. £50 billion under investment). It is owned by, and is the principal fund manager for, the BT Pension Scheme, the U.K.'s largest pension fund. Hermes also manages portfolios for the Post Office Pension Fund and a number of other major corporate and public pension schemes.

Hermes was joined by eight other large institutional investors as well as by PriceWaterhouseCoopers and BP Amoco in drafting and issuing the Statement. These entities all discussed and agreed on the Statement's substantive conclusions.

(b) Legal Basis and Compliance: *Voluntary (issuer states shares will be voted accordingly).*

Compliance with this Statement is voluntary in that it has no basis to legally or contractually compel companies to comply with its recommendations. However, this Statement is intended as a basis for dialogue between Hermes and the companies in which it invests. Hermes is committed to applying the Statement, but thoughtfully, giving due consideration to the specific circumstances of individual companies and adopting a pragmatic approach. Hermes, as a large institutional investor that is committed to actively exercising stewardship, will inform itself of whether the companies in which it invests are complying with the Statement and will take appropriate action.

(c) Consultations.

The Statement does not indicate whether any formal consultative process was undertaken outside the entities who joined in the Statement, as described above.

(d) Contributions.

There is no record of any contributions by parties other than Hermes and the other entities who jointly issued the Statement, as described above.

(e) Definition of Corporate Governance.

The Statement states that “[d]irectors of public companies are responsible for running companies in the long-term interests of shareholders. Shareholders and their agents have responsibilities as owners to exercise stewardship of companies. Corporate

governance should provide a framework where both parties can fulfil these responsibilities.”

- (f) Objective: Improve accountability to shareholders and/or maximise shareholder value.

“These corporate governance guidelines explain in detail how Hermes will exercise its clients’ ownership rights in practice. The guidelines are intended as a basis for dialogue between companies and shareholders.” (Introduction)

Hermes’s approach to stewardship is based on a fundamental belief that companies with concerned and involved shareholders are more likely to achieve superior long-term returns than those without. Good stewardship creates value.

- (g) Scope: Listed companies.

By its nature, the Hermes Statement is aimed at companies in which Hermes invests and companies that seek investment from Hermes and other institutional investors (as most listed companies do).

(2) Supervisory and Managerial Bodies.

- (a) Rules/recommendations regarding the separate roles and responsibilities of supervisory and managerial bodies (including lines of responsibility).

The Hermes Statement states that “[d]irectors of public companies are responsible for running companies in the long-term interests of shareholders.” (¶ 1.1) The Statement favours separation of the roles of chairman and chief executive and is generally opposed to a chief executive becoming chairman in the same company. It states that the overriding consideration should be whether the composition and balance of the board will ensure that no individual can wield undue influence on the board. (¶ 2.4)

- (b) Rules/recommendations regarding the accountability of supervisory and managerial bodies (including conflicts of interest).

According to the Hermes Statement, public companies are responsible for the long-term interests of shareholders. Those responsible for managing the company are thus to be accountable primarily to shareholders. The Statement places much of the responsibility for creating accountability in the hands of non-executive directors, as stated below.

- (c) Rules/recommendations regarding the size, composition, independence and selection criteria and procedures of supervisory and managerial bodies.

On the issue of identifying candidates for election to the board, Hermes recommends that a nomination committee be responsible, after consultation with other directors, for formulating candidate specifications and approving the process by which they are identified and short-listed. Confirmation of candidates nominated should be the responsibility of the board as a whole. Regarding the size of the board, the Statement stipulates that it is up to the board to determine its “precise number,” although shareholder approval is necessary. The Statement indicates that the number of

executive, non-executive and independent members is not as important as the balance struck among these groups. (¶ 2.1)

The nomination committee should subsequently ensure that all newly elected directors undergo an appropriate orientation program.

The Statement takes the position that “the expression of fresh views and genuine debate across the board table are of considerable value and importance. For this reason at least one new independent non-executive director should join the board every three years, and [non-executive directors] should not normally serve for more than ten years.” (¶ 2.6) The Statement accepts that not all non-executive directors need to be independent, but recommends that a majority (and at least three) of the non-executive directors satisfy the test of independence. There should be full disclosure in the annual report of any factors to be taken into account in judging an individual’s independence.

The Hermes Statement adopts the Cadbury Committees definition of independence, and explicitly states that to be considered an independent non-executive director, one must not:

- Be or have been employed by the company;
- Serve as a director for more than 10 years or be over 70 years of age;
- Represent significant shareholders or other single interest groups;
- Receive an income from the company other than director fees;
- Participate in the company’s share option or performance-related remuneration schemes;
- Have conflicting or cross directorships; and
- Have any other significant financial or personal tie to the company or its management that could interfere with the director’s loyalty to the shareholders.

(¶ 2.3)

However, according to the Statement, the “final decision on whether [non-executive directors] are independent lies with the shareholders who elect them.” (¶ 2.3)

The Statement also encourages the creation of a lead director. The main responsibilities of the position of lead director are to ensure that the views of non-executive directors are given due consideration and to provide a communication channel between non-executive directors and shareholders. “This communication channel should be in addition to and not replace existing channels.” (Appendix 2, Introduction) The Statement strongly supports the appointment of a senior non-executive director as lead director and sees the role as akin to that of deputy chairman. “The senior [non-executive] director should be responsible for completing a periodic performance appraisal of the company chairman.” (Appendix 2, ¶ 4)

Where the board chairman either combines the role of chairman and chief executive or has at any time been an executive director of the company, then the senior NED might chair both the nomination committee and the remuneration committee.

(d) Rules/recommendations regarding the working methods of supervisory and managerial bodies (including information flows).

The Hermes Statement places heavy emphasis on the role of non-executive directors in providing accountability to shareholders. It states that non-executive directors should work co-operatively with their executive colleagues and demonstrate objectivity and robust independence of judgement in their decision-making.

The Statement views the key role of non-executive directors as ensuring that the chief executive and the board as a whole concentrate on maximising long-term shareholder value. There are three ways in which non-executive directors accomplish this objective:

- “Strategic function -- bringing their independent judgement to strategic decision-making;
- Expertise -- providing skills and experience that may not otherwise be readily available to the company; and
- Governance function -- Ensuring compliance with best practice, participating in the appointment of new directors and monitoring the performance of [non-executive directors].”

(¶ 2.2)

The Statement also recommends that the senior or lead non-executive director be available for confidential discussions with other non-executive directors who may have concerns that they believe have not been properly considered by the board as a whole.

(e) Rules/recommendations regarding remuneration of members of supervisory and managerial bodies (including evaluation procedures).

“Remuneration committees of independent [non-executive directors] are best placed to decide the remuneration packages necessary to recruit, retain and motivate executives. They should take professional advice as necessary. Where independent advisers are appointed, they should be responsible to the remuneration committee. . . .” (Appendix 1, ¶ 1.2) “Remuneration committees should explain proposed schemes clearly to shareholders, justifying the structure of the scheme and the relevance of the performance criteria chosen.” (Appendix 1, ¶ 3.4)

The Statement endorses performance-based remuneration, stating that it is “the principal means by which executive directors are motivated to achieve greater shareholder value and are rewarded for doing so. Performance-related remuneration should be aligned over time with returns earned by shareholders. Increases in remuneration should be driven by improved performance and should not just be a matter of annual appreciation.” (The Appendix 1, ¶ 1.3) The Statement also comments on evaluation procedures, stating that the board as a whole should conduct an annual review of the performance of non-executive directors and the chairman, and should consider the effectiveness of the board as a whole. (¶ 2.8) The senior or lead non-executive director should “take a major part in the performance appraisal of the board as a whole and of individual directors” (Appendix 2, ¶ 5), as well as the company chairman. (Appendix 2, ¶ 4)

Finally, the Statement's guidance emphasises that "[i]ncentive schemes should be designed to reward exceptional performance. Awards should be scaled. . . . No award should be made where targets are not met." (Appendix 1, ¶ 3.1) Schemes based on the grant of shares are recommended as preferable to many share option schemes.

- (f) Rules/recommendations regarding the organisation and supervision of internal control systems and relations between supervisory bodies, managerial bodies and internal/external auditors.

The Statement does not address this topic.

(3) Rights of Shareholders/Stakeholders.

- (a) Rules/recommendations regarding protection of the rights of shareholders.

The Hermes Statement makes specific recommendations regarding protection of the rights of shareholders, including: (i) support of electronic proxy voting and encouragement that companies adopt this practice as soon as practicable; and (ii) recommendation that existing shareholders should be offered a right of first refusal when a company issues shares exceeding five percent (5%) of the outstanding shares. Only in exceptional circumstances would Hermes approve the waiver of clients' pre-emption rights. Furthermore, the Statement maintains that "performance-related remuneration is . . . an area of company policy in which shareholders have a valid role." (Appendix 1, ¶ 1.1)

The Statement also makes reference to the responsibility of shareholders, stating that they and their agents have a responsibility as owners to exercise stewardship of companies.

- (b) Rules/recommendations regarding equal/fair treatment of shareholders.

The Statement holds that split-share capital structure often disadvantages the majority of shareholders, and the issuing bodies state that they will not support the issue of shares with reduced or no voting rights and are likely to withhold support for other capital-raising exercises by companies with such capital structures. Furthermore, the issuers state that their support for a company with an unequal capital structure would be qualified in the event of it becoming a take-over target.

- (c) Rules/recommendations regarding the rights of stakeholders.

Section 1.2 of the Statement espouses the position that a company run in the long-term interests of its shareholders will need to manage effectively relationships with its employees, suppliers and customers, to behave ethically and to have regard for the environment and society as a whole.

Additional information about the Hermes Statement is included in the Comparative Matrix appended to this Report as Annex V.

g. HAMPPEL REPORT

Code: Committee on Corporate Governance: Final Report (Hampel Report)
Issuing Body: Committee established in 1995 and sponsored by The London Stock Exchange, The Confederation of British Industry, the Institute of Directors, the Consultative Committee of Accountancy Bodies, the National Association of Pension Funds and the Association of British Insurers
Date: January 1998
Official Language: English

Perspective Note: The Hampel Report is an important document from a historic perspective. The Combined Code, which has incorporated many of its provisions, has superseded it in terms of influence on companies listed on the London Stock Exchange.

Citation Note: The document referred to as the Hampel Report has two major parts: general Principles of Corporate Governance and more detailed Guidelines. Parenthetical citations below to “Principles” refer to the former, and citations to “Guideline” refer to the latter.

(1) Background.

(a) Issuing Body: Committee related to a stock exchange and a business, industry and/or academic association.

The Committee, established in 1995 on the initiative of the Chairman of the Financial Reporting Council and sponsored by the organisations listed above, was chaired by Sir Robert Hampel (Chairman of ICI plc) and made up of senior members of the business communities and the legal and accounting professions.

(b) Legal Basis and Compliance: Disclosure (in line with the Combined Code’s provisions).

Compliance with the Hampel Report was wholly voluntary. However, the Combined Code, which incorporates many of the recommendations of the Hampel Report, has been annexed to the listing rules of the London Stock Exchange. Listed companies must either comply with the provisions of the Combined Code or publicly disclose their reasons for failing to do so (see Combined Code below).

(c) Consultations.

The Committee consulted widely throughout British industry, law, accounting and academia. It issued both a questionnaire and a preliminary report and considered numerous responses and comments thereto.

(d) Contributions.

The Committee consulted widely in preparing its report. It issued a questionnaire in response to which over 140 submissions were received. Members of the Committee also participated in over 200 individual and group discussions. The Committee

received 167 written submissions on its published preliminary report and had a “substantial number of further discussions.” In total, the Report states, over 252 organisations or individuals responded in writing to one or both of these consultations. This included 114 public companies, 14 individual investors, 12 professional partnerships, 24 representative bodies, 29 other organisations and 59 individuals. (Foreword, ¶ 3)

(e) Definition of Corporate Governance.

The Hampel Report adopts the Cadbury Report’s definition of corporate governance as “the system by which companies are directed and controlled.”

(f) Objective: Improve quality of board (supervisory) governance; Improve quality of governance-related information available to equity markets.

“The objective of the new principles and code, like those of the Cadbury and Greenbury codes, is not to prescribe corporate behaviour in detail but to secure sufficient disclosure so that investors and others can assess companies’ performance and governance practice and respond in an informed way.” (Guideline 1.25)

To this end, the Committee set out to:

- Conduct a review of the Cadbury Code and its implementation to ensure that the original purpose is being achieved, proposing amendments to and deletions from the code as necessary;
- Keep under review the role of directors, executive and non-executive, recognising the need for board cohesion and the common legal responsibilities of all directors;
- Be prepared to pursue any relevant matters arising from the report of the study group on directors’ remuneration chaired by Sir Richard Greenbury; address, as necessary, the role of shareholders in corporate governance issues;
- Address, as necessary, the role of auditors in corporate governance issues; and
- Deal with any other relevant matters.

(g) Scope: Listed companies.

The Hampel Report was directed towards companies listed on the London Stock Exchange.

(2) Supervisory and Managerial Bodies.

(a) Rules/recommendations regarding the separate roles and responsibilities of supervisory and managerial bodies (including lines of responsibility).

According to the Hampel Report, the “prime responsibility of the board of directors is to determine the broad strategy of the company and to ensure its implementation.” (Guideline 3.11) The role of management (delegated to the chief executive and his

colleagues) is to run the business and implement policies and strategies adopted by the board.

The Hampel Report states that there are “two key tasks at the top of every public company -- the running of the board and the executive responsibility for the running of the company’s business. A decision to combine these roles in one individual should be publicly explained.” (Principle A.II) The Hampel Report distinguishes between the responsibilities of the board chairman and those of the chief executive officer. In the case of the chairman, the Hampel Report endorses the following statement from the Cadbury Report: “Chairmen are primarily responsible for the working of the board, for the balance of its membership subject to board and shareholders’ approval, and for ensuring all directors, executive and non-executive alike, are able to play their full part in its activities.” (Hampel Report, Guideline 3.16; Cadbury Report, ¶ 4.7) The Hampel Report notes that the task of the chief executive officer is to “run the business and to implement the policies and strategies adopted by the board.” (Guideline 3.16)

(b) Rules/recommendations regarding the accountability of supervisory and managerial bodies (including conflicts of interest).

The details of the Hampel Report’s section entitled “Accountability and Audit” and discussed in section (f) below.

Regarding conflicts of interests, the report indicates that “there may be a temptation to compromise on independence where an audit firm depends for a significant portion of its income on a single audit client.” (Guideline 6.8) For this reason, the Report recommends that “the bodies concerned should examine whether, in the existence of professional guidance, the ten percent (10%) limit of total income from one listed or other public interest client should be reduced.” (Guideline 6.8)

(c) Rules/recommendations regarding the size, composition, independence and selection criteria and procedures of supervisory and managerial bodies.

The Report states that the board should include “a balance of executive and non-executive directors (including independent non-executives) such that no individual or small group of individuals can dominate the board’s decision taking.” (Principle A.III) In order to ensure effective corporate governance, the Guidelines suggest that the non-executive directors comprise no less than a third of the board. (Guideline 3.14)

Like the Cadbury Committee, the Hampel Report considers independent directors to be those who are “independent from management and free from any business or other relationship which could materially interfere with their exercise of independent judgement.” The Report notes that non-executive, non-independent directors can still make a valuable contribution. (Guideline 3.9)

Regarding selection procedure, the Report states that “there should be a formal and transparent procedure for the appointment of new directors to the board.” (Principle A.V) It recognises the adoption of a formal procedure, with a nomination committee making recommendations to the full board, as good practice. It also states that all directors should be required to submit themselves for re-election at regular intervals at

least every three years and endorses the view that it is the board's responsibility to appoint new directors and the shareholders' responsibility to re-elect them.

(d) Rules/recommendations regarding the working methods of supervisory and managerial bodies (including information flows).

The Hampel Report states that “[t]he board can only fulfil its responsibilities if it meets regularly and reasonably often.” (Guideline 3.11)

The Report recommends that the board “should be supplied in a timely fashion with information in a form and of a quality appropriate to enable it to discharge its duties.” (Principle A.IV) It endorses the view of the Cadbury Report that “the effectiveness of non-executive directors (indeed, of all directors) turns, to a considerable extent, on the quality of the information they receive.” (Guideline 2.6) The Report states that “[r]eliance purely on what is volunteered by management is unlikely to be enough in all circumstances and further inquiries may be necessary if a particular director is to fulfil his or her duties properly.” (Guideline 3.4)

The Hampel Report notes that audit committees have had a successful impact on creating an effective link between the board and the auditors, as well as board questioning of executive members. (Guideline 6.3)

(e) Rules/recommendations regarding remuneration of members of supervisory and managerial bodies (including evaluation procedures).

Regarding director remuneration, the Hampel Report states that “[l]evels of remuneration should be sufficient to attract and retain the directors needed to run the company successfully” and that “[t]he component parts of remuneration should be structured so as to link rewards to corporate and individual performance.” (Principle B.I) The Report also comments on procedures for determining director remuneration, stating that “companies should establish a formal and transparent procedure for developing policy on executive remuneration and for fixing the remuneration packages of individual executive directors.” (Principle B.II) Regarding disclosure, the Report recommends that companies’ “annual reports contain a statement of remuneration policy and details of the remuneration of each director.” (Principle B.III) (This follows the recommendations of the Greenbury Report.) Finally, the Hampel committee adopts the recommendation of the Cadbury and Greenbury Reports that companies should establish a remuneration committee to develop a policy on the remuneration of executive directors and other senior executives.

The Report also makes several recommendations regarding the proper role of shareholders in the remuneration process, discussed below.

Although the Report does not have a recommendation regarding formal board assessment procedures, it notes an interest in its development. (Guideline 3.13)

(f) Rules/recommendations regarding the organisation and supervision of internal control systems and relations between supervisory bodies, managerial bodies, and internal/external auditors.

The Report's section entitled "Accountability and Audit" makes the following recommendations:

- Financial Reporting: The board should present a balanced and understandable assessment of the company's position and prospects. (Principle D.I)
- Internal Control: The board should maintain a sound system of internal control to safeguard shareholders' investments and the company's assets. (Principle D.II)
- Relationship with the Auditors: The Board should establish formal and transparent arrangements for maintaining an appropriate relationship with the company's auditors. (Principle D.III)
- Audit Committee: The Report supports the Cadbury recommendation that all listed companies should establish an audit committee, comprised of non-executive directors, as a committee of, and responsible to, the board. (Guideline 2.21)
- External Auditors: The external auditors should independently report to shareholders in accordance with statutory and professional requirements and independently assure the board on the discharge of its responsibilities in accordance with professional guidance. (Principle D.IV)

The Hampel Report discusses at some length a proposal in the Cadbury Report that the directors should report on the effectiveness of the company's system of internal control and that this report should be reviewed by the auditors. The Hampel Report considers that auditors should not be required to report publicly on the directors' review of internal controls, but that they should report privately to the directors on this issue.

(3) Rights of Shareholders/Stakeholders.

(a) Rules/recommendations regarding protection of the rights of shareholders.

The Hampel Report's recommendations relating to shareholders do not deal with shareholder rights in the traditional sense. Part 4, Section VI details the committee's recommendations on shareholder involvement in remuneration, agreeing with the Greenbury Report's recommendation that shareholders "should be invited specifically to approve all new long-term incentive plans . . . which potentially commit shareholders' funds over more than one year, or dilute the equity." It also states that the shareholders annual general meeting should consider carefully each year whether or not to approve the company's remuneration policy (as opposed to making it a standard agenda item).

The Report also contains a section on "The Role of Shareholders" (Part 5), which deals primarily with the role of institutional shareholders in improving corporate governance. This section is adopted by the Combined Code (see below).

(b) Rules/recommendations regarding equal/fair treatment of shareholders.

See above.

(c) Rules/recommendations regarding the rights of stakeholders.

The Hampel Report quotes with approval a statement made by the Confederation of British Industry (the “CBI”) (an employer’s organisation representing both listed and unlisted companies in the U.K.) that the board is responsible for relations with stakeholders, but is accountable only to the shareholders. It notes, however, that “directors can meet their legal duties to shareholders, and can pursue the objective of long-term shareholder values successfully, only by developing and sustaining these stakeholder relationships.” (Guideline 1.18)

Additional information about the Hampel Report is included in the Comparative Matrix appended to this Report as Annex V.

h. COMBINED CODE

Code: **The Combined Code: Principles of Good Governance and Code of Best Practice**

Issuing Body: **The Committee on Corporate Governance**

Date: **July 1998**

Official Language: **English**

Perspective Note: The Combined Code applies to all U.K. companies listed on the London Stock Exchange. Listed companies must disclose whether they comply with its Code of Best Practice provisions or explain why they do not.

Citation Note: The Combined Code has two parts: General “Principles of Good Governance” and a “Code of Best Practices,” which elaborates on the Principles. (Companies listed on the London Stock Exchange are required to disclose their compliance with the Code of Best Practices.) Parenthetical citations below refer to either the “Principle” or to the “Code.”

(1) Background.

- (a) Issuing Body: *Committee related to a stock exchange and a business, industry and/or academic association.*

The Committee on Corporate Governance, chaired by Sir Ronald Hampel, was established in November 1995 on the initiative of the Chairman of the Financial Reporting Council, following the recommendations of the Cadbury and Greenbury Commissions that a new committee should review the implementation of their recommendations.

- (b) Legal Basis and Compliance: *Disclosure (comply or explain).*

After completion of the Combined Code, the London Stock Exchange introduced a requirement that listed companies make a disclosure statement in two parts. In the first part of the statement, a listed company is required to report on how it applies the principles in the Combined Code. The Code does not prescribe the form or content of this part of the statement, “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. It must be for shareholders and others to evaluate this part of the company’s statement.” In the second part of the statement, “the company [is] required either to confirm that it complies with the Code provisions or -- where it does not -- provide an explanation. Again, it must be for shareholders and others to evaluate such explanations.”

The Combined Code states that “companies should be ready to explain their governance policies, including any circumstances justifying departure from best practice; ... those concerned with the evaluation of governance should do so with common sense, and with due regard to companies’ individual circumstances.” (Preamble ¶ 7)

(c) Consultations.

The Combined Code was created in response to many requests to produce a set of principles which embraced Cadbury and Greenbury as well as the Hampel Report. The Combined Code in its final form includes a number of changes made by the London Stock Exchange, with the committee's agreement, following the consultation undertaken by the London Stock Exchange on the Committee's original draft.

(d) Contributions.

The Codes does not indicate contributions other than those discussed above. Of course, the Code is a compilation of the Cadbury, Greenbury and Hampel reports, so the committees that created these reports may be seen as contributors.

(e) Definition of Corporate Governance.

The Combined Code does not contain a definition of the term "corporate governance."

(f) Objective: *Improve quality of board (supervisory) governance; Improve quality of governance-related information available to equity markets.*

"[T]he Committee . . . intended to produce a set of principles and a code which embraced Cadbury, Greenbury and the Committee's own work. This Combined Code fulfils that undertaking. . . . We understand that it is the intention of the London Stock Exchange to introduce a requirement on listed companies to make a disclosure. . . . [C]ompanies should be ready to explain their governance policies, including any circumstances justifying departure from best practice."
(Preamble ¶¶ 1, 3 & 6)

The Committee makes it clear that the Combined Code is a compilation of two previously issued codes, the Cadbury Code and the Greenbury Code, in addition to the Committee's own work. "We see this Combined Code as a consolidation of the work of the three committees, not as a new departure. We have therefore retained the substance of the two earlier codes except in those few cases where we take a different view from our predecessors." (Preamble ¶ 7)

The Combined Code also states that "it is still too soon to assess definitively the results of the Cadbury and more especially the Greenbury codes." (Preamble ¶ 7)

(g) Scope: *Listed companies.*

The Combined Code applies to U.K. companies listed on the London Stock Exchange.

(2) Supervisory and Managerial Bodies.

(a) Rules/recommendations regarding the separate roles and responsibilities of supervisory and managerial bodies (including lines of responsibility).

The Combined Code states that every listed company “should be headed by an effective board which should lead and control the company.” (Principle A.1)

The Combined Code espouses a separation of responsibilities between those responsible for managing the corporation and those responsible for oversight of management. The Code states that “[t]here are two key tasks at the top of every public company -- the running of the board and the executive responsibility for the running of the company’s business. There should be a clear division of responsibilities at the head of the company which will ensure a balance of power and authority, such that no one individual has unfettered powers of decision.” (Principle A.2) Furthermore, the Code’s provisions require that “[a] decision to combine the posts of chairman and chief executive officer in one person should be publicly justified.” (Code § 1, A.2.1)

(b) Rules/recommendations regarding the accountability of supervisory and managerial bodies (including conflicts of interest).

This subject is not addressed directly by the Combined Code, although the Code does recommend that directors establish a remuneration committee consisting of independent non-executive directors in order to avoid conflicts of interest. (Code § 1, B.2.1). The treatment of “Accountability and Audit” (Code § 1, D) deals primarily with issues of internal control and is discussed below.

(c) Rules/recommendations regarding the size, composition, independence and selection criteria and procedures of supervisory and managerial bodies.

The Combined Code does not expressly comment on the size of the board, but does recommend that non-executive directors should constitute at least one-third of the board and that a majority of the non-executive directors should be independent directors. The Combined Code recommends that a committee of the board, consisting of a majority of non-executive directors, be formed for the purpose of nominating candidates for election to the board of directors.

The Code recommends that the board consist of a balance of executive and non-executive directors, and that the non-executive directors should be “of a sufficient calibre and number for their views to carry significant weight in the board’s decisions.” (Code, A.3.1) According to the Code, the majority of the non-executive members should be:

- Independent from management; and
- Free from any business or other relationship that could materially interfere with their independent judgement.

(Code § 1, A.3.1-A.3.2)

The Combined Code states that “[t]here should be a formal and transparent procedure for the appointment of new directors to the board.” (Principle A.5) It recommends that a nomination committee, made up of a majority of independent directors, should be established to make recommendations to the board on all new board appointments. (Code § 1, A.5.1) It also states that “[a]ll directors should be required to submit themselves for re-election at regular intervals at least every three years” (Principle A.6) and that “reappointment should not be automatic.” (Code § 1, A.6.1) It makes other specific points about the procedure for appointment and re-election. (Code § 1, A.5.1 - A.6.2)

(d) Rules/recommendations regarding the working methods of supervisory and managerial bodies (including information flows).

Principle A.4 states that “[t]he board should be supplied in a timely manner with information in a form and of a quality appropriate to enable it to discharge its duties.” More specifically, “[m]anagement has an obligation to provide the board with appropriate and timely information,” but that “information volunteered by management is unlikely to be enough in all circumstances and directors should make further inquiries where necessary.” (Code § 1, A.4.1)

The Combined Code recommends the creation of committees for the purposes of:

- Nominating candidates for the board (committee to be comprised of a majority of non-executive directors) (Code § 1, A.5.1);
- Determining the level of executive remuneration (committee to be comprised solely of non-executive directors) (Code § 1, B.2.2); and
- Overseeing the company’s audit (committee to be comprised solely of non-executive directors) (Code § 1, D.3.1).

The Combined Code recommends that the board should meet regularly. (Code § 1, A.1.1). The board should have access to independent professional advice at the company’s expense (Code § 1, A.1.3); and all directors should have access to the advice and services of the company secretary. (Code § 1, A.1.4) In addition; directors should receive appropriate training both at the time of their election to the board and subsequently as necessary. (Code § 1, A.1.6)

(e) Rules/recommendations regarding remuneration of members of supervisory and managerial bodies (including evaluation procedures).

The Combined Code recommends that a committee comprised of non-executive directors be appointed for the purpose of recommending the “framework” for executive remuneration within the company and determining remuneration packages for the executive directors. Various criteria to be taken into account by the remuneration committee are set out. The Combined Code comments on the “strong case” for limiting notice periods under contracts of employment to one year, but recognises that this will not be possible in all cases. It recommends that performance-related elements should form a “significant proportion” of an overall remuneration package with the intention of aligning the interests of directors with those of shareholders. (Code § 1, B)

The Combined Code recommends that the company's annual report and accounts should include a report on remuneration setting out the company's policy on executive directors' remuneration and commenting on factors specific to the company. (Code § 1, B.3.1-B.3.2) The members of the remuneration committee should be named in this report. (Code § 1, B.2.3)

The Combined Code does not recommend that the remuneration report should be a standard item on the agenda for a company's AGM. However, it does recommend that the board consider each year whether shareholders should be invited to approve the policy set out in the report. (Code § 1, B.3.5)

(f) Rules/recommendations regarding the organisation and supervision of internal control systems and relations between supervisory bodies, managerial bodies and internal/external auditors.

The Combined Code deals expressly with the need to “maintain a sound system of internal controls to safeguard shareholders' investment and the company's assets.” (Principle D.2) It recommends the establishment of a committee to deal with issues regarding the audit (including the scope and results of the audit, its cost effectiveness and the objectivity of the auditor). It also recommends that the directors should, at least annually, conduct a review of the effectiveness of the internal control system and report to shareholders that they have done so. The Combined Code's requirement of a sound system of internal control was the subject of a subsequent report (see the Turnbull Report, below) by a working party convened by the Institute of Chartered Accountants in England and Wales.

Regarding financial reporting, the Combined Code states that “[t]he board should present a balanced and understandable assessment of the company's position and prospects.” (Principle D.1) They should explain their responsibility for preparing the accounts and report that the business is a going concern, with supporting assumptions or qualifications as necessary. (Code § 1, D.1.1 - D.1.3)

Finally, regarding the company's audit function, the Combined Code states that “[t]he board should establish formal and transparent arrangements for considering how they should apply the financial reporting and internal control principles and for maintaining an appropriate relationship with the company's auditors.” (Principle D.3) The Code recommends that the board establish “an audit committee of at least three directors, all non-executive, with written terms of reference which deal clearly with its authority and duties. The members of the committee, a majority of whom should be independent non-executive directors, should be named in the report and accounts.” Duties of the audit committee should include “keeping under review the scope and results of the audit and its cost-effectiveness and the independence and objectivity of the auditors.” Finally, where the auditors also supply a substantial volume of non-audit services to the company, the committee should keep the nature and extent of such services under review, seeking to balance the maintenance of objectivity and value for money. (Code § 1, D.3.1 - D.3.2)

(3) Rights of Shareholders/Stakeholders.

(a) Rules/recommendations regarding protection of the rights of shareholders.

Shareholder rights are addressed in the Combined Code primarily through recommendations regarding the annual meeting and the information that the company is obliged to provide shareholders (*i.e.*, information on remuneration and internal control systems).

The Combined Code reminds that the general meeting provides an opportunity for the board to communicate with shareholders. (Principle C.2) Notice and related papers should be sent to shareholders at least twenty working days prior to the meeting. (Code § 1, C.2.4) Separate resolutions should be used for each substantively separate issue. (Code § 1, C.2.2)

The Code urges institutional shareholders to take steps to ensure that their voting intentions are being translated into practice. (Code § 2, E.1.3) Dialogue between the company and its institutional shareholders, based on a mutual understanding of objectives, is encouraged. (Principle E.2)

(b) Rules/recommendations regarding equal/fair treatment of shareholders.

The Combined Code emphasises that all proxy votes should be counted and, “except where a poll is called,” the company should indicate the level of proxies lodged on a resolution and the votes for and against. (Code § 1, C.2.1) On the other hand, the Combined Code states that “[i]nstitutional shareholders have a responsibility to make considered use of their votes.” (Principle E.1) Moreover, institutional shareholders should inform their clients, on request, of the proportion of resolutions on which votes were cast and non-discretionary proxies lodged. (Code § II, E.1.2)

(c) Rules/recommendations regarding the rights of stakeholders.

The Combined Code does not address this topic.

Additional information about the Combined Code is included in the Comparative Matrix appended to this Report as Annex V.

i. TURNBULL REPORT

Code: Internal Control: Guidance for Directors on the Combined Code (Turnbull Report)
Issuing Body: The Institute of Chartered Accountants in England and Wales (“ICAEW”), with endorsement from the London Stock Exchange (“LSE”)
Date: September 1999
Official Language: English

(1) **Background.**

- (a) Issuing Body: *Committee related to a stock exchange and a business, industry and/or academic association.*

The Institute of Chartered Accountants in England and Wales (“ICAEW”) is a professional association for chartered accountants. This Report resulted from an agreement between the ICAEW and the London Stock Exchange (“LSE”) to establish an “Internal Control Working Party,” chaired by Nigel Turnbull, to provide guidance to listed companies in implementing certain requirements of the Combined Code.

- (b) Legal Basis and Compliance: *Voluntary (advise on compliance with Combined Code).*

The Turnbull Report provides guidance on the interpretation of a particular aspect of the Combined Code and London Stock Exchange Listing Rules requirement that listed companies publicly disclose that they have conducted a review of the effectiveness of the relevant company’s system of internal control.

(c) Consultations.

In addition to consulting with the London Stock Exchange, the Working Party sent a consultative report to every listed company in the U.K. several months before the publication of the final report, and comments to this Report were considered in drafting the Final Report.

(d) Contributions.

The Working Party was made up of partners and representatives from leading accounting firms, investment banks, portfolio managers and companies.

(e) Definition of Corporate Governance.

The Turnbull Report does not provide a definition of the term “corporate governance.”

- (f) Objective: *Improve quality of board (supervisory) governance.*

“This guidance is intended to: reflect sound business practice whereby internal control is embedded in the business processes by which a company pursues its objectives; remain relevant over time in the continually evolving business environment; and enable each company

to apply it in a manner which takes account of its particular circumstances.

The guidance requires directors to exercise judgement in reviewing how the company has implemented the requirements of the code relating to internal control and reporting to shareholders thereon. The guidance is based on the adoption by a company's board of a risk-based approach to establishing a sound system of internal control and reviewing its effectiveness. This should be incorporated by the company within its normal management and governance processes.” (¶¶ 8-9)

- (g) Scope: Listed companies.

The Turnbull Report applies to companies listed on the London Stock Exchange.

(2) Supervisory and Managerial Bodies.

- (a) Rules/recommendations regarding the separate roles and responsibilities of supervisory and managerial bodies (including lines of responsibility).

As stated above, the purpose of the Turnbull Report is to provide guidance on various provisions of the Combined Code relating to internal control. These provisions include obligations to maintain a sound system of internal control to safeguard shareholders' investments and the company's assets (Combined Code, Principle D.2) and to carry out an annual review of the system of internal control (Combined Code § 1, D.2.1).

Turnbull urges directors to exercise judgement in reviewing how the company has implemented the requirements of the Combined Code regarding internal control and reporting to shareholders thereon. It states that:

“The board of directors is responsible for the company's system of internal control. It should set appropriate policies on internal control and seek regular assurance that will enable it to satisfy itself that the system is functioning effectively. The board must further ensure that the system of internal control is effective in managing risks in the manner which it has approved.” (¶ 16)

The Report states that “it is the role of management to implement board policies on risk and control. In fulfilling its responsibilities, management should identify and evaluate the risks faced by the company for consideration by the board and design, operate and monitor a suitable system of internal control which implements the policies adopted by the board.” (¶ 18)

- (b) Rules/recommendations regarding the accountability of supervisory and managerial bodies (including conflicts of interest).

While the Turnbull report specifically addresses this topic in relation to internal control, it is clear through its recommendations that the Report focuses on the board's role in representing the interests of the company, generally, and of shareholders.

The Report states that “[m]anagement is accountable to the board for monitoring the system of internal control and for providing assurance to the board that it has done so.” (¶ 25) In turn, the board is accountable for the disclosures on internal control. (¶ 26)

- (c) Rules/recommendations regarding the size, composition, independence and selection criteria and procedure of supervisory and managerial bodies.

The Report does not address this topic.

- (d) Rules/recommendations regarding the working methods of supervisory and managerial bodies (including information flows).

The Turnbull Report emphasises that “[e]ffective monitoring on a continuous basis is an essential component of a sound system of internal control.” (¶ 27)

In discussing the process by which the board should review the effectiveness of the company’s internal control systems, the Report states that the board should:

- Regularly receive and review reports on internal control;
- Undertake an annual assessment for the purposes of making its public statement on internal control to ensure that it has considered all aspects of internal control for the company for the year under review and up to the date of approval of the annual report and accounts;
- Consider all types of controls, including those of an operational and compliance nature, as well as internal financial controls; and
- Define the process to be adopted for its review of the effectiveness of internal control, encompassing both the scope and frequency of the reports it receives and reviews during the year as well as the process for its annual assessment.

The Report states that reports from management to the board should, in relation to the areas covered by them, provide a balanced assessment of the significant risks and the effectiveness of the system of internal control in managing those risks. In reviewing these reports, the board should:

- Consider what are the significant risks and assess how they have been identified, evaluated and managed;
- Assess the effectiveness of the related system of internal control in managing the significant risks, having regard, in particular, to any significant failings or weaknesses; and
- Consider whether the findings indicate a need for more extensive monitoring of the system of internal control.

Finally, the Report states that, should the board become aware at any time of a significant failing or weakness in internal control, it should determine how the failing or weakness arose and re-assess the effectiveness of management’s ongoing processes for designing, operating and monitoring the system of internal control.

- (e) Rules/recommendations regarding remuneration of members of supervisory and managerial bodies (including evaluation procedures).

The Report does not address this topic.

- (f) Rules/recommendations regarding the organisation and supervision of internal control systems and relations between supervisory bodies, managerial bodies and internal/external auditors.

This is the subject area covered by the entire Turnbull Report. The Turnbull Report seeks to provide guidance on the requirement set out in the London Stock Exchange Listing Rules that a company's annual report and accounts should include a narrative statement of how the company has complied with its obligations under the Combined Code (including those relating to internal control).

Specifically, the Report states that the company's internal control system is the responsibility of the board of directors, while it is the responsibility of management to implement the boards policies "on risks and control." (¶¶ 16 & 18) According to the Report, the internal control system encompasses "the policies, processes, tasks, behaviours and other aspects of the company that, taken together, facilitate its effective and efficient operation," as well as safeguarding assets and managing liabilities. (¶ 20) Generally, the Report asserts that an effective and efficient system of internal control provides some assurance that "the company will not be hindered in achieving its business objectives." (¶ 24)

(3) Rights of Shareholders/Stakeholders.

- (a) Rules/recommendations regarding protection of the rights of shareholders.

The Report emphasises that one of the integral components of internal control is the protection of shareholder investments. (¶ 10)

- (b) Rules/recommendations regarding equal/fair treatment of shareholders.

The Report does not address this topic.

- (c) Rules/recommendations regarding the rights of stakeholders.

Although the report does not expressly deal with stakeholder rights, it does note that for purposes of effective internal control it is necessary to evaluate policies regarding employees, customer relations and environmental protection. (Appendix)

Additional information about the Turnbull Report is included in the Comparative Matrix appended to this Report as Annex V.

j. NAPF CORPORATE GOVERNANCE CODE

Code: Towards Better Corporate Governance
Issuing Body: National Association of Pension Funds
Date Issued: June 2000
Official Languages: English

(1) **Background.**

(a) Issuing Body: *Investors association.*

The National Association of Pension Funds (“NAPF”) is the principal UK body representing the interests of pension funds. Among its members are large and small companies and public sector bodies. NAPF members also include businesses that provide professional services to pension funds, such as consultancy, actuarial, legal, trustee, administration, IT and investment services.

(b) Legal Basis and Compliance: *Voluntary (association members recommended to apply to portfolio companies).*

The NAPF Code is a voluntary code that is recommended to the organisation’s members but has no legal authority. The NAPF Code Introduction states that the NAPF will keep its guidelines under regular review as law, codes and best practice evolve and will provide its members with updated information on a timely basis.

(c) Consultations.

We have no information suggesting that the preparation of the Code involved any consultation with other bodies. It can be reasonably assumed that it is a largely internal product, prepared in consultation with NAPF’s management.

(d) Contributions.

See above.

(e) Definition of Corporate Governance.

The Code does not offer a definition of corporate governance.

(f) Objective: *Improve accountability to shareholders and/or maximise shareholder value.*

The NAPF Code sets out the NAPF’s policy positions on a wide range of corporate governance issues, “many of which are fully in step with the principles set out in the Combined Code.” The Foreword states that it is the NAPF’s “ardent hope that the introduction of clear policy positions, agreed by the NAPF, together with templates to assist voting, will go a long way towards helping pension funds achieve a higher level of active participation in the governance of UK companies, to their and the whole economy’s benefit.” (Code, p. 1)

- (g) Scope: Listed companies.

The Code states that it sets out NAPF's corporate governance policy for UK listed companies.

(2) Supervisory and Managerial Bodies.

- (a) Rules/recommendations regarding the separate roles and responsibilities of supervisory and managerial bodies (including lines of responsibility).

The Code states that the functions of chairman of the board and chief executive officer are "two discrete roles" and "must not be confused." Therefore, the code endorses the Combined Code's recommendation in stating that "it is generally preferable for different people to perform the two functions." (Code § 4) Notably, the NAPF rejects the Combined Code's allowance that companies may fill both roles with one person provided that such practice is publicly justified.

- (b) Rules/recommendations regarding the accountability of supervisory and managerial bodies (including conflicts of interest).

The Code recommends that accountability be accomplished through "constructive use of the annual general meeting." The Code states that the results of all proxy votes should be published during or shortly after the AGM and that resolutions should cover separate issues and should not be "bundled." (Code § 10)

- (c) Rules/recommendations regarding the size, composition, independence and selection criteria and procedures of supervisory and managerial bodies.

The Code states that board balance is essential to delivering shareholder value. It states that the board should be composed of both executive and non-executive directors (including independent non-executives) "such that no individual or small group of individuals can dominate a board's decision-making." It also states that non-executive directors should comprise "not less than one-third of the board with a minimum of three." Further, it states that the majority of these non-executive directors should be independent, as lays out specific criteria to define that term. (Code § 2-3)

- (d) Rules/recommendations regarding the working methods of supervisory and managerial bodies (including information flows).

The Code states that "the board requires appropriate and timely information sufficient to enable it to discharge its duties. It is the responsibility of company management to ensure that all directors are supplied with the information necessary to make informed judgements on matters affecting the companies." (Code § 5) The Code further states that the board should maintain a dialogue with institutional shareholders "based on a mutual understanding of objectives." (Code § 6)

(e) Rules/recommendations regarding remuneration of members of supervisory and managerial bodies (including evaluation procedures).

The Code makes recommendations regarding both procedure on directors' remuneration and the level and make-up of director and executive remuneration. On the first matter, the code states that:

- A policy on executive remuneration should follow a formal and transparent procedure;
- No director should be involved in deciding his or her own remuneration
- The remuneration committee should consist solely of independent non-executive directors and be responsible for making recommendations to the board.
- The remuneration committee requires a minimum of three independent non-executive directors.
- Non-executive directors should be rewarded commensurate with their responsibilities.
- A proportion of non-executive pay can be made in the form of shares, provided these are not leverages options.
- Independent non-executive directors should not take “significant” holdings in the companies in which they are directors because this reduces their independence.

Regarding the level and make-up of remuneration, the Code advocates that:

- Executive directors' remuneration should be related to the performance of the company.
- Levels of remuneration should be sufficient to attract and retain the directors needed to run the company successfully, but companies should avoid paying more than is necessary for this purpose.
- The remuneration of each individual director, together with the components that form his/her pay package, should be tabulated and explained in a form that can easily be understood by shareholders.
- Remuneration committees must set, and take responsibility for, reward levels. Guidance from institutional shareholders can only be general in nature and should be so regarded by companies.
- It is unrealistic to expect institutional shareholders to have sufficient knowledge of the business to set specific performance hurdles for incentive reward.

(Code § 9)

The Code also recommends that rolling service contracts for executives should not exceed one year. Finally, it recommends that the report of the remuneration committee should be submitted to shareholders for their approval. (Code § 9)

- (f) Rules/recommendations regarding the organisation and supervision of internal control systems and relations between supervisory bodies, managerial bodies and internal/external auditors.

The Code states that “good quality accounts are essential if investors are to understand where the company is today and where it is going” and that “the board should present a balanced and understandable assessment of the company’s position and prospects.” (Code § 11) To this end it recommends that the board “ensure that the management establishes and maintains a sound system of internal control to safeguard shareholders’ investments and the company’s assets. (Code § 11)

The Code also states that each board should establish an audit committee (Code § 12) and that a change in auditors should be explained and justified to the shareholders (Code § 13).

(3) Rights of Shareholders/Stakeholders.

- (a) Rules/recommendations regarding protection of the rights of shareholders.

The Code does not address this topic.

- (b) Rules/recommendations regarding equal/fair treatment of shareholders.

The Code does not address this topic.

- (c) Rules/recommendations regarding the rights of stakeholders.

The Code does not address this topic.

Additional information about the NAPF Code is included in the Comparative Matrix appended to this Report as Annex V.

k. AUTIF CODE

Code: Code of Good Practice: Institutional Investors and Corporate Governance
Issuing Body: The Association of Unit Trusts and Investment Funds (“AUTIF”)
Date: January 2001
Official Language: English

Citation Note: The document referred to as the AUTIF Code has two major parts: a “Statement of Key Principles” and “Guidance Notes on the Key Principles.” Parenthetical citations below to “Principle” refer to the former, and citations to “Note” refer to the latter.

(1) **Background.**

(a) **Issuing Body:** *Investors association.*

The Association of Unit Trusts and Investment Funds (AUTIF) is the trade body representing the U.K. unit trust and investment funds (mutual funds) industry. The companies that are members of AUTIF are responsible for more than ninety-nine percent (99%) of the industry’s funds under management.

(b) **Legal Basis and Compliance:** *Voluntary (disclosure encouraged).*

The AUTIF Code is a set of recommendations to institutional investors and contains no compliance or disclosure requirements. The Code does, however, encourage disclosure by its member firms:

“AUTIF recommends that member firms should include in their annual reports to investors, as a minimum, a statement as to whether the firm is following the AUTIF code of good practice or another similar code. The detailed content of such a statement would of course be a matter for the discretion of individual members.” (Principle 7)

(c) **Consultations.**

The Code does not indicate whether any formal consultative process was undertaken.

(d) **Contributions.**

There is no record of any contributions by parties outside AUTIF in the preparation of this Code.

(e) **Definition of Corporate Governance.**

The AUTIF Code does not contain any definition of the term “corporate governance.”

- (f) Objective: *Improve accountability to shareholders and/or maximise shareholder value.*

“AUTIF encourages all member firms to adopt a clear and considered policy towards their responsibilities as shareholders. As part of this policy, AUTIF recommends that member firms should take steps to satisfy themselves about the extent to which the firms in which they invest comply with the recommendations of the Combined Code.”
(Principle 1)

- (g) Scope: *Listed companies.*

This Code is directed to AUTIF’s member firms who are investors for application related to the listed companies in their portfolios.

(2) Supervisory and Managerial Bodies.

- (a) Rules/recommendations regarding the separate roles and responsibilities of supervisory and managerial bodies (including lines of responsibility).

The Code references Principle D.2 of the Combined Code, which states that the board should maintain a sound system of internal control to safeguard shareholders’ investment and the company’s assets, and Combined Code § 1, D.2.1, which recommends an annual review by the directors of the company’s effectiveness of internal controls, with a report to shareholders. The Code states that this review should cover financial, operational and compliance controls, and risk management (Note on Principle 6).

AUTIF encourages member firms, as part of their dialogue with the companies in which they invest and when scrutinising the annual reports and accounts, to pay particular attention to the company’s compliance with the Combined Code in the area of the role of chairman and chief executive.

- (b) Rules/recommendations regarding the accountability of supervisory and managerial bodies (including conflicts of interest).

The AUTIF Code is based on board accountability to shareholders, and, in this regard, many of its recommendations are aimed at providing shareholders with sufficient information. The Code also cites the Combined Code’s recommendation that the board include a “balance of executive and non-executive directors (including independent non-executives).”

- (c) Rules/recommendations regarding the size, composition, independence and selection criteria and procedures of supervisory and managerial bodies.

The AUTIF Code adopts the Combined Code’s recommendation that “a company board should include a balance of executive and non-executive directors (including independent non-executives) such that no individual or small group of individuals can dominate the board’s decision taking.” (Combined Code, Principle A.3; AUTIF Note on Principle 6) It also adopts Principles A.5 and A.6 of the Combined Code, recommending that there should be a formal and transparent appointment procedure

and that directors should be required to submit themselves for re-election at regular intervals and at least every three years. (*Id.*) The AUTIF Code expressly encourages all member firms to provide training for relevant staff on corporate governance issues. (Principle 10)

- (d) Rules/recommendations regarding the working methods of supervisory and managerial bodies (including information flows).

The AUTIF Code adopts and encourages member firms to pay attention to the companies' compliance with the Combined Code relating to the formation of nomination, remuneration and audit committees. (Note on Principle 5)

- (e) Rules/recommendations regarding remuneration of members of supervisory and managerial bodies (including evaluation procedures).

The AUTIF Code states that Member firms should consider the remuneration policy of companies in which they invest. They may wish to pay particular attention to those elements of remuneration packages for directors and senior executives that are performance-related, including share options and compensation arrangements. The AUTIF Code also encourages member firms, as part of their dialogue with the companies in which they invest and when scrutinising the annual reports and accounts, to pay particular attention to the companies' compliance with the Combined Code in the area of directors' remuneration and the formation of a remuneration committee. (Note on Principle 6)

- (f) Rules/recommendations regarding the organisation and supervision of internal control systems and relations between supervisory bodies, managerial bodies and internal/external auditors.

The AUTIF Code cites the Combined Code's recommendations regarding internal control and the audit function. It states that the Board should present a "balanced and understandable assessment of the company's position and prospects." It also states that the board should maintain a sound system of internal control to safeguard shareholders' investment and the company's assets, and that its review of such systems should include operation, financial and compliance controls and risk management. Finally, the Code recommends the establishment of an audit committee. (Note on Principle 6)

(3) Rights of Shareholders/Stakeholders.

- (a) Rules/recommendations regarding protection of the rights of shareholders.

The AUTIF Code deals with shareholder rights from the standpoint of the responsibility of shareholders. It states that "responsible shareholders should ensure as far as possible that votes are always actively exercised" and that "member firms should review regularly any standing or special instructions on voting." (Principle 2) It also states that responsible shareholders should where possible "discuss with company representatives any issues on which they are unlikely to be able to support the board." (Note on Principle 2) The Code also makes specific recommendation regarding electronic voting of shares, stating that member firms should play an active

role in consultations aimed at developing systems for electronic transmission of votes.” (Note on Principle 3)

(b) Rules/recommendations regarding equal/fair treatment of shareholders.

The Code does not address this topic.

(c) Rules/recommendations regarding the rights of stakeholders.

Although the role of stakeholders is not covered directly by the AUTIF Code, the Code encourages member firms which have a policy on wider issues affecting the companies in which they invest, such as attitudes towards environmental or social issues, or on donations to political parties, to disclose this to investors. (Principle 9) It also states that member firms may wish to take into account the policy of the companies in which they invest towards environmental and social issues and on political donations. (Note on Principle 6)

Additional information about the AUTIF Code is included in the Comparative Matrix appended to this Report as Annex V.

P. INTERNATIONAL & PAN-EUROPEAN CODES

1. CORPORATE GOVERNANCE CODES

Heightened interest in corporate governance practices and codes over the past five years can be traced to several significant events, including the April 1998 publication by the OECD Business Sector Advisory Group on Corporate Governance of a Report entitled “Corporate Governance: Improving Competitiveness and Access to Capital in Global Markets.” This Report (commonly known as the “Millstein Report,” after the chairman of the Advisory Group, Ira M. Millstein) issued at the height of the Asian financial crisis. It put forth a major theme that resounds in a great many of the codes which have since been adopted in nations around the world: that access to capital is the primary driver for the integration of core corporate governance practices in the international arena. (p. 14)

The Millstein Report emphasised that: (1) no single country or existing system can serve as the model that dictates corporate governance reform world-wide; and (2) access to capital is the primary driver for the integration of core corporate governance practices in the international arena. (p. 15) It also emphasised that “board practices should be subject to voluntary adaptation and evolution, in an environment of globally understood minimum standards.” (p. 9) It warned against over-regulation by governments and recommended that any regulation of corporate governance focus on:

- Fairness: ensuring the protection of shareholder rights and the enforceability of contracts with resource providers;
- Transparency: requiring timely disclosure of adequate information concerning corporate financial performance;
- Accountability: clarifying governance rules and responsibilities, and supporting voluntary efforts to ensure the alignment of managerial and shareholder interests, as monitored by (supervisory) boards of directors having some independent members; and
- Responsibility: ensuring corporate compliance with the other laws and regulations that reflect the respective society’s values.

(Millstein Report, pp. 20-24)

One of the Millstein Report’s most interesting contributions is a set of twenty-five “policy perspectives.” These include twenty “Perspectives for Public Policy Improvement” designed to assist policy makers and regulators in shaping the corporate governance environment, and five “Perspectives for Voluntary [Private Sector] Self-Improvement” designed for corporations and investors to consider. These “perspectives” are set forth in the two boxes, directly below:

MILLSTEIN REPORT: PERSPECTIVES FOR PUBLIC POLICY IMPROVEMENT

1 (Flexibility). Policy makers and regulators should be sensitive to corporations' need for flexibility in responding to the changing competitive environment and the related need for flexible, adaptive governance structures. Regulation should support a range of ownership and governance forms so that a market for governance arrangements develops.

2 (Regulatory Impact). Policy makers and regulators should consider the impact of any proposed regulatory initiative on the ability of the corporate sector to respond to competitive market environments. They should avoid those regulations that threaten to unduly interfere with market mechanisms.

3 (Regulatory Focus). Regulatory intervention in the area of corporate governance is likely to be most effective if limited to:

- **Fairness.** Ensuring the protection of shareholder rights and the enforceability of contracts with resource providers;
- **Transparency.** Requiring timely disclosure of adequate information concerning corporate financial performance;
- **Accountability.** Clarifying governance roles and responsibilities, and supporting voluntary efforts to ensure the alignment of managerial and shareholder interests, as monitored by boards of directors -- or in certain nations, boards of auditors -- having some independent members; and
- **Responsibility.** Ensuring corporate compliance with the other laws and regulations that reflect the respective society's values.

4 (Clarity, Consistency, Enforceability). Policy makers and regulators should provide clear, consistent and enforceable securities and capital market regulations designed to protect shareholder rights and create legal systems capable of enforcing such regulations. Such regulations should seek to treat all equity investors -- including minority shareholders -- fairly, and should include protections against fraud, dilution, self-dealing and insider trading.

5 (Litigation Abuse). Regulations aimed at protecting shareholder rights should be designed to protect against litigation abuse. This can be accomplished through the use of tests for the sufficiency of shareholder complaints and the provision of safe harbours for management and director actions.

6 (Basic Contract, Commercial and Consumer Law). Policy makers and regulators should ensure that an adequate system of contract, commercial and basic consumer protection law is in place, so that contractual relationships are enforceable. (This is particularly relevant to those developing and emerging market nations with less established legal systems.)

7 (Regulatory Impact on Active Investors). Policy makers and regulators should review whether their securities, tax and other regulations unduly hinder active investors, and whether their regulations concerning institutional investors inappropriately inhibit them from participating as active investors.

8 (Corruption and Bribery). Policy makers and regulators should ensure that corporations function in an environment that is free from corruption and bribery.

9 (Accurate, Timely Disclosure). Regulators should require that corporations disclose accurate, timely information concerning corporate financial performance. Adequate enforcement mechanisms should be provided.

10 (Consistent, Comparable Disclosure). Regulators should co-operate internationally in developing clear, consistent and comparable standards for disclosure of corporate financial performance, including accounting standards.

11 (Ownership Disclosure). Regulators should extend such disclosure requirements to the corporate ownership structure, including disclosure of any special voting rights and of the beneficial ownership of controlling or major blocks of shares.

12 (Disclosure Improvement). Regulators should encourage on-going improvements in both disclosure techniques and formats. This may encompass both the use of new information technologies, and the disclosure of non-financial but relevant information concerning intangible assets.

13 (Corporate Governance Legal Standards). Policy makers and regulators should articulate clearly the legal standards that govern shareholder, director and management authority and accountability, including their fiduciary roles and legal liabilities. However, because corporate governance and expectations concerning roles and liabilities continue to evolve, legal standards should be flexible and permissive of evolution.

14 (Shareholder Protection). Policy makers and regulators should protect and enforce shareholders' rights to vote and participate in annual shareholders meetings.

15 (Independent Corporate Boards). Policy makers and regulators should encourage some degree of independence in the composition of corporate boards. Stock exchange listing requirements that address a minimal threshold for board independence -- and frequently board audit committee independence -- have proved useful, while not unduly restrictive or burdensome. However, policy makers and regulators should recognise that corporate governance -- including board structure and practice -- is not a "one size-fits-all" proposition, and should be left, largely, to individual participants.

16 (Sound Audit Practices). Policy makers and regulators should encourage sound audit practices, which include board selection of, and reliance on, an independent auditor.

17 (Investor Competition). Governments should avoid regulations that unduly inhibit the ability of institutional investors to compete with one another. However, sound, prudent management of these funds should remain the overriding objective of public policy in this area.

18 (Law-abiding Corporations). Policy makers and regulators should ensure that corporations abide by laws that uphold the respective society's values, such as criminal, tax, antitrust, labour, environmental protection, equal opportunity, and health and safety laws.

19 (Individual Welfare). Policy makers and regulators should support and encourage education and training efforts, the provision of unemployment benefits, and other similar efforts aimed at promoting the welfare of individuals.

20 (Income and Opportunity Divergence). Policy makers and regulators may wish to consider the implications of significant divergence in income and opportunity paths. In particular, government action may be necessary to promote skill acquisition in certain sections of society that do not benefit from present market trends.

**MILLSTEIN REPORT: PERSPECTIVES FOR
VOLUNTARY (PRIVATE SECTOR) SELF-IMPROVEMENT**

21 (Corporate Objective). *Individual corporations should disclose the extent to which they pursue projects and policies that diverge from the primary corporate objective of generating long-term economic profit so as to enhance shareholder value in the long term.*

22 (Governance and Competition). *Individual corporations and shareholders should recognise the important role that corporate governance plays in positioning the corporation to compete effectively while meeting the expectations of its primary resource providers.*

23 (Board “Best Practices”). *Individual corporations, shareholders and other interested parties should continue their efforts to articulate and adopt -- voluntarily -- corporate governance “best practice” designed to improve board independence and activism, and accountability to shareholders.*

24 (Independent Oversight). *Whether in a single-tier or two-tier board system, individual corporations should ensure that an effective number of board of director members -- or in certain nations, board of auditor members -- are persons who are capable of exercising judgement, independent of management views. Generally, this will require that such board members are persons who are not employed by the company.*

25 (Voting as an Asset). *Investors should consider the right to vote and participate in annual meetings as an asset that provides an opportunity to influence the direction and management of the company.*

The Millstein Report recommended that “[i]ndividual corporations, shareholders and other interested parties should continue their efforts to articulate and adopt -- voluntarily -- corporate governance ‘best practices’ designed to improve board independence and activism, and accountability to shareholders.” (p. 23) The Report also recommended that the OECD articulate a set of common corporate governance principles “to guide national policy reviews and reforms in OECD member nations, as well as private sector initiatives.” (p. 25)

The OECD Principles of Corporate Governance, issued in May 1999, are an outgrowth of the recommendations contained in the Millstein Report. They centre on five overarching principles designed to describe what the basic framework of corporate governance should provide in OECD member nations (which include all of the EU Member States). In addition, the code provides numerous recommendations and annotations offering more specific terms of reference for implementing the Principles. The five Principles are:

1. “The corporate governance framework should protect shareholders’ rights.”
2. “The corporate governance framework should ensure the equitable treatment of all shareholders, including minority and foreign shareholders. All shareholders should have the opportunity to obtain effective redress for violation of their rights.”
3. “The corporate governance framework should recognise the rights of stakeholders as established by law and encourage active co-operation between corporations and stakeholders in creating wealth, jobs, and the sustainability of financially sound enterprises.”
4. “The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership, and governance of the company.”
5. “The corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board’s accountability to the company and the shareholders.”

Two of the three other international codes discussed below expressly build upon the OECD Principles: the ICGN Statement and the Euroshareholders Guidelines.

a. OECD PRINCIPLES OF CORPORATE GOVERNANCE

Code: The OECD Principles of Corporate Governance
Issuing Body: The Organisation for Economic Co-Operation and Development (“OECD”)
Date: May 1999
Official Language: English, French, German, and Spanish

(1) **Background.**

(a) Issuing Body: *Intergovernmental organisation.*

The OECD is an inter-governmental organisation of 29 member nations that provides governments a setting in which to discuss and develop economic and social policy. The Principles was drafted by an Ad Hoc Task Force described below.

(b) Legal Basis and Compliance: *Voluntary.*

Although ratified by the OECD Ministers, the OECD Principles are wholly aspirational in nature. They are intended to serve as a non-binding reference point for local governments and private sectors to consider, adapt and build upon. Compliance is therefore voluntary. However, the Principles express a clear viewpoint that governance reform is related to market forces, and that companies and nations that wish to attract capital investment should consider implementing the corporate governance framework described in the OECD’s Principles.

(c) Consultations.

A number of consultative meetings were held and various drafts were posted on the Internet for comment.

(d) Contributions.

The OECD Principles build upon experiences from national initiatives in OECD member countries and, in particular, previous work carried out by the OECD Business Sector Advisory Group (BSAG) on Corporate Governance. The BSAG, chaired by Ira M. Millstein, issued its report, entitled “Corporate Governance: Improving Competitiveness and Access to Capital in Global Markets,” in April 1998 (the “Millstein Report”).

The OECD Ad Hoc Task Force that drafted the OECD Principles was comprised of representatives of all 29 OECD member governments (including all EU Member States); the European Commission; the World Bank; the International Monetary Fund (“IMF”); the Basle Committee on Banking Supervision; the International Organisation of Securities Commissions (“IOSC”); the OECD’s Business and Industry Advisory Committee (“BIAC”) and Trade Union Advisory Committee (“TUAC”); and selected other private sector organisations.

(e) Definition of Corporate Governance.

The OECD Principles provide the following definition of “corporate governance”:
“Corporate governance relates to the internal means by which corporations are operated and controlled. While governments play a central role in shaping the legal, institutional and regulatory climate within which individual corporate governance systems are developed, the main responsibility lies with the private sector.” (Preface)

(f) Objective: *Improve companies’ performance, competitiveness and/or access to capital.*

“The Principles are intended to assist member and non-member governments in their efforts to evaluate and improve the legal, institutional and regulatory framework for corporate governance in their countries, and to provide guidance and suggestions for stock exchanges, investors, corporations, and other parties that have a role in the process of developing good corporate governance.” (Preamble)

(g) Scope: *Listed companies; encouraged to all companies.*

Although the Principles may be read as focusing on publicly-traded (listed) companies, they expressly state that the guidance they provide might also be useful for improving corporate governance in non-traded companies, including privately held and state-owned enterprises.

(2) Supervisory and Managerial Bodies.

(a) Rules/recommendations regarding the separate roles and responsibilities of supervisory and managerial bodies (including lines of responsibility).

Aware of the multiplicity of board systems in use throughout the world, OECD Principle V sets forth the basic proposition that: “The corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board’s accountability to the company and the shareholders.”

The Annotation to Principle V.E.2 observes that the supervisory body is responsible for guiding corporate strategy; selecting, monitoring and, when necessary, replacing key executives; and achieving an adequate return for shareholders. It should implement systems designed to ensure that the company obeys applicable laws, including tax, competition, labour, environmental, equal opportunity, health and safety laws, and deals fairly with the legitimate interests of all stakeholders.

The OECD Principles do not address directly the roles and responsibilities of the managerial body. However, they indicate that management succession planning should be under the control of the supervisory body. (Principle V.D.2)

(b) Rules/recommendations regarding the accountability of supervisory and managerial bodies (including conflicts of interest).

As quoted above, Principle V provides that the managerial body should be accountable to the supervisory body and the supervisory body should be accountable to the shareholding body.

To strengthen the accountability of the supervisory body, the OECD Principles recommend that the supervisory body include a sufficient number of non-executive members capable of exercising independent judgement, particularly as to those issues where conflicts of interest could arise with the managerial body; *e.g.*, in the areas of financial reporting, nominations to the supervisory body, and executive and board remuneration. Supervisory bodies are encouraged to establish committees composed partly or entirely of non-executive directors to consider these types of matters. (Principle V.E.1)

(c) Rules/recommendations regarding the size, composition, independence and selection criteria and procedures of supervisory and managerial bodies.

The Annotations to Principle V emphasise that the variety of board systems and practices in different countries requires flexible approaches to issues of board size, composition and independence. That being said, the need for supervisory body members with capacity for objective judgement or “independence” is a key theme throughout the OECD Principles. Board independence requires that a sufficient number of its members not be employed by the company and not be closely related to the company or its management through significant economic, family or other ties. (They may, however, be shareholders.) While ultimate responsibility for financial reporting, remuneration and nomination usually attach to the supervisory body as a whole, participation at the committee level by independent non-executive members can provide additional assurance to market participants that their interests are being protected. (Annotations to Principles V.E. and V.E.1)

Principle V.D.3 calls for a formal and transparent process for the nomination of supervisory body members.

The Annotation to Principle V.E.2 observes that some companies have found it useful to engage in on-going education and voluntary self-evaluation as a method for improving the performance of the supervisory body. Education might encompass acquiring new skills and/or staying apprised of new laws, regulations, and changing commercial risks. Another factor that may affect director performance is service on too many boards. The Annotation notes that to prevent this, some countries have imposed limits on the number of board positions a person may hold.

(d) Rules/recommendations regarding the working methods of supervisory and managerial bodies (including information flows).

The Annotations to Principle V emphasise that independent board members are particularly well positioned to bring an objective view to the evaluation of management’s performance, and can also play an important role in other situations where conflicts of interest might occur, for example, reacting to a take-over proposal. Independent and other non-executive members of the supervisory body do not usually

have the same access to information as key managers; therefore, they should have access to key managers within the company (e.g., the company secretary and the internal auditor) and also to independent external advice at company expense. They should actively make sure they are getting all the accurate and relevant information they need, on a timely basis. (Annotations to Principles V.E and V.F)

Although not explicitly stated in the Principles, it is implied that the managerial body should be diligent in providing necessary information to the supervisory body in accordance with applicable laws and regulations as well as with the specific code of corporate governance that may apply.

(e) Rules/recommendations regarding remuneration of members of supervisory and managerial bodies (including evaluation procedures).

According to Principle V.D.3, it is the task of the supervisory body to review both the remuneration of key executives as well as of its own members.

Appropriate disclosure of executive and board remuneration is called for. On disclosure in general, Principle IV states: “The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership, and governance of the company.” More specifically, Principle IV.A.4 indicates that disclosure should include how much, and in what forms, key executives and board members are remunerated.

(f) Rules/recommendations regarding the organisation and supervision of internal control systems and relations between supervisory bodies, managerial bodies and internal/external auditors.

Principle IV provides that the corporate governance framework should ensure that accurate and sufficient information on the company’s financial situation, performance, ownership and governance should be prepared, audited, and disclosed to the shareholders and other stakeholders in accordance with high quality standards.

The Principles note that establishing an audit committee may enable the supervisory body to exercise closer internal control over the company’s financial situation. In addition, an annual audit should be conducted by an independent external auditor in order to provide objective assurance about the way in which financial statements have been prepared and presented. (Principle IV.B & IV.C)

According to an Annotation to Principle IV.D, the supervisory body should ensure that communications with parties that have a legitimate interest in the company are aptly handled by duly designated personnel.

(3) Rights of Shareholders/Stakeholders.

(a) Rules/recommendations regarding protection of the rights of shareholders.

Principle I states: “The corporate governance framework should protect shareholders’ rights,” which are enumerated as the right to:

- Secure methods of ownership registration;

- Convey or transfer shares;
- Obtain relevant information on the corporation on a timely and regular basis;
- Participate and vote in general shareholder meetings;
- Elect members of the board; and
- Share in the profits of the corporation.”

(Principle I.A)

Principle II adds: “All shareholders should have the opportunity to obtain effective redress for violation of their rights.” Moreover, shareholders should have a say in fundamental corporate changes, including amendments to the company’s governing documents, the authorisation of additional shares, and “extraordinary transactions” that result in the sale of the company. (Principle I.B.)

These rights are meaningless unless shareholders can vote. Therefore shareholders should be able to vote in person or in abstentia with equal effect, and they should receive adequate notice and agenda information. They should also have opportunity to ask questions and place items on the agenda. (Principle I.C) Principle II.A.3 adds that company procedures should not make it unduly difficult or expensive for shareholders to vote.

(b) Rules/recommendations regarding equal/fair treatment of shareholders.

Principle II states: “The corporate governance framework should ensure the equitable treatment of all shareholders, including minority and foreign shareholders.” Among other things, this means that all shareholders of the same class should be treated equally. (Principle II.A) Within any class, all shareholders should have the same voting rights. All investors should be able to obtain information about the voting rights attached to all classes of shares before they purchase. Any changes in voting rights should be subject to shareholder vote. (Principle II.A.1)

The Principles, however, take a flexible position on the concept of “one share/one vote.” They note that various kinds of shares, including those without voting rights, may be effective structures for distributing risk and reward. (Annotation to Principle II.A.1) They emphasise that “[c]apital structures and arrangement that enable certain shareholders to obtain a degree of control disproportionate to their equity ownership should be disclosed.” (Principle I.D)

When custodians or nominees cast votes, the Principles recommend that they do so in a manner agreed upon with the beneficial owner of the shares. (Principle II.A.2) General shareholder meeting procedures should treat all shareholders fairly and not make voting unduly expensive or difficult. (Principle II.A.3) When the supervisory body’s decisions may have different impacts on shareholder groups, it should treat all shareholders fairly. (Principle V.B)

The Principles recommend that insider trading and “abusive self-dealing” be prohibited, and that supervisory and managerial body members be required to disclose material interests in corporate transactions or other matters. (Principles II. B & C)

(c) Rules/recommendations regarding the rights of stakeholders.

Principle III states: “The corporate governance framework should recognise the rights of stakeholders as established by law and encourage active co-operation between corporations and stakeholders in creating wealth, jobs, and the sustainability of financially sound enterprises.” The legal framework should not only protect stakeholders but provide the opportunity for stakeholders to obtain effective redress for violation of their rights. (Principles III.A & III.B)

The Principles emphasise that the corporate governance framework should permit stakeholders to participate in wealth creation through performance-enhancing mechanisms. (Principle III.C)

To the extent stakeholders are given participation rights in the corporate governance process, *e.g.*, in works councils, they should have access to relevant information. (Principle III.D)

Additional information about the OECD Principles of Corporate Governance is included in the Comparative Matrix appended to this Report as Annex V.

b. ICGN STATEMENT

Code: Statement on Global Corporate Governance Principles
Issuing Body: International Corporate Governance Network (“ICGN”)
Date: July 1999
Official Language: English (French translation available)

(1) **Background.**

- (a) Issuing Body: *Association of investors and others (including business/industry) interested in corporate governance.*

ICGN is a membership organisation of primarily institutional and other investors world-wide representing over U.S. \$10 trillion in assets under investment, as well as corporations and persons interested in corporate governance. The organisation’s mission is to improve corporate governance practices by companies world-wide.

- (b) Legal Basis and Compliance: *Voluntary (investors recommended to apply to portfolio companies; companies recommended to disclose compliance or explain).*

Compliance with the ICGN Statement is wholly voluntary. Moreover, the Statement imposes no disclosure requirements.

(c) **Consultations.**

The Statement does not indicate that ICGN consulted with parties outside its membership.

(d) **Contributions.**

The ICGN Statement was formally adopted by the ICGN Membership in 1999, after a period of comment and discussion. There is no indication that the ICGN received contributions from parties outside its membership. The Statement does, however, acknowledge the influence of the OECD Principles. Several members of the ICGN served on the OECD’s Ad Hoc Task Force on Corporate Governance. The ICGN Statement emphasises that the OECD Principles serve as the bedrock of minimum acceptable standards of corporate governance for companies and investors around the world.

(e) **Definition of Corporate Governance.**

The ICGN Statement does not provide a definition of corporate governance. However, it is based on the OECD Principles and therefore adopts the OECD definition (see OECD Principles above).

- (f) Objective: *Improve companies’ performance, competitiveness and/or access to capital.*

“While the ICGN considers the OECD Principles the necessary bedrock of good corporate governance, it holds that amplifications are required to give them sufficient force. In particular, the ICGN believes

that companies around the world deserve clear, concrete guidance on how the OECD Principles can best be implemented. . . . The ICGN therefore advocates that companies adopt the OECD Principles as amplified in the attached statements.” (Statement on OECD Principles, p. 2)

The ICGN contends that practical guidance can help boards meet real-world expectations so that they may operate most efficiently and, in particular, compete for scarce investment capital effectively. The Statement holds that if investors and managers succeed in establishing productive communication on issues, they will have enhanced prospects for economic prosperity, fuller employment, better wages and greater shareholder wealth. (*Id.*)

(g) Scope: Listed companies.

The ICGN Statement is not aimed expressly at any particular class of companies. By its nature, however, the Statement is concerned primarily with publicly-traded companies.

Note that the ICGN Statement adopts the OECD Principles and “amplifies” some of them in its Statement. In general, only ICGN Statements and ICGN “amplifications” of the OECD Principles are discussed below.

(2) Supervisory and Managerial Bodies.

(a) Rules/recommendations regarding the separate roles and responsibilities of supervisory and managerial bodies (including lines of responsibility).

The ICGN Statement goes beyond the OECD Principles insofar as it makes the shareholders the focus of board responsibilities and accountability. Right at the outset, the ICGN Statement declares that “[t]he overriding objective of the corporation should be to optimise over time the returns to its shareholders. Where other considerations affect this objective, they should be clearly stated and disclosed.” (Statement 1) It identifies “[t]he board of directors, or supervisory board, as . . . a fiduciary for all shareholders. . . .” (Statement 4)

An ICGN Amplification of OECD Principle V specifies that the responsibilities of the supervisory body include monitoring and contributing effectively to the strategy and performance of management, and staffing key supervisory body committees with qualified people.

The specific roles and responsibilities of the managerial body are not explicitly developed. It is apparent, however, that the Statement expects management to run the day-to-day operations of the company and to actively propose company strategy to the supervisory body for consideration and approval.

(b) Rules/recommendations regarding the accountability of supervisory and managerial bodies (including conflicts of interest).

In the ICGN Statement, the supervisory body is a fiduciary for the shareholders and is accountable to them exclusively, while also being responsible for successful

professional relationships with the corporation's stakeholders. (Statement 4; ICGN Amplification of OECD Principle III)

The managerial body is accountable to the supervisory body. (*See* OECD Principle V)

- (c) Rules/recommendations regarding the size, composition, independence and other selection criteria and procedures of supervisory and managerial bodies.

The ICGN Statement does not comment on the size of boards. As to board composition, “[c]orporations should disclose, upon appointment to the board and in each annual report or proxy statement, information on the identities, core competencies, professional or other backgrounds, factors affecting independence, and overall qualifications of board members and nominees so as to enable investors to weigh the value they add to the company. Information on the appointment procedure itself should also be disclosed annually.” (Statement 4)

The ICGN Statement indicates that the supervisory body should include a sufficient number of independent non-executive members with the appropriate competencies. Accordingly, independent non-executives should comprise no fewer than three members and as much as a substantial majority. (Amplification of OECD Principle V)

- (d) Rules/recommendations regarding the working methods of supervisory and managerial bodies (including information flows).

Certain key responsibilities of the supervisory body (*e.g.*, audit, nomination and executive remuneration) require the input of independent, non-executive members. Boards should therefore consider establishing committees, each of which would have a sufficient number of independent non-executive board members in those areas where there is a potential for conflicts of interest or where the exercise of independent business judgement is advisable. To meet this challenge, the audit, remuneration and nomination committees should be composed wholly or predominantly of independent non-executives. (Statement 5; ICGN Amplification of OECD Principle V)

- (e) Rules/recommendations regarding remuneration of members of supervisory and managerial bodies (including evaluation procedures).

In keeping with the ICGN's strong focus on shareholders, Statement 5 affirms that “[r]emuneration of supervisory body members and key executives should be aligned with the interests of shareholders.”

- (f) Rules/recommendations regarding the organisation and supervision of internal control systems and relations between supervisory bodies, managerial bodies and internal/external auditors.

“Corporations should disclose accurate, adequate and timely information, in particular meeting market guidelines where they exist, so as to allow investors to make informed decisions about the acquisition, ownership obligations and rights, and sale of shares.” (Statement 2)

(3) Rights of Shareholders/Stakeholders.

(a) Rules/recommendations regarding protection of the rights of shareholders.

Shareholders should have the right to approve major strategic modifications to the core business(es) of a company, as well as major changes which dilute the equity, or erode the economic interests or shareownership rights, of existing shareholders. (Amplification to OECD Principle I) The right and opportunity to vote at shareholder meetings hinges in part on the adequacy of the voting system. The ICGN believes that markets and companies can facilitate access to the ballot by following the ICGN's GLOBAL SHARE VOTING PRINCIPLES. The ICGN affirms that equal effect should be given to votes whether cast in person or in absentia. As a matter of transparency, meeting procedures should ensure that votes are properly counted and recorded, and that a timely announcement of the outcome be made. (Amplification of OECD Principle I) When negotiations on issues between shareholders and the supervisory board fail, shareholders should have the right to sponsor resolutions or convene extraordinary meetings. (Statement 10)

Fiduciary investors have a responsibility to vote. Regulators and law should facilitate voting rights and timely disclosure of the levels of voting. (Statement 3)

(b) Rules/recommendations regarding equal/fair treatment of shareholders.

The ICGN Statement reaffirms the OECD's recommendation that boards should treat all the company's shareholders equitably and should ensure that the rights of all investors, including minority and foreign shareholders, are protected. (Amplification of OECD Principle II)

The ICGN Statement considers "one share/one vote" an integral element of a company's ordinary shares. Companies should take appropriate means to ensure the owners' rights to vote. Divergence from a "one share/one vote" standard, which gives certain shareholders power disproportionate to their equity ownership, is undesirable. Any such divergence should be both disclosed and justified. (Statement 3; ICGN Amplification of OECD Principle I)

Note that in July 1998, the ICGN adopted Global Share Voting Principles, including the following:

1. Equal & Fair Voting Rights: "The same voting rights should attach to shares regardless of how much equity a shareholder holds, or how geographically distant a shareholder may be from the company. Votes should be cast only according to instructions by the owner or the owner's agent." (ICGN Global Share Voting Principle 1)
2. Meeting Notices: "Company law, corporate articles and/or voluntary co-ordination among companies should allow firms to structure their reporting calendar and notice distribution so as to give priority to creating a reasonable time for shareholders to receive meeting agendas, consider voting items, make arrangements to attend the meeting if they so desire, and vote in time for the ballot to count. The notice should be clear as to the actual date and location of

the meeting and it should be distributed as widely as possible so as to reach investors.” (ICGN Global Share Voting Principle 2)

3. Meeting Agendas: “Meeting agendas should be presented in such a way that shareholders can understand and ascertain which items are to be voted. Companies should faithfully present the principal purpose of each resolution. Voting items should be numbered in the order in which they will be taken up at the meeting.” (ICGN Global Share Voting Principle 3)
4. Voting Deadlines: “Companies should set the voting deadline for mailed ballots as close to the meeting as is practical, with the emphasis on ease of share voting. At the same time, custodians, voting agents and depository institutions (for instruments such as Global Depository Receipts and American Depository Receipts) should move their own voting deadlines as close as practical to the company deadline date.” (ICGN Global Share Voting Principle 4)
5. Blocking/Depositing Shares: “Shareholders should be able to vote at companies they own without facing the cost and inconvenience of having their shares blocked from trading or deposited in a designated institution for a period of time. But at the same time, companies should be assured that investors casting ballots are legitimate owners eligible to cast a specific number of votes. Each market should seek solutions that reconcile these two needs.” (ICGN Global Share Voting Principle 5)
6. Language: “Companies with internationally diversified ownership should ensure that agendas and notices are accessible to shareholders in at least one internationally-accepted language. Companies should ensure that translations are timely, accurate and complete, with the meaning and purpose of resolutions clear.” (ICGN Global Share Voting Principle 6)
7. Procedures: “Procedures should be re-examined, simplified and updated with a view to enfranchising and facilitating share voting by investors. Companies should make available to shareholders a variety of voting methods, such as voting by mail, telephone, fax, Internet, Swift, and/or e-mail.” (ICGN Global Share Voting Principle 7)
8. Vote Counts and Verification: “All votes should be counted regardless of whether they are received by proxy or other means, or cast by hand or voice at the meeting, and the results should be declared. Companies should ensure that a process exists by which shareholders can ascertain that their votes were correctly and officially cast at shareholder meetings.” (ICGN Global Share Voting Principle 8)
9. Costs: “To the extent possible, share voting systems should be designed to minimise costs imposed on intermediaries and shareholders in exercising voting rights.” (ICGN Global Share Voting Principle 9)
10. Market Oversight: “There should be appropriate regulation or an effective mechanism to ensure that shareholder meeting agendas are released according to established rules and procedures, and that the correct amount and

appropriate content of proxy information is distributed to shareholders.”
(ICGN Global Share Voting Principle 10)

(c) Rules/recommendations regarding the rights of stakeholders.

Statement 9 represents a strong affirmation of the interdependence of interests between shareholders and other stakeholders. “Boards that strive for active co-operation between corporations and stakeholders will be most likely to create wealth, employment and sustainable economies. They should disclose their policies on issues involving stakeholders such as workplace and environmental matters.”
(Statement 9) It is an important task of the supervisory body to manage successfully its relationships with stakeholders. (Preamble to ICGN Amplified OECD Principles)
Performance-enhancing mechanisms such as employee share ownership plans and other profit-sharing programs promote employee participation and align shareholder and stakeholder interests. (Amplification of OECD Principle III)

Additional information about the ICGN Statement is included in the Comparative Matrix appended to this Report as Annex V.

C. EUROSHAREHOLDERS GUIDELINES

Code: Euroshareholders Corporate Governance Guidelines 2000
Issuing Body: The European Shareholders Group (“Euroshareholders”)
Date: February 2000
Official Language: English

Citation Note: The document referred to as the Euroshareholders Guidelines has two major parts: A set of “Recommendations” and the remainder of the document, which (based on the title of the document) we call Guidelines. Citations below to “Recommendations” refer to the former, and citations to “Guidelines” refer to the latter.

(1) **Background.**

(a) **Issuing Body:** *Investors association.*

Euroshareholders (formerly known as *Groupement des Actionnaires Européens* (“GAE”)) is a confederation of European shareholders associations. At present, national shareholder associations from eight EU Member States are members: Belgium, Denmark, France, Germany, The Netherlands, Spain, Sweden and the United Kingdom.

(b) **Legal Basis and Compliance:** *Voluntary (association members (investors) recommended to apply to portfolio companies).*

The Euroshareholders Guidelines place no compliance or disclosure requirements upon companies. The Euroshareholders Guidelines are wholly voluntary. However, the Guidelines state that Euroshareholders will apprise itself of companies’ compliance efforts and take appropriate action (through voice, voting and investment decisions of its members).

(c) **Consultations.**

There is no indication that the Euroshareholders consulted with parties other than its members.

(d) **Contributions.**

There is no indication that the Euroshareholders received contributions from parties other than its members. Note, however, that the Euroshareholders Guidelines are based on the OECD Principles.

(e) **Definition of Corporate Governance.**

The Euroshareholders Guidelines do not define corporate governance. They are, however, based on the OECD Principles. (See above).

- (f) Objective: Improve accountability to shareholders and/or maximise shareholder value.

“The Euroshareholders Guidelines will -- if adopted by companies and/or countries -- result in an improvement in the rights and influence of shareholders. As far as the different national legal structures allow, Euroshareholders has tried to be as specific as possible in describing its views on the various corporate governance issues.” (Introduction)

The Euroshareholders Guidelines aim to influence companies to govern themselves in a manner that best protects shareholder interests. The Guidelines are based on the idea that the special relationship that shareholders have with a company -- that of taking risk by providing capital -- justifies special attention to their interests and their opinions. The company’s management should aim at maximising shareholder value in the long term, and shareholders should be provided with all relevant information, including financial objectives and strategy. In addition, shareholders should have significant influence on major changes in the company.

- (g) Scope: Listed companies.

The Euroshareholders Guidelines do not expressly target any specific class of companies, but, by nature, are concerned with European listed companies.

(2) Supervisory and Managerial Bodies.

- (a) Rules/recommendations regarding the separate roles and responsibilities of supervisory and managerial bodies (including lines of responsibility).

The Euroshareholders Guidelines, like the ICGN Statement, begin by emphasizing that “[a] company should aim primarily at maximising shareholder value in the long-term.” (Recommendation 1) The supervisory body does this by: (i) controlling and supervising the executive body; (ii) ensuring the high professional quality of the executive body; and (iii) advising the executive body. (Guideline V)

The executive body is responsible for the management of the company and therefore for setting the company’s objectives, defining its strategy and policy and the ensuing development of results. It is also responsible for maintaining effective systems of internal control and for adequate disclosure to shareholders. (Guideline V)

- (b) Rules/recommendations regarding the accountability of supervisory and managerial bodies (including conflicts of interest).

These Guidelines focus on accountability to the shareholders. “The special relationship which shareholders have with any company in which they participate -- that they provide risk-bearing capital -- justifies special attention to their interests and their position in general.” (Guideline I)

The supervisory body is accountable to the shareholders, to a large extent by ensuring that adequate disclosure is made to shareholders. (Guideline IV)

Key executives (or the management board) report to non-executive board members (or the supervisory board) on the company's objectives and strategy, and the associated risks. (Guideline V)

- (c) Rules/recommendations regarding the size, composition, independence and other selection criteria and procedures of supervisory and managerial bodies.

These Guidelines do not discuss board size.

The Guidelines note that, in a two-tier board system, management and supervisory functions are by definition divided into two bodies. The Guidelines recommend that in a one-tier system, there should be a significant degree of independence between the supervisory and managerial bodies, so that the supervisory body may fulfil its supervisory functions with an adequate degree of objectivity. (Guideline V)

Recommendation 9 states: "Shareholders should have the right to elect members of at least one board and shall also be able to file a resolution for dismissal.

To provide greater assurance of board independence, Recommendation 10B proposes that "[t]he number of non-executive board members who have previously served in an executive capacity is limited to one."

- (d) Rules/recommendations regarding the working methods of supervisory and managerial bodies (including information flows).

The supervisory body is urged to "clearly state (in writing) their financial objectives as well as their strategy, and should include these in the annual report. (Recommendation 1)

While the Euroshareholders Guidelines do not go into specific working methods, they do state that "[a] basic principle in any corporate governance framework is openness and transparency between the various corporate bodies." (Guideline IV)

- (e) Rules/recommendations regarding remuneration of members of supervisory and managerial bodies (including evaluation procedures).

The Euroshareholders Guidelines recommend that a special committee be established to set the remuneration of all directors. The remuneration of executive directors may be flexible, in relation to the company's profitability, but bonuses and other performance-related remuneration should not exceed double the base salary. (Guideline V)

- (f) Rules/recommendations regarding the organisation and supervision of internal control systems and relations between supervisory bodies, managerial bodies and internal/external auditors.

The Guidelines do not cover internal control directly, but Guideline IV states: "The annual report and the annual accounts are extremely important for shareholders, since these documents are needed to:

- Judge the evolution of the company's results;

- Judge the performance of the management; and
- Make investment decisions.

Shareholders should therefore be allowed to elect the outside auditors.”

Regarding external auditors, Recommendation 6 advises: “Auditors have to be independent and should be elected by the general meeting of shareholders.”

(3) Rights of Shareholders/Stakeholders.

(a) Rules/recommendations regarding protection of the rights of shareholders.

In line with the Guidelines’ emphasis on accountability to shareholders, Euroshareholders Recommendation 2 states: “Major decisions which have a fundamental effect upon the nature, size, structure and risk profile of the company, and decisions which have significant consequences for the position of the shareholder within the corporation, should be subject to shareholders’ approval or should be decided by the AGM [annual general meeting].”

The Guidelines identify the following items as among those that should be subject to shareholder approval:

- Mergers and take-overs;
- Distribution of profits and dividends;
- Stock option schemes;
- Share buy-back programs; and
- Capital increases connected with the exemption of pre-emptive rights of the existing shareholders.

(Guideline II)

Recommendation 9 recognises that “[s]hareholders . . . have the right to elect members of at least one board and also be able to file a resolution for dismissal. Prior to the election, shareholders should be able to suggest candidate members to the board.” Recommendation 7 urges that shareholders be able to place items on the agenda of the AGM.

(b) Rules/recommendations regarding equal/fair treatment of shareholders.

The Guidelines regard the principle of “one share/one vote” as central to the right to vote. Shareholders should have the right to vote at AGMs in proportion with the number of shares they hold. In line with this principle, the Guidelines urge termination of “certification” (as occurs, *e.g.*, in the Netherlands) because it deprives investors of their voting rights and transfers influence to a trust office within the company’s own sphere of interests. Neither should companies issue shares with disproportional voting rights that are intended to shift the balance of power at the general meeting. (Guideline II)

In addition, the Guidelines emphasise that the voting process should be as fair as possible. Shareholders should be able to vote in person or in absentia, and equal

effect should be given to votes whether cast in person, by proxy or by other means such as electronic devices. An efficient proxy voting system should be established. (Guideline II)

(c) Rules/recommendations regarding the rights of stakeholders.

The Euroshareholders Guidelines do not cover this topic directly. They do encourage a high standard of information disclosure. Much of that information may be expected to come to the attention of stakeholders.

Additional information about the Euroshareholders Guidelines is included in the Comparative Matrix appended to this Report as Annex V.

d. EASD PRINCIPLES & RECOMMENDATIONS

Code: European Association of Securities Dealers: Corporate Governance Principles & Recommendations.

Issuing Body: European Association of Securities Dealers (“EASD”)

Date: May 2000

Official Language: English

Citation Note: The document referred to as the EASD Principles and Recommendations has two parts: a set of general Principles and a more specific Recommendations. Parenthetical citations below therefore refer to “Principles” and to “Recommendations.”

(1) Background.

(a) Issuing Body: *Committee related to pan-European association of securities professionals.*

EASD is an international not-for-profit association whose membership consists of banks, brokers, securities professionals, lawyers, accountants and other professionals interested in developing a pan-European equity market and culture.

The EASD board of directors formally approved the formation of a Corporate Governance Committee. This Committee consists of a group of experts from six countries, with the additional assistance of a scientific adviser and a trans-European legal alliance adviser. The Committee drafted these Principles and Recommendations.

The EASD is related to the pan-European equity screen-based market formerly known as EASDAQ. In 2001, control of EASDAQ transferred to NASDAQ, and the name was changed to NASDAQ-Europe.

(b) Legal Basis and Compliance: *Voluntary (disclosure encouraged).*

The EASD Principles & Recommendations are voluntary in nature. When the Principles & Recommendations were issued in 2000, EASDAQ intended to append them to its requirements for companies listed on EASDAQ on a “comply or explain” basis. However, control of EASDAQ transferred to NASDAQ (and its name changed to NASDAQ Europe). The NASDAQ Europe Rule Book makes no express reference to the EASD Principles & Recommendations. However, elements of the listing rules may have been influenced by the EASD efforts.

(c) Consultations.

A wide array of international organisations (*e.g.*, OECD, World Bank), national securities regulators, stock exchanges, lawyers, and other experts conversant with corporate governance were consulted by EASD and reviewed drafts of the Principles & Recommendations. A list acknowledging the parties who contributed is included in the document.

(d) Contributions.

The EASD Corporate Governance Committee and its representatives are active in the theoretical and practical corporate governance debate that has been intensifying world-wide in recent years. Within that context, they consulted with a wide array of national and international authorities, organisations and specialists from Europe, the Americas and Asia.

(e) Definition of Corporate Governance.

The EASD Principles and Recommendations do not offer an express definition of corporate governance. However, the Preamble discusses many issues covered by the corporate governance concept.

(f) Objective: *Improve companies' performance, competitiveness and/or access to capital; Improve quality of governance-related information available to equity markets.*

“The committee’s overall approach has been to define principles that adequately express the legitimate concerns of the different parties involved and make recommendations that stimulate the confidence of investors and the companies they invest in.” (EASD’s Approach, p. 10)

The objective of the EASD Principles and Recommendations is to advance convergence of European corporate governance standards and, thus, help to create the conditions of greater share and market liquidity, decrease the cost of capital and increase the competitiveness of European companies.

(g) Scope: *Listed companies.*

The EASD Principles and Recommendations are not expressly aimed at any particular class of companies. However, they have been conceived with a view to improving the marketability of publicly-traded companies’ shares.

(2) Supervisory and Managerial Bodies.

(a) Rules/recommendations regarding the separate roles and responsibilities of supervisory and managerial bodies (including lines of responsibility).

The supervisory body is a fiduciary with a mandate to act in the interests of the company and its shareholders as a whole, in good faith, with due diligence, care and loyalty, and on an appropriately informed basis. (Recommendation V.1.a) Its responsibilities include determining company objectives, strategy, risks, major acquisitions and investments, and overseeing accounts and budgets, managerial and corporate performance, corporate governance, stakeholder policies, senior executive nomination, remuneration and succession planning, conflicts of interest, corporate ethics and behaviour, audit and control systems, disclosure and communication of information. (Recommendation V.2)

Management should have sufficient latitude to propose and implement corporate strategy. (Principle VII) Nevertheless, management runs the business in accordance

with the strategies, policies and criteria defined by the supervisory body.
(Recommendation VII.1)

(b) Rules/recommendations regarding the accountability of supervisory and managerial bodies (including conflicts of interest).

Like the ICGN Statement and the Euroshareholders Guidelines, the EASD Principles and Recommendations focus on the primacy of the shareholders: the supervisory body is accountable to all the shareholders as the owners of the company's equity.
(Preamble)

Management, for its part, is immediately accountable to the supervisory body, and ultimately to the company and all the shareholders. (Recommendation VII.2)

“Conflicts of interest should be avoided. Where they cannot be avoided, they must be properly managed and disclosed.

- Self-dealing contrary to the company's interest is prohibited.
- Insider trading is prohibited.
- Where material conflicts of interest occur, they should be disclosed (a) at least to the board, and (b) where significant, also to the shareholders.
- Transactions with related parties should take place “at arms-length.” In any event: (a) the parties that have a conflict of interest should abstain from voting; (b) the transaction should, where sufficiently material, be subject to the approval of the board or, as the case may be, by shareholders.
- Board members: (a) A distinction should be made between ongoing and incidental conflicts of interest. (b) In both cases, the board member concerned should be excluded from voting and, as appropriate, not present during the decision-making process on the relevant item.
- Executives: (a) Ongoing conflicts of interest must be avoided. (b) Outside business activities of executives should be reported to and, if significant, approved by the board.”

(Principle IX & Recommendation IX)

(c) Rules/recommendations regarding the size, composition, independence and other selection criteria and procedures of supervisory and managerial bodies.

The EASD Principles and Recommendations do not cover size of the board.

As regards the composition of the supervisory body, the shareholders have the right to elect and to remove members of the board of directors or supervisory body.
(Recommendation I.1.d) Once elected, new members should be properly inducted in the company's affairs. (Recommendation VI.2b)

On the subject of board independence: the supervisory body must be capable of exercising objective judgement on the company's affairs independently from management and particular interest groups. (Recommendation V.1.c) To accomplish this mandate, there should be a sufficient number of individuals of character and skill

who are independent from management, from influential shareholders, and from other conflicts of interest (*e.g.*, representatives of employees, the state or suppliers). (Recommendation VI.1.b) There should be a majority of independent board members on all board committees where there is a potential for conflicts of interest. (Recommendation VI.4.a)

A non-executive director is not the same thing as an independent director. A non-executive director might be an appointee of a major shareholder, a representative of the company's employees, or an individual who has material ongoing service contracts with the company. (Preamble)

- (d) Rules/recommendations regarding the working methods of supervisory and managerial bodies (including information flows).

According to the EASD Principles and Recommendations, the supervisory body should determine the powers delegated to management and the decision-making process. (Recommendation VII.4.a) Management should have sufficient latitude to propose and implement corporate strategy. (Principle VII)

- (e) Rules/recommendations regarding remuneration of members of supervisory and managerial bodies (including evaluation procedures).

Remuneration of the non-executive members of the board of directors, or of the members of the supervisory board in a two-tier system, should be sufficient to attract and retain individuals of quality. Non-executive board members' remuneration should be determined according to principles and policies of the board and its relevant committee; both remuneration and policies of remuneration should be disclosed. Independent board members may own some shares of the company, but they should not participate in stock option or pension plans. Nevertheless, stock options even for independent directors may be acceptable in early-stage companies, before they are listed. (Recommendation VI.3)

As regards remuneration of executives, it should be determined in accordance with the principles and policies defined by the board and its relevant committee, which should strive to align executives' interest with those of the company and its shareholders as a whole. (Recommendation VII.5.a)

Remuneration policies for all board members should be transparent. The elements of the remuneration and shareholdings of the top executives should be disclosed, together with the material elements of their participation in stock options, pension plans or other similar schemes, as well as severance provisions or payments if, in the opinion of the board, these exceed customary norms. (Recommendation VII.5.b)

- (f) Rules/recommendations regarding the organisation and supervision of internal control systems and relations between supervisory bodies, managerial bodies and internal/external auditors.

The EASD Principles and Recommendations urge companies to disclose relevant, timely, accurate and understandable information necessary for the shareholders to properly evaluate the status and the situation of the company. Adequate internal controls should ensure the integrity of corporate data. Independent verification and

certification of the existence of appropriate controls and the reliability of data, in particular disclosed information, should be obtained to the fullest extent feasible. (Principle VIII)

Disclosed information should be drafted according to recognised high-quality international standards and audited. The audit too should be conducted in accordance with internationally accepted standards. (Recommendation VIII.4-6)

(3) Rights of Shareholders/Stakeholders.

(a) Rules/recommendations regarding protection of the rights of shareholders.

Principle I states: “Shareholders enjoy basic rights, which should be protected. They have a right to adequate and timely information and appropriate forms of participation in certain decisions affecting the company and themselves.”

Basic shareholders rights include:

- Having secure methods of ownership and transmission, and proof thereof;
- Receiving relevant, timely and regular information on matters of concern to them;
- Participating and voting in shareholder meetings, in particular to decide on fundamental changes affecting shareholders’ rights, *e.g.*, modifications to articles of association, bylaws and similar organic documents of the company;
- Authorisation of issuance of additional shares or other schemes that may dilute the holdings of existing shareholders, like stock option plans, extraordinary transactions involving the merger of the company or the sale of all or a substantial part of its assets;
- Dissolution of the company;
- Electing and removing members of the supervisory body;
- Approving the external auditors, subject to legal constraints; and
- Sharing in profits.

(Recommendation I.1)

Shareholders should receive sufficient notice and information on shareholder meeting location, date, agenda and issues to be discussed, and should have the ability to request that items be placed on the agenda, and to ask questions at the meeting. They should receive adequate information on the rules and voting procedures relating to meetings. (Recommendation I.2) Substantially different subjects should be voted on separately. Shareholders should also have means for seeking redress for alleged violations of their rights. (Recommendation I.3)

At the annual general meeting, the chairman should be present to answer shareholders’ questions or to refer them to appropriate members of the board (such as committee chairmen) or management, who should also be present. After the shareholders’ meeting, shareholders should have prompt and practical access to information on the substance of the discussion and the results of the voting. (Recommendation I.2)

(b) Rules/recommendations regarding equal/fair treatment of shareholders.

The EASD Principles and Recommendations are strongly in favour of “one share/one vote.” They urge that deviations from this standard should be avoided. Where deviations exist, they ought to be disclosed. (Principle III) Deviations from “one share/one vote” brought about by mechanisms that induce voting rights disproportional to cash-flow rights, such as multiple vote shares, voting caps, the use of multiple legal devices, the use of cross-holdings, as well as overly complicated statutory provisions, should be discouraged. Where they nevertheless continue to exist:

- They must not apply within a single class of shares;
- They must be simple and easy to understand; and
- They must be disclosed and explained.

(Recommendation III.2)

In addition, minority shareholders’ interests must be protected by ensuring that:

- Rules and procedures of ordinary and extraordinary shareholder meetings provide for appropriate safeguards;
- Due regard is given to minority rights and concerns by the supervisory body and management;
- Appropriate rules and procedures concerning conflicts of interest exist.

(Recommendation IV.1)

Without prejudice to legal remedies, minority shareholders should be able to raise concerns affecting their interests by petitioning the supervisory body and/or the relevant authorities. (Recommendation IV.2)

(c) Rules/recommendations regarding the rights of stakeholders.

According to the EASD Principles and Recommendations, the supervisory body is responsible for ensuring that the rights of the company’s stakeholders are respected and their concerns addressed, and that policies in this respect are developed. (Recommendation V.1.b) Such attention is necessary to promote the best interests of the company itself in the long term. (Preamble)

The Principles and Recommendations note that in certain instances, founders and controlling shareholders may and do consider other objectives that in effect override shareholder return maximisation. Such other objectives may include social, economic and environmental contributions. These must be properly disclosed and explained. (Preamble)

Additional information about the EASD Principles & Recommendations is included in the Comparative Matrix appended to this Report as Annex V.

Comparative Matrix Of Corporate Governance Codes Relevant To The European Union And Its Member States

ANNEX V



By Holly J. Gregory

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Corporate Governance Defined

Corporate Governance refers to that blend of law, regulation, and appropriate voluntary private-sector practices which enables the corporation to attract financial and human capital, perform efficiently, and thereby perpetuate itself by generating long-term economic value for its shareholders, while respecting the interests of stakeholders and society as a whole.

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COMPARISON OF CORPORATE GOVERNANCE CODES

EUROPEAN UNION

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COMPARISON OF CORPORATE GOVERNANCE CODES EUROPEAN UNION¹

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January 2002

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| <p><u>Code:</u> OECD PRINCIPLES OF CORPORATE GOVERNANCE (May 1999)</p> <p><u>Related Document:</u> CORPORATE GOVERNANCE: IMPROVING COMPETITIVENESS AND ACCESS TO CAPITAL IN GLOBAL MARKETS – A REPORT TO THE OECD (“Millstein Report”) (April 1998)</p> <p><u>Issuing Body:</u> Organisation for Economic Cooperation & Development (“OECD”), an intergovernmental organisation</p> <p><u>Legal Basis and Compliance:</u> Voluntary</p> <p><u>Objective:</u> Improve companies’ performance, competitiveness and/or access to capital</p> <p><u>Scope:</u> Listed companies; encouraged to all companies</p> | <p><u>Code:</u> STATEMENT ON GLOBAL CORPORATE GOVERNANCE PRINCIPLES (July 1999)</p> <p><u>Related Document:</u> ICGN GLOBAL SHARE VOTING PRINCIPLES (July 1998)</p> <p><u>Issuing Body:</u> International Corporate Governance Network (“ICGN”), an association of investors and others (including business/industry) interested in corporate governance</p> <p><u>Legal Basis and Compliance:</u> Voluntary (investors recommended to apply to portfolio companies; companies recommended to disclose compliance or explain)</p> <p><u>Objective:</u> Improve companies’ performance, competitiveness and/or access to capital</p> <p><u>Scope:</u> Listed companies</p> | <p><u>Code:</u> EUROSHAREHOLDERS CORPORATE GOVERNANCE GUIDELINES (February 2000)</p> <p><u>Issuing Body:</u> European Shareholders Group (“Euroshareholders”), an investors association (members from eight EU Member States: Belgium, Denmark, France, Germany, the Netherlands, Spain, Sweden and the United Kingdom)</p> <p><u>Legal Basis and Compliance:</u> Voluntary (association members (investors) recommended to apply to portfolio companies)</p> <p><u>Objective:</u> Improve accountability to shareholders and/or maximise shareholder value</p> <p><u>Scope:</u> Listed companies</p> | <p><u>Code:</u> CORPORATE GOVERNANCE PRINCIPLES AND RECOMMENDATIONS (May 2000)</p> <p><u>Issuing Body:</u> European Association of Securities Dealers (“EASD”), a committee related to pan-European association of securities professionals</p> <p><u>Legal Basis and Compliance:</u> Voluntary (disclosure encouraged)</p> <p><u>Objective:</u> Improve companies’ performance, competitiveness and/or access to capital; Improve quality of governance-related information available to equity markets</p> <p><u>Scope:</u> Listed companies</p> |

¹ In this COMPARISON, standard text, also when bolded, underlined or capitalized, replicates the verbatim text of the codes cited. *Italic text format* indicates comments or interpretations provided by the author. The full citation for each of the codes analyzed herein can be found in the APPENDIX.

² Holly J. Gregory, a partner in the law firm of Weil, Gotshal & Manges LLP, practices in the Firm’s corporate governance group, which is led by Ira M. Millstein. She was assisted in this COMPARISON by legal assistants Frederick W. Philippi and Sarah A. Lehner.

| Recommendations of Federation of Companies (Belgium) | Dual Code of the BXS/CBF (Belgium) | The Director's Charter (FDA) (Belgium) | (Reserved) |
|--|---|--|------------|
| OVERVIEW | | | |
| <p><i>Code:</i> CORPORATE GOVERNANCE: RECOMMENDATIONS FROM THE FEDERATION OF BELGIAN COMPANIES (January 1998)</p> <p><i>Issuing Body:</i> Federation of Belgian Companies ("VBO/FEB"), a business, industry and/or academic association or committee.</p> <p><i>Legal Basis and Compliance:</i> Voluntary (disclosure encouraged)</p> <p><i>Objective:</i> Improve companies' performance, competitiveness and/or access to capital</p> <p><i>Scope:</i> All companies</p> <p><i>Predominant Board Structure (listed companies):</i> Unitary</p> | <p><i>Code:</i> DUAL CODE OF THE BRUSSELS STOCK EXCHANGE ("BXS") AND THE BELGIAN BANKING AND FINANCE COMMISSION ("CBF") (a/k/a CORPORATE GOVERNANCE FOR BELGIAN LISTED COMPANIES) (December 1998)</p> <p><i>Note:</i> Part I is the "Cardon Report" Part II is the "CBF Recommendations"</p> <p><i>Issuing Bodies:</i></p> <p><i>Part I:</i> Belgian Commission on Corporate Governance, a committee related to a stock exchange</p> <p><i>Part II:</i> Banking & Finance Commission, a governmental/quasi-governmental entity</p> <p><i>Legal Basis and Compliance:</i> Voluntary (disclosure encouraged)</p> <p><i>Objective:</i></p> <p><i>Part I:</i> Improve companies' performance, competitiveness and/or access to capital</p> <p><i>Part II:</i> Improve quality of governance-related information available to capital markets</p> <p><i>Scope:</i></p> <p><i>Part I:</i> Listed companies; encouraged to all companies</p> <p><i>Part II:</i> Listed companies</p> <p><i>Predominant Board Structure (listed companies):</i> Unitary</p> | <p><i>Code:</i> THE DIRECTOR'S CHARTER (LA CHARTE DE L'ADMINISTRATEUR) (January 2000)</p> <p><i>Issuing Body:</i> La Fondation des Administrateurs ("FDA"), a directors association</p> <p><i>Legal Basis and Compliance:</i> Voluntary (association members encouraged to comply)</p> <p><i>Objective:</i> Improve quality of board (supervisory) governance</p> <p><i>Scope:</i> All companies</p> <p><i>Predominant Board Structure (listed companies):</i> Unitary</p> | |

| Danish Shareholders Ass'n Guidelines (Denmark) | Nørby Report & Recommendations (Denmark) | Chamber of Commerce/Confederation Code (Finland) | Ministry of Trade & Industry Guidelines (Finland) |
|--|---|---|--|
| OVERVIEW | | | |
| <p><u>Code:</u> GUIDELINES ON GOOD MANAGEMENT OF A LISTED COMPANY (February 2000)</p> <p><u>Issuing Body:</u> The Danish Shareholders Association, an investors association</p> <p><u>Legal Basis and Compliance:</u> Voluntary (disclosure encouraged)</p> <p><u>Objective:</u> Improve accountability to shareholders and/or maximise shareholder value</p> <p><u>Scope:</u> Listed companies</p> <p><u>Predominant Board Structure (listed companies):</u> Two-tier</p> | <p><u>Code:</u> RECOMMENDATIONS FOR GOOD CORPORATE GOVERNANCE IN DENMARK (December 2001)</p> <p><u>Issuing Body:</u> The Nørby Commission, a committee (commission) organized by government</p> <p><u>Legal Basis and Compliance:</u> Voluntary (disclosure encouraged)</p> <p><u>Objective:</u> Improve companies' performance, competitiveness and/or access to capital</p> <p><u>Scope:</u> Listed companies; encouraged to all companies</p> <p><u>Predominant Board Structure (listed companies):</u> Two-tier</p> | <p><u>Code:</u> CORPORATE GOVERNANCE CODE FOR PUBLIC LIMITED COMPANIES (February 1997). Note: This Code is available in English only in summary form.</p> <p><u>Issuing Bodies:</u> The Central Chamber of Commerce and the Confederation of Finnish Industry and Employers, a business, industry and/or academic association or committee</p> <p><u>Legal Basis and Compliance:</u> Voluntary (disclosure encouraged)</p> <p><u>Objective:</u> Improve the quality of board (supervisory) governance</p> <p><u>Scope:</u> Listed companies</p> <p><u>Predominant Board Structure (listed companies):</u> Unitary</p> | <p><u>Code:</u> HANDLING CORPORATE GOVERNANCE ISSUES IN STATE-OWNED COMPANIES AND ASSOCIATED COMPANIES (November 2000)</p> <p><u>Issuing Body:</u> Finland Ministry of Trade and Industry, a governmental/quasi-governmental entity</p> <p><u>Legal Basis and Compliance:</u> Voluntary (disclosure encouraged)</p> <p><u>Objective:</u> Improve companies' performance, competitiveness and/or access to capital</p> <p><u>Scope:</u> Listed companies and other privatised companies</p> <p><u>Predominant Board Structure (listed companies):</u> Unitary</p> |

| Viénot I Report (France) | Hellebuyck Commission Recommendations (France) | Viénot II Report (France) | (Reserved) |
|---|--|---|------------|
| OVERVIEW | | | |
| <p><i>Code:</i> THE BOARD OF DIRECTORS IN LISTED COMPANIES (LE CONSEIL D'ADMINISTRATION DES SOCIÉTÉS COTÉES) ("Viénot I Report") (July 1995)</p> <p><i>Issuing Bodies:</i> Conseil National du Patronat Français ("CNPF"), which in 1998 became Mouvement des Entreprises de France (MEDEF), and Association Française des Entreprises Privées ("AFEP"), a business, industry and/or academic association or committee</p> <p><i>Legal Basis and Compliance:</i> Voluntary</p> <p><i>Objective:</i> Improve quality of board (supervisory) governance</p> <p><i>Scope:</i> Listed companies</p> <p><i>Predominant Board Structure (listed companies):</i> Unitary</p> | <p><i>Code:</i> RECOMMENDATIONS ON CORPORATE GOVERNANCE ("Hellebuyck Commission Recommendations") (June 1998; revised October 2001)</p> <p><i>Issuing Body:</i> Association Française de la Gestion Financière – Association des Sociétés et Fonds Français d'Investissement ("AFG-ASFFI"), an investors association</p> <p><i>Legal Basis and Compliance:</i> Voluntary (association members recommended to apply to portfolio companies)</p> <p><i>Objective:</i> Improve accountability to shareholders and/or maximise shareholder value</p> <p><i>Scope:</i> Listed companies</p> <p><i>Predominant Board Structure (listed companies):</i> Unitary</p> | <p><i>Code:</i> REPORT OF THE COMMITTEE ON CORPORATE GOVERNANCE ("Viénot II Report") (July 1999)</p> <p><i>Issuing Body:</i> Association Française des Entreprises Privées ("AFEP") & Mouvement des Entreprises de France ("MEDEF"), a business, industry and/or academic association or committee</p> <p><i>Legal Basis and Compliance:</i> Voluntary (disclosure encouraged)</p> <p><i>Objective:</i> Improve quality of board (supervisory) governance</p> <p><i>Scope:</i> Listed companies</p> <p><i>Predominant Board Structure (listed companies):</i> Unitary</p> | |

| Berlin Initiative Code (Germany) | German Panel Rules (Germany) | Cromme Commission Code (Germany) | (Reserved) |
|---|--|--|------------|
| OVERVIEW | | | |
| <p><u>Code:</u> GERMAN CODE OF CORPORATE GOVERNANCE (June 2000)</p> <p><u>Issuing Body:</u> Berliner Initiativkreis (Berlin Initiative Group), a business, industry and/or academic association or committee</p> <p><u>Legal Basis and Compliance:</u> Voluntary (disclosure encouraged)</p> <p><u>Objective:</u> Improve quality of board (supervisory) governance</p> <p><u>Scope:</u> Listed companies; encouraged to all companies</p> <p><u>Predominant Board Structure (listed companies):</u> Two-tier</p> | <p><u>Code:</u> CORPORATE GOVERNANCE RULES FOR QUOTED GERMAN COMPANIES (July 2000)</p> <p><u>Issuing Body:</u> German Panel on Corporate Governance, a business, industry and/or academic association or committee</p> <p><u>Legal Basis and Compliance:</u> Voluntary (disclosure encouraged)</p> <p><u>Objective:</u> Improve accountability to shareholders and/or maximise shareholder value; Improve quality of board (supervisory) governance</p> <p><u>Scope:</u> Listed companies</p> <p><u>Predominant Board Structure (listed companies):</u> Two-tier</p> | <p><u>Code:</u> DEUTSCHER CORPORATE GOVERNANCE KODEX / GERMAN CORPORATE GOVERNANCE CODE (draft, December 2001)</p> <p><u>Issuing Body:</u> Regierungskommission Deutscher Corporate Governance Kodex / Government Commission German Corporate Governance Code (“Cromme Commission”), a committee organized by government.</p> <p><u>Legal Basis and Compliance:</u> Disclosure (comply or explain)</p> <p><u>Objective:</u> Improve companies’ performance, competitiveness and/or access to capital</p> <p><u>Scope:</u> Listed companies; encouraged to all companies</p> <p><u>Predominant Board Structure (listed companies):</u> Two-tier</p> | |

| Mertzanis Report (Greece) | Federation of Greek Industries Principles (Greece) | IAIM Guidelines (Ireland) | Preda Report (Italy) |
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| OVERVIEW | | | |
| <p><i>Code:</i> PRINCIPLES ON CORPORATE GOVERNANCE IN GREECE: RECOMMENDATIONS FOR ITS COMPETITIVE TRANSFORMATION (“Mertzanis Report”) (October 1999)</p> <p><i>Issuing Body:</i> Committee on Corporate Governance in Greece, a committee organised by government</p> <p><i>Legal Basis and Compliance:</i> Voluntary (may serve as basis for legal reform)</p> <p><i>Objective:</i> Improve companies’ performance, competitiveness and/or access to capital</p> <p><i>Scope:</i> Listed companies</p> <p><i>Predominant Board Structure (listed companies):</i> Unitary</p> | <p><i>Code:</i> PRINCIPLES OF CORPORATE GOVERNANCE (August 2001)</p> <p><i>Issuing Body:</i> Federation of Greek Industries, a business, industry and/or academic association or committee</p> <p><i>Legal Basis and Compliance:</i> Voluntary</p> <p><i>Objective:</i> Improve companies’ performance, competitiveness and/or access to capital</p> <p><i>Scope:</i> Listed companies; encouraged to all companies</p> <p><i>Predominant Board Structure (listed companies):</i> Unitary</p> | <p><i>Code:</i> CORPORATE GOVERNANCE, SHARE OPTION AND OTHER INCENTIVE SCHEME GUIDELINES (March 1999)</p> <p><i>Issuing Body:</i> Irish Association of Investment Managers (“IAIM”), an investors association</p> <p><i>Legal Basis and Compliance:</i> Voluntary (now disclosure in line with the Combined Code’s provisions)</p> <p><i>Objective:</i> Improve quality of board (supervisory) governance</p> <p><i>Scope:</i> Listed companies</p> <p><i>Predominant Board Structure (listed companies):</i> Unitary</p> | <p><i>Code:</i> CODE OF CONDUCT FOR LISTED COMPANIES (“Preda Report”) (October 1999)</p> <p><i>Issuing Body:</i> Comitato per la Corporate Governance delle Società Quotate (Committee for the Corporate Governance of Listed Companies), a committee related to a stock exchange</p> <p><i>Legal Basis and Compliance:</i> Disclosure (comply or explain)</p> <p><i>Objective:</i> Improve companies’ performance, competitiveness and/or access to capital; Improve quality of governance-related information available to equity markets</p> <p><i>Scope:</i> Listed companies</p> <p><i>Predominant Board Structure (listed companies):</i> Unitary</p> |

| Peters Report (The Netherlands) | VEB Recommendations (The Netherlands) | SCGOP Handbook and Guidelines (The Netherlands) | Securities Market Comm'n Recommendations (Portugal) |
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| OVERVIEW | | | |
| <p><u>Code:</u> FORTY RECOMMENDATIONS ON CORPORATE GOVERNANCE IN THE NETHERLANDS ("Peters Report") (June 1997)</p> <p><u>Issuing Body:</u> Secretariat Committee on Corporate Governance, a committee related to a stock exchange and a business, industry and/or academic association</p> <p><u>Legal Basis and Compliance:</u> Voluntary (disclosure encouraged)</p> <p><u>Objective:</u> Improve quality of board (supervisory) governance</p> <p><u>Scope:</u> Listed companies</p> <p><u>Predominant Board Structure (listed companies):</u> Two-tier</p> | <p><u>Code:</u> TEN RECOMMENDATIONS ON CORPORATE GOVERNANCE IN THE NETHERLANDS (1997)</p> <p><u>Issuing Body:</u> Vereniging van Effectenbezitters ("VEB"), an investors association</p> <p><u>Legal Basis and Compliance:</u> Voluntary (association members recommended to apply to portfolio companies)</p> <p><u>Objective:</u> Improve accountability to shareholders and/or maximise shareholder value</p> <p><u>Scope:</u> Listed companies</p> <p><u>Predominant Board Structure (listed companies):</u> Two-tier</p> | <p><u>Code:</u> CORPORATE GOVERNANCE HANDBOOK OF THE SCGOP (August 2001)</p> <p><u>Issuing Body:</u> Stichting Corporate Governance Onderzoek voor Pensioenfondsen ("SCGOP") (Foundation for Corporate Governance Research for Pension Funds), an investors association</p> <p><u>Legal Basis and Compliance:</u> Voluntary (disclosure encouraged)</p> <p><u>Objective:</u> Improve accountability to shareholders and/or maximise shareholder value</p> <p><u>Scope:</u> Listed companies</p> <p><u>Predominant Board Structure (listed companies):</u> Two-tier</p> | <p><u>Code:</u> RECOMMENDATIONS ON CORPORATE GOVERNANCE (November 1999)</p> <p><u>Issuing Body:</u> Comissão do Mercado de Valores Mobiliários ("CMVM") (Portuguese Securities Market Commission), a governmental/quasi-governmental entity</p> <p><u>Legal Basis and Compliance:</u> Voluntary (disclosure encouraged)</p> <p><u>Objective:</u> Improve companies' performance, competitiveness and/or access to capital</p> <p><u>Scope:</u> Listed companies; encouraged to all companies</p> <p><u>Predominant Board Structure (listed companies):</u> Unitary</p> |

| Olivencia Report (Spain) | Swedish Shareholders Ass'n Policy (Sweden) | ICSA Code (United Kingdom) | ISC Statement of Best Practice (United Kingdom) |
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| OVERVIEW | | | |
| <p><u>Code:</u> THE GOVERNANCE OF SPANISH COMPANIES ("Olivencia Report") (February 1998)</p> <p><u>Issuing Body:</u> Special Committee for the Study of a Code of Corporate Governance for Boards of Directors of Listed Companies, a committee (commission) organised by government</p> <p><u>Legal Basis and Compliance:</u> Voluntary</p> <p><u>Objective:</u> Improve companies' performance, competitiveness and/or access to capital</p> <p><u>Scope:</u> Listed companies and other privatized companies</p> <p><u>Predominant Board Structure (listed companies):</u> Unitary</p> | <p><u>Code:</u> CORPORATE GOVERNANCE POLICY (November 1999)</p> <p><u>Issuing Body:</u> Swedish Shareholders Association, an investors association</p> <p><u>Legal Basis and Compliance:</u> Voluntary (association members recommended to apply to portfolio companies)</p> <p><u>Objective:</u> Improve accountability to shareholders and/or maximise shareholder value</p> <p><u>Scope:</u> Listed companies</p> <p><u>Predominant Board Structure (listed companies):</u> Unitary</p> | <p><u>Code:</u> GOOD BOARDROOM PRACTICE – A CODE FOR DIRECTORS (February 1991, reissued 1995)</p> <p><u>Issuing Body:</u> Institute of Chartered Secretaries and Administrators ("ICSA"), a business, industry and/or academic association or committee</p> <p><u>Legal Basis and Compliance:</u> Voluntary</p> <p><u>Objective:</u> Improve quality of board (supervisory) governance</p> <p><u>Scope:</u> Listed companies; encouraged to all companies</p> <p><u>Predominant Board Structure (listed companies):</u> Unitary</p> | <p><u>Code:</u> THE ROLE AND DUTIES OF DIRECTORS – A STATEMENT OF BEST PRACTICE (April 1991)</p> <p><u>Issuing Body:</u> Institutional Shareholders Committee ("ISC"), an investors association</p> <p><u>Legal Basis and Compliance:</u> Voluntary (association members recommended to apply to portfolio companies)</p> <p><u>Objective:</u> Improve quality of board (supervisory) governance</p> <p><u>Scope:</u> Listed companies</p> <p><u>Predominant Board Structure (listed companies):</u> Unitary</p> |

| Cadbury Report (United Kingdom) | Greenbury Report (United Kingdom) | Hampel Report (United Kingdom) | The Combined Code/Turnbull Report (United Kingdom) |
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| OVERVIEW | | | |
| <p><u>Code:</u> REPORT OF THE COMMITTEE ON THE FINANCIAL ASPECTS OF CORPORATE GOVERNANCE ("Cadbury Report") (December 1992, reissued 1996)</p> <p><u>Issuing Body:</u> Committee established by the Financial Reporting Council and the London Stock Exchange, a committee related to a stock exchange and a business, industry and/or academic association</p> <p><u>Legal Basis and Compliance:</u> Disclosure (comply or explain)</p> <p><u>Objective:</u> Improve quality of board (supervisory) governance; Improve governance-related information available to equity markets</p> <p><u>Scope:</u> Listed companies; encouraged to all companies</p> <p><u>Predominant Board Structure (listed companies):</u> Unitary</p> | <p><u>Code:</u> DIRECTORS' REMUNERATION (July 1995)</p> <p><u>Issuing Body:</u> Committee established in January 1995 on the initiative of the Confederation of British Industry, a business, industry and/or academic association or committee.</p> <p><u>Legal Basis and Compliance:</u> Disclosure (comply or explain)</p> <p><u>Objective:</u> Improve quality of board (supervisory) governance; improve quality of governance-related information available to equity markets</p> <p><u>Scope:</u> Listed companies; encouraged to all companies</p> <p><u>Predominant Board Structure (listed companies):</u> Unitary</p> | <p><u>Code:</u> FINAL REPORT ("Hampel Report") (January 1998)</p> <p><u>Issuing Body:</u> Committee sponsored by the London Stock Exchange, the Confederation of British Industry, the Institute of Directors, the Consultative Committee of Accountancy Bodies, the National Association of Pension Funds and the Association of British Insurers – committee related to a stock exchange and a business, industry and/or academic association</p> <p><u>Legal Basis and Compliance:</u> Disclosure (in line with the Combined Code's provisions)</p> <p><u>Objective:</u> Improve quality of board (supervisory) governance; Improve quality of governance-related information available to equity markets</p> <p><u>Scope:</u> Listed companies</p> <p><u>Predominant Board Structure (listed companies):</u> Unitary</p> | <p><u>Codes:</u></p> <p>A) THE COMBINED CODE: PRINCIPLES OF GOOD GOVERNANCE AND CODE OF BEST PRACTICE (July 1998)</p> <p>B) INTERNAL CONTROL: GUIDANCE FOR DIRECTORS ON THE COMBINED CODE ("Turnbull Report") (September 1999)</p> <p><u>Issuing Bodies:</u></p> <p>A) Committee on Corporate Governance, a committee related to a stock exchange and a business, industry and/or academic association</p> <p>B) Institute of Chartered Accountants in England and Wales ("ICAEW"), a committee related to a stock exchange and business, industry and/or academic association</p> <p><u>Legal Basis and Compliance:</u></p> <p>A) Disclosure (comply or explain)</p> <p>B) Voluntary (advice on compliance with Combined Code)</p> <p><u>Objective:</u></p> <p>A) Improve quality of board (supervisory) governance; Improve quality of governance-related information available to equity markets</p> <p>B) Improve quality of governance-related information available to equity markets</p> <p><u>Scope:</u> Listed companies</p> <p><u>Predominant Board Structure (listed companies):</u> Unitary</p> |

| NAPF Corporate Governance Code (United Kingdom) | AUTIF Code (United Kingdom) | Hermes Statement (United Kingdom) | PIRC Shareholder Voting Guidelines (United Kingdom) |
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| OVERVIEW | | | |
| <p><u>Code:</u> TOWARDS BETTER CORPORATE GOVERNANCE – NAPF CORPORATE GOVERNANCE POLICY (June 2000)</p> <p><u>Issuing Body:</u> National Association of Pension Funds (“NAPF”), an investors association</p> <p><u>Legal Basis and Compliance:</u> Voluntary (association members recommended to apply to portfolio companies)</p> <p><u>Objective:</u> Improve accountability to shareholders and/or maximise shareholder value</p> <p><u>Scope:</u> Listed companies</p> <p><u>Predominant Board Structure (listed companies):</u> Unitary</p> | <p><u>Code:</u> CODE OF GOOD PRACTICE: INSTITUTIONAL INVESTORS AND CORPORATE GOVERNANCE. (January 2001)</p> <p><u>Issuing Body:</u> Association of Unit Trusts and Investment Funds (“AUTIF”), an investors association</p> <p><u>Legal Basis and Compliance:</u> Voluntary (disclosure encouraged)</p> <p><u>Objective:</u> Improve accountability to shareholders and/or maximise shareholder value</p> <p><u>Scope:</u> Listed companies</p> <p><u>Predominant Board Structure (listed companies):</u> Unitary</p> | <p><u>Code:</u> STATEMENT ON UK CORPORATE GOVERNANCE & VOTING POLICY (March 1997; revised January 2001)</p> <p><u>Issuing Bodies:</u> Hermes Investment Management Limited (“Hermes”), investor in association with other investor groups</p> <p><u>Legal Basis and Compliance:</u> Voluntary (issuer states shares will be voted accordingly)</p> <p><u>Objective:</u> Improve accountability to shareholders and/or maximise shareholder value</p> <p><u>Scope:</u> Listed companies</p> <p><u>Predominant Board Structure (listed companies):</u> Unitary</p> | <p><u>Code:</u> PIRC SHAREHOLDER VOTING GUIDELINES (1994; revised March 2001)</p> <p><u>Issuing Body:</u> Pensions Investment Research Consultants Limited (“PIRC”), an investor advisor</p> <p><u>Legal Basis and Compliance:</u> Voluntary (institutional investors recommended to apply to portfolio companies)</p> <p><u>Objective:</u> Improve accountability to shareholders and/or maximise shareholder value</p> <p><u>Scope:</u> Listed companies</p> <p><u>Predominant Board Structure (listed companies):</u> Unitary</p> |

| OECD Principles/Millstein Report (International) | ICGN Statement/Global Voting Principles (International) | Euroshareholders Guidelines (Pan-European) | EASD Principles and Recommendations (Pan-European) |
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| 1. Definition of Corporate Governance | | | |
| <p>Corporate governance relates to the internal means by which corporations are operated and controlled. While governments play a central role in shaping the legal, institutional and regulatory climate within which individual corporate governance systems are developed, the main responsibility lies with the private sector. (Preface)</p> <p><i>See</i> Preamble at 9 ([C]orporate governance ... involves a set of relationships between a company's management, its board, its shareholders and other stakeholders. Corporate governance also provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined. Good corporate governance should provide proper incentives for the board and management to pursue objectives that are in the interests of the company and shareholders, and should facilitate effective monitoring, thereby encouraging firms to use resources more efficiently.</p> <p>Corporate governance is only part of the larger economic context in which firms operate, which includes, for example, macroeconomic policies and the degree of competition in product and factor markets. The corporate governance framework also depends on the legal, regulatory and institutional environment. In addition, factors such as business ethics and corporate awareness of the environmental and societal interests of the communities in which it operates can also have an impact on the reputation and the long-term success of a company.).</p> | <p><i>Not covered directly, but the ICGN Statement adopts the OECD Principles. See OECD, left.</i></p> | <p><i>Not covered directly, but the Euroshareholders Guidelines are based on the OECD Principles. See OECD, left.</i></p> | <p><i>Not covered.</i></p> |

| Recommendations of Federation of Companies (Belgium) | Dual Code of the BXS/CBF (Belgium) | The Director's Charter (FDA) (Belgium) | (Reserved) |
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| 1. Definition of Corporate Governance | | | |
| <p>The organisation of the administration and management of companies, which is better known under the term "corporate governance," has to meet the expectations of the shareholders and the requirements of the economic process. (Foreword)</p> | <p>"Corporate governance" refers to the set of rules applicable to the management and control of a company. It is the duty of the board of directors to manage the company's affairs exclusively in the interests of the company and all its shareholders, within the framework of the laws, regulations and contentions under which the company operates. (Part I: A.2)</p> <p>The organisation of the administration and management of limited companies (commonly called "corporate governance") (Part II: A, Introduction)</p> | <p><i>Not covered.</i></p> | |

| Danish Shareholders Ass'n Guidelines (Denmark) | Nørby Report & Recommendations (Denmark) | Chamber of Commerce/Confederation Code (Finland) | Ministry of Trade & Industry Guidelines (Finland) |
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| 1. Definition of Corporate Governance | | | |
| <p><i>Not covered.</i></p> | <p>[T]he concept [of corporate governance] can be defined as:</p> <p>The goals, according to which a company is managed, and the major principles and frameworks which regulate the interaction between the company's managerial bodies, the owners as well as other parties, who are directly influenced by the company's dispositions and business (in this context jointly referred to as the company's stakeholders). (Introduction)</p> <p><i>See</i> Introduction (The debate [regarding good corporate governance] has more recently moved from primarily being driven by a wish to stimulate "owner activism" and increase the supervision of the management, to having a broader view of the company and its relationship with its other stakeholders. In line with this, the Danish debate about the relationship between the board and the management has also changed its focus from a narrow control and supervision perspective to a broader and more forward-looking strategic perspective.).</p> <p><i>See also</i> I (Good corporate governance implies that the board and the management understand that interaction between the management and the shareholders is of vital importance to the company.)</p> <p><i>See also</i> Executive Summary (<i>corporate governance as a worthwhile endeavor</i>).</p> | <p><i>Not covered.</i></p> | <p><i>Not covered directly, but see</i> Cover Letter to Civil Servants on Boards of Directors of state-owned companies from the Ministry of Trade and Industry, 7 November 2000 (These Guidelines include a set of tools for development of ownership steering and of control of shareholders.).</p> <p><i>See also</i> 1 (The objective of the following guidelines is development of the corporate governance schemes of companies. The guidelines deal mainly with cases in which determining the "best practice" is not always unequivocal, because making the choice depends on company-specific factors. Therefore these guidelines are a recommendation by nature. The Ministry stresses that <u>it is essential to become aware of corporate governance issues and to handle them in an appropriate manner at the Board of Directors of the company – then the choices relating to them are conscious.</u>)</p> |

| Viénot I Report (France) | Hellebuyck Commission Recommendations (France) | Viénot II Report (France) | (Reserved) |
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| 1. Definition of Corporate Governance | | | |
| <p><i>Not covered directly, but see</i> p. 8 (The board cannot divest itself of the powers attributed to it by law, and must carry out its duties to the full, notably as regards supervision of management, provision of information to the market and strategic planning.).</p> | <p><i>Not covered directly, but see</i> Introduction ([T]he concept of corporate governance arose out of the investment managers' concern to build the value of their clients' investments by exercising all their rights as shareholders, including active participation in the general meetings of listed companies.).</p> | <p><i>Not covered.</i></p> | |

| Berlin Initiative Code (Germany) | German Panel Rules (Germany) | Cromme Commission Code (Germany) | (Reserved) |
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| 1. Definition of Corporate Governance | | | |
| <p>Corporate governance describes the legal and factual regulatory framework for managing and supervising a company. (Preamble)</p> <p>Basic Order of Corporate Governance The basic order determines the company's system of objectives and therefore the upper guideline for the company's management. Further, it stipulates the principal organisational framework for managing and supervising the company. (Code, I.1)</p> | <p><i>Not covered directly, but see</i> Code, I (The purpose of Corporate Governance is to achieve a responsible, value-oriented management and control of companies. Corporate Governance Rules promote and reinforce the confidence of current and future shareholders, lenders, employees, business partners and the general public in national and international markets.).</p> | <p><i>Not covered directly, but see</i> §I (This German Corporate Governance Code ... presents essential statutory regulations for the management and supervision of German exchange-listed companies and includes internationally and nationally recognized standards for good and responsible corporate governance.).</p> | |

| Mertzanis Report (Greece) | Federation of Greek Industries Principles (Greece) | IAIM Guidelines (Ireland) | Preda Report (Italy) |
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| 1. Definition of Corporate Governance | | | |
| <p><i>Not covered directly, but see</i> Introduction ([A] competitive corporate governance framework must guarantee a reasonable balance among the rights and responsibilities both within the Board of Directors and among all the agents in the corporation's governance. The corporate governance framework should moreover ensure the conditions for best corporate performance and long-term sustainability. All functions of the Board of Directors and the General Shareholder Meetings should aim at the enhancement of the entire performance of the corporation within an adequately supervised and informed environment.).</p> <p><i>See also</i> Principle 5 (<u>The corporate governance framework should ensure the strategic leadership of the corporation, the efficient monitoring of management by the Board of Directors and the accountability of the Board to the corporation and its shareholders.</u>).</p> | <p>Corporate governance is a system of principles providing a basis for the organization, operation and management of a public limited liability company (or "A.E."), in a manner that ensures the protection and satisfaction of the legitimate interests of all persons linked to the company in the framework of the company's interests. (§1.1)</p> <p><i>See</i> §1.4 (Corporate governance principles and the procedures adopted for their implementation and supervision are voluntary engagements of the company, whose basis and starting point are found in the legislation in force on public limited liability companies, the legislation on stock exchanges, and the regulatory provisions adopted by the Athens Stock Exchange and its supervisory authorities, but whose scope extends beyond existing legislation, and includes voluntary commitments that contribute to the maintenance and improvement of the company's credibility.).</p> <p><i>See also</i> §1.5 (The principles and procedures of corporate governance are reflected in the overall structure and operation of the company, and apply to its administrative bodies (the board of directors and the shareholders' assembly), as well as the manner in which these are structured and operate, but also the more general lines of communication between the company's different stakeholders.).</p> <p><i>See also</i> §1.6 (Corporate governance is of interest to any company, not limited to public limited liability companies. It is particularly recommended for public limited liability companies that are listed on the Athens Stock Exchange.).</p> | <p><i>Not covered directly, but the</i> IAIM Guidelines <i>adopt the</i> Combined Code. <i>See</i> the Combined Code, Preamble, ¶ 7 (We have retained the substance of the [Cadbury and Greenbury] codes except in those few cases where we take a different view.).</p> <p>The Cadbury Report, 2.5 <i>provides</i>: Corporate governance is the system by which businesses are directed and controlled.</p> | <p>Corporate Governance, in the sense of the set of rules according to which firms are managed and controlled, is the result of norms, traditions and patterns of behaviour developed by each economic and legal system and is certainly not based on a single model that can be exported and imitated everywhere. (Report, 2)</p> |

| Peters Report (The Netherlands) | VEB Recommendations (The Netherlands) | SCGOP Handbook and Guidelines (The Netherlands) | Securities Market Comm'n Recommendations (Portugal) |
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| 1. Definition of Corporate Governance | | | |
| <p>[T]he concept of Corporate Governance has been understood to mean a code of conduct for those associated with the company – in particular [executives]*, Supervisory Board members and investors – consisting of a set of rules for sound management and proper supervision and for a division of duties and responsibilities and powers effecting the satisfactory balance of influence of all the stakeholders. The basic principle here is that members of the [Management Board]* and Supervisory Board members should – also in public – be accountable for their conduct. (Introduction, 1.2)</p> <p>See Recommendation 6.3 (The annual accounts audit is one of the cornerstones for sound Corporate Governance.).</p> <p><i>*Note: The Peters Report regularly uses the term “directors” to mean the executives, and the term “Board of Directors” to mean the Management Board. For purposes of consistency and clarity, this COMPARISON will regularly substitute “[executive]” for “director” and “[Management Board]” for “Board of Directors” in the texts of the Peters Report.</i></p> | <p><i>Not covered.</i></p> | <p>Corporate governance concerns the way companies are managed and how management is supervised. The various parties involved play their own specific role. (Handbook, p. 8)</p> <p>A corporation is accountable in different ways to the various interested parties. Corporate governance controls the way in which this responsibility is accounted for to the ultimate providers of risk-bearing capital: the shareholders. (Handbook, p. 9)</p> <p><i>See Handbook, p. 9 (There are great differences of opinion on what form of corporate governance is best for a company. In the last few years, however, the importance of good corporate governance has been widely recognized....</i></p> <p>The Netherlands has a “two-tier” system. In the Netherlands, investors are forced to put their trust first and foremost in the supervisory board to keep good watch over the management board of a company.).</p> <p><i>See also Handbook, p. 14 (Pension funds strive to achieve optimal returns within pre-set risk parameters. Each corporate governance policy must satisfy this primary goal. Since the execution of a corporate governance policy entails costs, clearly it must also generate adequate compensatory income....</i></p> <p>Scientific research in the Netherlands has ... shown a positive correlation between good corporate governance and performance.).</p> | <p>Corporate Governance is used to describe the system of rules and procedures employed in the conduct and control of listed companies.</p> <p>Corporate Governance has ... an internal aspect and an external aspect: the first meaning is understood as the set of organisational rules within each listed company; external control, in turn, relates to the assessment of the performance of the company which is conducted through the normal function of market mechanisms, a domain in which the proceedings of institutional investors are of capital importance. (Introduction)</p> |

| Olivencia Report (Spain) | Swedish Shareholders Ass'n Policy (Sweden) | ICSA Code (United Kingdom) | ISC Statement of Best Practice (United Kingdom) |
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| 1. Definition of Corporate Governance | | | |
| <p><i>Not covered directly, but see</i> Introduction, 2 (The great demand ... for better governance of companies calling on financial markets serves to define a movement of reform arising in recent years and among wide sectors of the public....</p> <p>The reforming movement advocates changes in how corporate governance is to be conducted, particularly in listed companies. The quest for change denotes non-satisfaction with former practices, which are to be improved. But this demand is not addressed to public authorities – via legislative reforms – to the same extent as to companies themselves, so that within the scope of their independent determination and the self-regulating powers of their bodies they may pass decisions ensuring better governance.).</p> | <p><i>Not covered directly, but see</i> Introduction at 6 (Corporate Governance or owner control is an important international issue.... The Cadbury Report underlines the importance of institutional investors showing interest in, and responsibility for, the company and their influence over it.).</p> | <p><i>Not covered.</i></p> | <p><i>Not covered.</i></p> |

| Cadbury Report (United Kingdom) | Greenbury Report (United Kingdom) | Hampel Report (United Kingdom) | The Combined Code/Turnbull Report (United Kingdom) |
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| 1. Definition of Corporate Governance | | | |
| <p>Corporate governance is the system by which businesses are directed and controlled. (Report, 2.5)</p> <p><i>See</i> Report, 1.1 ([B]oards ... must be free to drive their companies forward, but exercise that freedom within a framework of effective accountability. This is the essence of any system of good corporate governance.).</p> | <p><i>Not covered directly, but see</i> Report, 4.3 (It is a well-established principle of corporate governance in the UK that Boards of Directors are responsible and accountable to shareholders for all aspects of a company's affairs.).</p> | <p>We can accept the Cadbury committee's definition of corporate governance as "the system by which companies are directed and controlled" (Cadbury Report 2.5). It puts the directors of a company at the centre of any discussion on corporate governance, linked to the role of the shareholders, since they appoint the directors. This definition is of course a restrictive one. It excludes many activities involved in managing a company which may nevertheless be vital to the success of the business. (1.15)</p> | <p><i>Not covered directly, but see</i> Preamble, ¶17 (We have retained the substance of the [Cadbury and Greenbury] codes except in those few cases where we take a different view.).</p> <p><i>See</i> the Cadbury Report, 2.5 (Corporate governance is the system by which businesses are directed and controlled.).</p> |

| NAPF Corporate Governance Code (United Kingdom) | AUTIF Code (United Kingdom) | Hermes Statement (United Kingdom) | PIRC Shareholder Voting Guidelines (United Kingdom) |
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| 1. Definition of Corporate Governance | | | |
| <p><i>Not covered directly, but see</i> Introduction (This document sets out the NAPF's corporate governance policy for UK listed companies. Good corporate governance is not just for boards of directors. It is essential to ensure a close relationship between companies and investors. Boards of directors are subject both to statutory obligations under the Companies Act and to the Combined Code appended to the Listing Rules. These require them to get approval for certain decisions. Following the recommendations of a number of committees of inquiry into corporate governance, the range of issues on which boards must seek shareholder approval has expanded. The NAPF, for its part, considers that there are further areas where companies have a responsibility to put matters before shareholders and these are also included in this document.).</p> | <p><i>Not covered.</i></p> | <p>Directors of public companies are responsible for running companies in the long-term interests of shareholders. Shareholders and their agents have responsibilities as owners to exercise stewardship of companies. Corporate governance should provide a framework where both parties can fulfil these responsibilities. (1.1)</p> <p><i>See</i> 1.5 (Hermes supports a standard approach to corporate governance. Hermes welcomes the publication of the Combined Code on Corporate Governance and will normally apply its recommendations. Consideration will also be given to the fuller discussions in the Cadbury, Greenbury and Hampel reports that underlie the Combined Code.).</p> | <p><i>Not covered directly, but see</i> Part 1: Introduction, p. 3 (Whilst these Guidelines are concerned to provide a statement of PIRC's approach to corporate governance best practice, we recognize that the definition of the scope of corporate governance is subject to debate.... [W]e consider that social and environmental reporting, and particularly the disclosure of information on the management of stakeholder relationships, is part of good corporate governance. An essential element of governance is accountability, which itself is dependent on full disclosure.).</p> <p><i>See also</i> draft Executive Summary of the principal recommendations of the Committee (March 31, 1999) at 1 (Corporate Governance is the process and structure used to direct and manage the business and affairs of the company towards enhancing business prosperity and corporate accountability, with the ultimate objective of realizing long-term shareholder value, whilst taking into account the interests of other stakeholders.).</p> |

| OECD Principles/Millstein Report (International) | ICGN Statement/Global Voting Principles (International) | Euroshareholders Guidelines (Pan-European) | EASD Principles and Recommendations (Pan-European) |
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| 2. The Mission of the Board of Directors | | | |
| <p>The corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board’s accountability to the company and the shareholders.</p> <p>A. Board members should act on a fully informed basis, in good faith, with due diligence and care, and in the best interest of the company and the shareholders.</p> <p>B. Where board decisions may affect different shareholder groups differently, the board should treat all shareholders fairly.</p> <p>C. The board should ensure compliance with applicable law and take into account the interests of stakeholders.</p> <p>(OECD Principle V)</p> <p>Together with guiding corporate strategy, the board is chiefly responsible for monitoring managerial performance and achieving an adequate return for shareholders, while preventing conflicts of interest and balancing competing demands.... [It also] implement[s] systems designed to ensure that the corporation obeys applicable laws, including tax, competition, labour, environmental, equal opportunity, health and safety laws. In addition, boards are expected to take due regard of, and deal fairly with, other stakeholder interests including those of employees, creditors, customers, suppliers and local communities. Observance of environmental and social standards is relevant in this context. (OECD Principle V Annotation at 40)</p> | <p><i>The ICGN Statement adopts</i> OECD Principle V (The corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board’s accountability to the company and the shareholders.)</p> <p>Corporate Governance practices should focus board attention on optimizing over time the returns to shareholders. In particular, the company should strive to excel in comparison with the specific equity sector peer group benchmark. (ICGN Statement 8 at 4-5; Preamble to ICGN Amplified OECD Principles at 6)</p> <p>[T]he board is expected to manage successfully its relationships with other stakeholders, <u>i.e.</u>, those with a legitimate interest in the operation of the business, such as employees, customers, suppliers, creditors, and the communities in which the company operates. (Preamble to ICGN Amplified OECD Principles at 6)</p> <p>The ICGN is of the view that the board should be accountable to shareholders and responsible for managing successful and productive relationships with the corporation’s stakeholders. (ICGN Amplified OECD Principle III at 7)</p> | <p>A company should aim primarily at maximizing shareholder value in the long-term. (Recommendation 1)</p> <p>The special relationship which shareholders have with any company in which they participate – that they provide risk-bearing capital – justifies special attention to their interests and their position in general. The return for shareholders consists of dividends and the performance of the share price. The company’s management should aim at maximizing shareholder value in the long-term, in order to ensure an adequate return for shareholders. The focus should therefore be upon long-term growth in the earnings per share, given a certain risk level. (Commentary on Recommendation 1)</p> | <p>Pursuing the long-term interest of the company, boards are agents who perform orientation and monitoring functions for which they are accountable to all shareholders. The board’s working and procedures should facilitate the achievement of these functions. (Principle V)</p> <p>Responsibilities</p> <p>a) Boards are fiduciaries who must act in the interest of the company and its shareholders as a whole, in good faith, with due diligence, care and loyalty, and on an appropriately informed basis.</p> <p>b) Boards are responsible for ensuring that the company’s stakeholders’ rights are respected and their concerns addressed, and that policies in this respect are developed.</p> <p>c) Boards must be capable of exercising objective judgement on the company’s affairs, independently of management and particular interest groups.</p> <p>(Recommendation V.1)</p> <p><i>Note:</i> In the EASD Principles and Recommendations, “the term ‘board’ equally refers to a board of directors or a supervisory board; it does not include management boards such as the <i>Vorstand</i> in Germany.” (Preamble at 8.n.3)</p> |

| Recommendations of Federation of Companies (Belgium) | Dual Code of the BXS/CBF (Belgium) | The Director's Charter (FDA) (Belgium) | (Reserved) |
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| 2. The Mission of the Board of Directors | | | |
| <p>The Board of Directors, which is a collegiate body, must ... exercise effective control over the company and the activities of its Executive Directors. (1.1)</p> <p>A number of decisions must belong to the exclusive competence of the Board of Directors, so that the administration and control of the company remain clearly in the hands of that Board. (1.4)</p> <p>Apart from its legal powers and powers provided for by the Articles, and apart from the powers of the General Meeting, the Board of Directors decides on what is covered by its powers.</p> <p>It is the task of the Board of Directors, on a proposal from the Executive Directors, to determine the strategic objectives of the company and the general policy plan, to appoint the management and to develop structures which will make it possible to achieve these objectives, to supervise the execution of the policy plan and the control of the company, and to give the necessary information to the partners.</p> <p>The Board of Directors also defines the procedures which have to be followed for transactions which are binding on the company, and it defines the cases when the signature of directors is required. It also defines the procedures which have to be followed if decisions have to be taken between two meetings of the Board of directors. (Note to 1.4)</p> <p>The Board of Directors must ensure that an efficient system of internal control is established. (4.5)</p> | <p>It is the duty of the board of directors to manage the company's affairs exclusively in the interests of the company and all its shareholders, within the framework of the laws, regulations and conventions under which the company operates.... The board of directors is responsible for all strategic decisions, for ensuring that the necessary resources are available to achieve the objectives, for appointing and supervising the executive management and, lastly, for reporting to the shareholders on the performance of its duties. (Part I: A.2)</p> <p>In addition to its function of taking the necessary action at strategic level and implementing strategy, the responsibility of the board of directors chiefly relates to the quality of the information it provides to shareholders. (Part I: A.7)</p> <p>The board of directors is the highest authority within the company. In addition to its decisionmaking duties, the board must exercise full and effective control over the company. To that end, it must meet regularly and must be capable of monitoring the executive management. (Part I: B.1.1)</p> <p>Without prejudice to its statutory duties, the board of directors is responsible for defining the strategic objectives and establishing general policy on the basis of proposals submitted by the executive management, appointing the executive management and approving the structures designed to facilitate the achievement of these objectives. It is also the board of directors' task to supervise the implementation of policy and the control of the company and to report to the shareholders. (Part I: B.1.2)</p> | <p>The Director recognizes that it is the role of the Board, upon proposals by the Management, to define the company's missions and values, to lay down its strategic objectives, to appoint the Management, to implement permanent structures allowing for the attainment of its objectives, to ensure the implementation of an operational plan and control of the company, and to furnish the necessary explanations to shareholders.</p> <p>The Director undertakes to verify that the Board effectively controls the company and the activity of the Management. In particular, the Director will be attentive ... [t]hat the Management cooperates fully and without reticence in regards to the Board's goal of control. (p. 4)</p> <p><i>See p. 4</i> (The Director undertakes to employ his or her influence, means of action, and capacities of judgement to lead the company to optimize its value in a sustainable, responsible and fair manner.).</p> <p><i>See also p. 6</i> (The Director undertakes to see to it that the interests of <u>the company and the entirety of its shareholders prevail</u>, in all circumstances, over his or her direct or indirect personal interests.).</p> | |

| Danish Shareholders Ass'n Guidelines (Denmark) | Nørby Report & Recommendations (Denmark) | Chamber of Commerce/Confederation Code (Finland) | Ministry of Trade & Industry Guidelines (Finland) |
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| 2. The Mission of the Board of Directors | | | |
| <p><i>Not covered directly, but see II. Governance, including the following:</i> [M]anagement should try to maximize the company's long-term profitability and share price development.</p> | <p>The board is responsible for carefully safeguarding the shareholders' interests, with due consideration of the other stakeholders. As concerns the managerial division of tasks between the board and the management, the board is assigned with, and responsible for, handling the overall management of the company, as well as supervising and establishing the guidelines for the management's work. One important management task is to develop and establish appropriate strategies for the company. It is important that the board ensures that there is continuous development and follow-up on the necessary strategies in collaboration with the management. (IV)</p> | <p><i>Not covered directly, but see English Summary, 3</i> (The company shall explain the main duties of the Supervisory Board in the Annual Report and in the Listing Particulars.).</p> | <p>The attractiveness of state-owned companies and associated companies as investment objects, as well as the efficiency of the State's ownership steering and control of shareholders, require that the corporate governance schemes of companies are up-to-date. In view of this objective, the Ministry of Trade and Industry recommends that the civil servants that are members of the Boards of Directors of state-owned companies and associated companies pay attention to corporate governance issues so as to solve them in as appropriate a manner as possible in terms of the companies' size and other special conditions. (1)</p> <p>The Board of Directors shall discuss the ways of measuring the profitability of the company's actions. It is essential to make sure that the activities produce economic value-added measured by the <u>economic profit</u> meter or by other corresponding methods. (2.1.2)</p> |

| Viénot I Report (France) | Hellebuyck Commission Recommendations (France) | Viénot II Report (France) | (Reserved) |
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| 2. The Mission of the Board of Directors | | | |
| <p>[W]hatever a board’s membership and procedures may be, its members collectively represent all shareholders and it must at all times put the company’s interest first. (p. 2)</p> <p>[T]he board of directors ... determines the company’s strategy, appoints the corporate officers charged with implementing that strategy, supervises management, and ensures that proper information is made available to shareholders and markets concerning the company’s financial position and performance, as well as any major transactions to which it is a party. (p. 2)</p> <p>[I]n continental Europe, and particularly in France, [emphasis regarding the duties of the board of directors] tends to be on the company’s interest...</p> <p>The interest of the company may be understood as the overriding claim of the company considered as a separate economic agent, pursuing its own objectives which are distinct from those of shareholders, employees, creditors including the internal revenue authorities, suppliers and customers. It nonetheless represents the common interest of all these persons, which is for the company to remain in business and prosper.</p> <p>The Committee thus believes that directors should at all times be concerned solely to promote the interests of the company. (p. 5)</p> <p>The Committee believes that while it is the Chairman’s role to draw up and propose a strategy, this must be adopted by the board. By virtue of the same principle, it must consider and decide on all strategically important decisions. (p. 8)</p> | <p>The Board of Directors is a strategic decision-making body whose choices affect the future of the company and involve the responsibility of its members. Its actions must be governed by openness, accountability and effectiveness. (§ II)</p> <p>The Commission takes the view that, to the degree the Board of Directors is responsible to all shareholders, it must act over time in the interest and on behalf of all. It is recommended that its strategy and action fall within the framework of the company’s sustainable development. (§ II.A.1)</p> | <p><i>Not covered.</i></p> | |

| Berlin Initiative Code (Germany) | German Panel Rules (Germany) | Cromme Commission Code (Germany) | (Reserved) |
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| 2. The Mission of the Board of Directors | | | |
| <p><u>Supervisory Board</u> The Supervisory Board plays an important role ... with its selection and supervision of the Management Board. It does not, however, have any managerial function. (Thesis 6)</p> <p>The Supervisory Board serves as supervisory authority which controls and advises the Management Board in the sense of “checks and balances.” In this, it is not on an equal footing next to, or even above, the Management Board. The Supervisory Board serves rather as a counterweight to the Management Board which can and should limit, but normally neither counterbalances nor outweighs, the influence of the organ of management on the destiny of the company.” (Commentary on Thesis 6; <i>see</i> Code, I.6)</p> <p><i>See</i> Code, I.7([A] supporting significance attaches to the standards for supervision.).</p> <p><u>Management Board</u> The Management Board ... forms the company’s clear locus of decision-making. (Code, I.6)</p> <p>The Management Board leads the public corporation. (Code, III.1.1)</p> <p>Decisions of fundamental importance for the company (basic decisions) are the responsibility of the Management Board as a whole. (Code, III.3.4)</p> <p><i>See</i> Code, I.2 (The target of company management is the sustained increase in the value of the company.).</p> <p><i>See also</i> Code, III (Governance Standards for the Management Board).</p> <p><i>See also</i> Thesis 5 (The Management Board stands at the centre of the ... guidelines.).</p> | <p><u>Supervisory Board</u> The Supervisory Board advises the Management Board on a regular basis regarding the management of the Company and the Group, and monitors the achievement of long-term corporate goals (monitoring: § 111 German Stock Corporation Act). (Code, III.2.a)</p> <p><u>Management Board</u> The Management Board develops the strategy for the Group in consultation with the Supervisory Board and is responsible for its implementation. (Code, II.1.b)</p> <p>The Management Board shall inform the Supervisory Board on a regular basis, in good time and comprehensively, about all relevant matters regarding business development, risk exposure and risk management of the company and major group subsidiaries. (Code, II.2.e)</p> | <p><u>Supervisory Board</u> The Supervisory Board appoints, supervises and advises the members of the Management Board and is involved in decisions which are of fundamental importance to the enterprise....</p> <p>Both the representatives elected by the shareholders and representatives of the employees are equally obligated to act in the enterprise’s interests. (§I)</p> <p><u>Management Board</u> The Management Board is responsible for independently managing the enterprise. The members of the Management Board jointly are accountable for management of the enterprise. (§I)</p> <p>The Management Board coordinates the enterprise’s strategic approach with the Supervisory Board and discusses the current state of the strategy implementation with the Supervisory Board in regular intervals. (§III.2)</p> <p>The Management Board is responsible for independently managing the enterprise. In doing so, it is required to act in the enterprise’s interests and undertakes to increase the sustainable value of the enterprise. (§IV.1.1)</p> <p>The Management Board develops the enterprise’s strategy, coordinates it with the Supervisory Board and ensures its implementation. (§IV.1.2)</p> | |

| Mertzanis Report (Greece) | Federation of Greek Industries Principles (Greece) | IAIM Guidelines (Ireland) | Preda Report (Italy) |
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| 2. The Mission of the Board of Directors | | | |
| <p>The Board of Directors is the authority that governs the corporation. Its duties involve decision-making and the responsibility for exercising full and efficient monitoring of all activities of the corporation. (Recommendation 5.1)</p> <p><i>See</i> Introduction (The Board has the responsibility to deal with the corporation's affairs exclusively in the interests of the corporation and its shareholders within the existing regulatory framework. The Board has the main responsibility for ensuring the establishment of efficient governance rules and must be accountable to the general shareholders meetings for its activities and performance. The Board has the main responsibility for setting the corporation's long-term goals and making all strategic decisions, making available all required resources for the achievement of strategic goals as well as the appointment and supervision of management.).</p> <p><i>See also</i> Recommendation 5.2 (In the case where the decisions of the Board of Directors may affect the different classes of shares in a different manner, the Board of Directors should treat all shareholders without discrimination.).</p> | <p>The primary task of the board of directors is the protection and promotion of the company's interests and the continuous returns reflected in a long-term improvement of the company's share value. (§2.4)</p> <p><i>See</i> §2.2 (The company's decisions are, as a starting point, decisions of the board of directors acting collectively. This provides all board members with the opportunity to exercise an active role in the company's management, with the further possibility, through powers granted in particular to executive members, to implement the objectives and guidelines of the board.).</p> | <p><i>Not covered directly, but the</i> IAIM Guidelines <i>adopt the</i> Combined Code. <i>See</i> the Combined Code, Principle A.1 (Every listed company should be headed by an effective board which should lead and control the company.).</p> | <p>Listed companies are governed by a board of directors ... that adopts an organization and modus operandi enabling it to guarantee effective and efficient performance of its functions. (Code 1.1)</p> <p>The Committee believes that the primary responsibility of the board of directors of a listed company is to set the company's strategic objectives and to ensure they are achieved. (Commentary on Code, 1.1)</p> <p><i>See</i> Commentary on Code, 5 ([T]he board of directors is required by law to inform the board of auditors.).</p> <p><i>See also</i> Report, 5.1 ([T]he fundamental feature [of the Code] is the central position of the board of directors, charged with providing strategic and organisational guidance and verifying the existence of the controls needed to monitor companies' performance.).</p> |

| Peters Report (The Netherlands) | VEB Recommendations (The Netherlands) | SCGOP Handbook and Guidelines (The Netherlands) | Securities Market Comm'n Recommendations (Portugal) |
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| 2. The Mission of the Board of Directors | | | |
| <p><u>Supervisory Board</u> In accordance with the law, the Supervisory Board, in performing its duties, is bound by the interests of the company and the enterprise connected therewith. It is responsible for the supervision of management policy and the general course of affairs in the company. Under the full 'structure regime,' the Supervisory Board is responsible for appointments to the Board of Directors. (Recommendation 2.1)</p> <p><u>Management Board</u> The [Management Board] is responsible for the management of the company, which implies, <i>inter alia</i>, that [it] is responsible for realizing the company's objectives, the strategy and policy, and the ensuing development of results. (Recommendation 4.1)</p> <p>The [Management Board] should report in writing to the Supervisory Board on the company's objectives, strategy and the associated risks of a financial nature. (Recommendation 4.2)</p> <p>There are no conceivable circumstances which can justify any relaxation of the principle that the management should be fully accountable to the providers of risk capital. (Recommendation 5.1)</p> | <p><i>Not covered directly, but see</i> Recommendation 1 (Companies should maximize shareholders value in the long run, on the condition that other stakeholders are treated in a reasonable and responsible way.).</p> <p><i>See also</i> Commentary on Recommendation 1 (More and more companies put 'creating shareholders value' first and focus on growth of earnings per share, also concerning acquisitions and dividend policy. With cyclical business in particular, creating value is underexposed, and continuance of existing – often unsatisfactory yielding – activities prevails.).</p> | <p><u>Supervisory Board</u> The supervisory board is the body that, in keeping with the interests of shareholders, must watch over the actions of the executive board and general developments at the company and its holding company. (Guideline 13)</p> <p>The supervisory – or non-executive – board regulates the management board. (Handbook, p. 8)</p> <p>For the Netherlands, the difference between the so-called one- and two-tier systems is important. "Two-tier" means that a separate organ – the supervisory board – supervises the management or executive board...</p> <p>The Netherlands has a "two-tier" system. In the Netherlands, investors are forced to put their trust first and foremost in the supervisory board to keep good watch over the management board of a company. (Handbook, p. 9)</p> <p><u>Management Board</u> The management – or executive – board is responsible for management of the company. (Handbook, p. 8)</p> | <p>[T]he board exercise[s] effective control in its guidance of the company, reserving decisions on important matters. To pursue this objective, it should ... ensure the supervision of the management of the company. (Commentary on Recommendation 14)</p> |

| Olivencia Report (Spain) | Swedish Shareholders Ass'n Policy (Sweden) | ICSA Code (United Kingdom) | ISC Statement of Best Practice (United Kingdom) |
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| 2. The Mission of the Board of Directors | | | |
| <p>The Board of Directors should take charge of the general function of supervision as its core mission, directly carrying out – not delegating – the responsibilities it entails and drawing up a formal schedule of matters specifically reserved for its knowledge. (Code, Recommendation 1)</p> <p>[The] Committee considers that the general function of supervision is the most genuine function of the Boards of Directors of listed companies. Within this function, the Committee separates three basic responsibilities: guiding the company's policies and strategies, controlling management, and liaising with shareholders. (Report, 1.1)</p> <p>[W]e recommend establishing, as an ultimate corporate goal, and consequently as a criterion that must rule the performance of the Board of Directors, the maximisation of corporate value or, to use an expression that has taken root in the market, the creation of shareholder value.... (Report, 1.3)</p> | <p>The administration of the company's business affairs is entrusted to the board by the general meeting. The board in turn appoints the company's managing director, who is responsible for the day-to-day administration of the company. (Guideline 2)</p> <p>The members of the board shall act with great thoroughness and care in the best interests of the company and all the shareholders. (Guideline 2.2)</p> <p>The owners should ensure that the board takes responsibility for:</p> <ul style="list-style-type: none"> § the shaping and development of the strategic leadership of the company; § the business idea, goals, risk policy, budgets and business plans, as well as deciding on major investments, acquisitions, and divestitures; § the appointment and, if necessary, replacement, of management and supervision, as well as compensation and reward of the company's leadership, in the first place the managing director and that person's deputy; § ensuring that the company's internal and external accounting and auditing fulfils the highest demands in regard to, among other things, audit, control and risk management; § ensuring that communication between the company's owners and other stakeholders is characterized by openness and correctness; § ensuring that an annual evaluation is carried out of the board's and the individual board members' contribution to the board. <p>(Guideline 2.2)</p> | <p><i>Not covered directly, but see Topic Heading 4, below.</i></p> | <p>All directors have an equal responsibility in helping to provide their company with effective guidance and leadership and it is recognized that they must ... act at all times entirely in the best interests of the company. (p. 1)</p> <p><i>See Topic Heading 4, below.</i></p> |

| Cadbury Report (United Kingdom) | Greenbury Report (United Kingdom) | Hampel Report (United Kingdom) | The Combined Code/Turnbull Report (United Kingdom) |
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| 2. The Mission of the Board of Directors | | | |
| <p>The board should ... retain full and effective control over the company and monitor the executive management. (Code, 1.1)</p> <p>[B]oards ... must be free to drive their companies forward, but exercise that freedom within a framework of effective accountability. (Report, 1.1)</p> | <p>It is a well-established principle of corporate governance in the UK that Boards of Directors are responsible and accountable to shareholders for all aspects of a company's affairs. (Commentary on Remuneration Committees, 4.3)</p> | <p>Every listed company should be headed by an effective board which should lead and control the company. (Principle A.1)</p> <p>The board should maintain a sound system of internal control to safeguard shareholders' investment and the company's assets. (Principle D.II)</p> <p>The single overriding objective shared by all listed companies, whatever their size or type of business, is the preservation and the greatest practicable enhancement over time of their shareholders' investment. All boards have this responsibility and their policies, structure, composition and governing processes should reflect this. (Guideline 1.16)</p> <p>The prime responsibility of the board of directors is to determine the broad strategy of the company and to ensure its implementation. To do this successfully requires high-quality leadership. It also requires that the directors have sufficient freedom of action to exercise their leadership. (Guideline 3.11)</p> | <p>Every listed company should be headed by an effective board which should lead and control the company. (Principle A.1)</p> <p>The board should maintain a sound system of internal control to safeguard shareholders' investment and the company's assets. (Principle D.2)</p> <p>The directors should, at least annually, conduct a review of the effectiveness of the group's system of internal control and should report to shareholders that they have done so. The review should cover all controls, including financial, operational and compliance controls, and risk management. (Code §1, D.2.1)</p> |

| NAPF Corporate Governance Code (United Kingdom) | AUTIF Code (United Kingdom) | Hermes Statement (United Kingdom) | PIRC Shareholder Voting Guidelines (United Kingdom) |
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| 2. The Mission of the Board of Directors | | | |
| <p><i>Not covered directly, but see §1 (An effective board is essential to lead and control each listed company. One of the major duties of the board is to agree [on] corporate strategy ... as well as monitoring performance and risk.).</i></p> <p><i>See also §2 (An effective board is essential to deliver shareholder value.).</i></p> <p><i>See also Topic Heading 4, below.</i></p> | <p>Principle D.2 [of the Combined Code] states that the board should maintain a sound system of internal control to safeguard shareholders' investment and the company's assets. Code Provision D.2.1 recommends an annual review by the directors of the company's effectiveness of internal controls, with a report to shareholders. This review should cover financial, operational and compliance controls, and risk management. (Guidance Note on Key Principle 6)</p> | <p>Directors of public companies are responsible for running companies in the long-term interests of shareholders. (1.1)</p> | <p>The role of the board is to lead and control the business. It should establish corporate strategy, set appropriate policies for its implementation, ensure reporting and decision-making procedures are effective, select and monitor key executives, manage potential conflicts of interest for the executives, manage relations with stakeholders, determine risk management systems and hold the executives accountable for their actions. (Part 2: Directors, p. 4)</p> |

| OECD Principles/Millstein Report (International) | ICGN Statement/Global Voting Principles (International) | Euroshareholders Guidelines (Pan-European) | EASD Principles and Recommendations (Pan-European) |
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| 3. The Role of Stakeholders | | | |
| <p>The corporate governance framework should recognize the rights of stakeholders as established by law and encourage active cooperation between corporations and stakeholders in creating wealth, jobs, and the sustainability of financially sound enterprises.</p> <p>A. The corporate governance framework should assure that the rights of stakeholders that are protected by law are respected....</p> <p>B. Where stakeholder interests are protected by law, stakeholders should have the opportunity to obtain effective redress for violation of their rights....</p> <p>C. The corporate governance framework should permit performance-enhancing mechanisms for stakeholder participation....</p> <p>D. Where stakeholders participate in the corporate governance process, they should have access to relevant information.... (OECD Principle III)</p> <p>The board should ... take into account the interests of stakeholders. (OECD Principle V.C)</p> <p>Boards are expected to take due regard of, and deal fairly with ... stakeholder interests including those of employees, creditors, customers, suppliers and local communities. (OECD Principle V Annotation at 40)</p> <p><i>See</i> OECD Preface at 6 (<i>business ethics, corporate awareness of environmental and societal interests</i>).</p> <p><i>See</i> Millstein Report, 1.2.16 (Corporate success is linked to the ability to align the interests of directors, managers and employees with the interests of shareholders.... [C]orporate actions must be compatible with societal objectives.... Attending to legitimate social concerns should, in the long run, benefit all parties, including investors.)</p> | <p>The overriding objective of the corporation should be to optimize over time the returns to its shareholders. Where other considerations affect this objective, they should be disclosed. To achieve this objective, the corporation should ... manage effectively its relationships with stakeholders. (ICGN Statement 1 at 3)</p> <p>Boards that strive for active cooperation between corporations and stakeholders will be most likely to create wealth, employment and sustainable economies. They should disclose their policies on issues involving stakeholders, for example, workplace and environmental matters. (ICGN Statement 9 at 5)</p> <p>[T]he board is expected to manage successfully its relationships with other stakeholders, <i>i.e.</i>, those with a legitimate interest in the operation of the business such as employees, customers, suppliers, creditors, and the communities in which the company operates. (ICGN Amplified OECD Principles, Preamble at 6)</p> <p>The ICGN is of the view that the board should be accountable to shareholders and responsible for managing successful and productive relationships with the corporation's stakeholders. The ICGN concurs with the OECD Principle that "active cooperation between corporations and stakeholders" is essential in creating wealth, employment and financially sound enterprises over time.</p> <p>The ICGN affirms that performance-enhancing mechanisms promote employee participation and align shareholder and stakeholder interests. These include broad-based employee share ownership plans or other profit-sharing programs. (ICGN Amplified OECD Principle III at 7)</p> | <p><i>Not covered.</i></p> | <p>[C]orporate governing organs should be accountable to the shareholders, the more so since they are the residual bearers of risk of the company as owners of its equity. However, company organs should also be responsible for properly addressing the concerns of other legitimate stakeholders. Such attention evidently promotes the best interests of the company itself in the long term. (Preamble at 2)</p> <p>[I]n certain instances, founders and controlling blockholders may and do consider other objectives to override shareholder return maximisation, such as social, economic and environmental contributions in general or to the area where the company is located.... [T]hese must be properly disclosed and explained. (Preamble at 5)</p> |

| Recommendations of Federation of Companies (Belgium) | Dual Code of the BXS/CBF (Belgium) | The Director's Charter (FDA) (Belgium) | (Reserved) |
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| 3. The Role of Stakeholders | | | |
| <i>Not covered.</i> | <p>Transparency is the basis on which trust between the company and its stakeholders is built, notwithstanding the constraints imposed on the company by its competitive environment. Transparency is conducive to the company's effectiveness, because it allows the board of directors to act promptly when necessary. (Part I: A.7)</p> | <p>The Company Director, in the Exercise of His Functions, Undertakes to ... [t]ake into account the legitimate expectations of all the company's partners (the community, clients, executives, employees, suppliers and creditors). (p. 2)</p> <p>The Director recognizes that the company and its various partners have, beyond their contractual engagements, formed relationships of trust and contracted reciprocal moral obligations, and that, if the Director must first and foremost protect the interests of the company and its shareholders, the Director cannot ignore that it is in the company's interests to maintain these relationships and reciprocal moral obligations.</p> <p>The Director undertakes to see to it that the company's management is aware of the interests, views, and expectations of its partners; that procedures are implemented to manage these relationships, and that proper and periodic communication is exchanged with these partners.</p> <p>The Director undertakes to encourage the Board to take into account in its decisions, in view of the long-term interests of the company, the impact of these decisions on the environment, on social relations, on rules of competition, and on consumer protection. (p.5)</p> | |

| Danish Shareholders Ass'n Guidelines (Denmark) | Nørby Report & Recommendations (Denmark) | Chamber of Commerce/Confederation Code (Finland) | Ministry of Trade & Industry Guidelines (Finland) |
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| 3. The Role of Stakeholders | | | |
| <p>Given a reasonable treatment of other stakeholders, management should try to maximise the company's long-term profitability and share price development – excess capital should be paid back to the shareholders. (II. Governance)</p> <p><i>See</i> III. Motivating Programmes (At emissions [sic] proposed to the employees: § motivating programmes should in total not [dilute] share capital by more than 5%; § only employees presently working in the company should profit; § the shareholders should be well informed about such projects prior to the shareholder meeting deciding upon it; § the auditors should carefully evaluate such programmes and answer all questions at the shareholders meeting; § other motivating programmes may also be of a nature to be voted upon at a shareholder meeting.)</p> | <p>It is decisive for a company's prosperity and future possibilities that the company has a good relationship with its stakeholders. Stakeholders are everyone who are directly affected by the company's decisions and business. Thus, it is desirable that the company's management runs and develops the company with due consideration of its stakeholders, and that the management provides an incentive for a dialogue with these.</p> <p>A successful interaction between the company and its stakeholders implies openness and mutual respect. (II)</p> <p>It is recommended that the board adopts a policy regarding the company's relationship with its stakeholders which, for instance, could include the company's business concept and its basic values and objectives. One element of such a policy could be the guidelines for the company's information about environmental and social issues, for example. (II.1)</p> <p>It is recommended that the board ensures that the interests and roles of the stakeholders are respected in accordance with the company's policy regarding this. As part of performing this, it is natural that the board ensures that there is an ongoing dialogue between the management and the company's stakeholders, in order to develop and strengthen the company. (II.2)</p> <p>Openness and transparency are essential conditions for ensuring that the company's shareholders and other stakeholders are able to continuously evaluate and relate to the company and its prospects, and through this, openness and transparency can contribute to a constructive interaction with the company. (III)</p> | <p><i>Not covered.</i></p> | <p>In the annual report or the relating environmental audit, an account of the measures implemented should be given in order to take account of <u>environmental values</u> in the business of the company. (2.1.2)</p> <p><i>See</i> 2.3.2 (In order to define the owner role of the State, the annual report shall mention the possible commitment of the State to the responsibilities of the company concerned in addition to the share capital investment. As the Finnish Government has not assumed such responsibilities, it is justified to mention this separately, especially in view of foreign investors.)</p> |

| Viénot I Report (France) | Hellebuyck Commission Recommendations (France) | Viénot II Report (France) | (Reserved) |
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| 3. The Role of Stakeholders | | | |
| <p>French law provides for the attendance of works council (<u>comité d'entreprise</u>) representatives at board meetings, where they have a consultative vote, and allows for full board membership of representatives of employees (by ministerial order of 1986) or of employee shareholders (under legislation dated 1994). (p. 12)</p> <p><i>See p. 5</i> (The interest of the company may be understood as ... distinct from those of shareholders, employees, creditors ..., suppliers and customers. It nonetheless represents the common interest of all of these persons, which is for the company to remain in business and prosper.).</p> | <p><i>Not covered directly, but see § II.D.5</i> (It is recommended that a charter consisting of a kind of director's code of professional conduct ... include ... the obligation ... to abide by ethical standards applying to company employees regarding transactions in company shares....).</p> | <p><i>Not covered.</i></p> | |

| Berlin Initiative Code (Germany) | German Panel Rules (Germany) | Cromme Commission Code (Germany) | (Reserved) |
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| 3. The Role of Stakeholders | | | |
| <p>Company management must sensibly balance the interests of the various stakeholders of the company. (Thesis 8)</p> <p>Among those with an interest in the public corporation are principally the owners (stockholders), but also employees, customers, loan creditors and suppliers, as well as the public at large.... [P]articular significance attaches to stockholders as the providers of risk capital. (Commentary on Thesis 8; see Code, I.3)</p> <p>[D]istinctive of the constitution of German companies is ... inclusion of employees by means of various forms of participation (co-determination). (Code, I.4)</p> <p>The Management Board should be aware of social responsibility to a reasonable extent.... (Code, III.1.4)</p> <p>The Supervisory Board should ... be aware of social responsibility to a reasonable extent.... (Code, IV.1.4)</p> <p>Co-determination at plant level, according to the Labour-Management Relations Act, is carried out in individual company plants.... Employees elect a works council in every plant with at least five employees. (Code, V.2.2)</p> <p>[E]mployees elect either one-third or one-half of the members of the Supervisory Board, depending on the size of the corporation. They thus participate in all responsibilities of this organ. The one-third equal footing co-determination applies according to Labour-Management Relations Act 1952 to all corporations with at least 500 but fewer than 2,000 employees, and parity co-determination according to the Co-determination Act 1976 in companies with a workforce exceeding 2,000. (Code, V.2.3)</p> <p><i>See generally</i> Code, V.2 (<i>employee co-determination</i>).</p> | <p><i>Not covered directly, but see</i> Code, I ([M]andatory law [covers] election of members of the Supervisory Board (§ 101). Supervisory Board members representing employees are sometimes legally mandated in the process known as co-determination.)</p> <p><i>See also</i> Code, I (Corporate Governance Rules promote and reinforce the confidence of current and future shareholders, lenders, employees, business partners and the general public in national and international markets.).</p> | <p>For enterprises with more than 500 or 2000 employees respectively in Germany, employees are represented in the Supervisory Board, which then is composed of employee representatives to one-third or to one-half. (§I)</p> <p><i>See</i> §I ([The Code's] purpose is to promote the trust of international and national investors, customers, employees and the public in the management and supervision of exchange-listed German stock corporations.).</p> | |

| Mertzanis Report (Greece) | Federation of Greek Industries Principles (Greece) | IAIM Guidelines (Ireland) | Preda Report (Italy) |
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| 3. The Role of Stakeholders | | | |
| <p><u>The corporate governance framework should recognize the rights of stakeholders in the corporation, as established by law, and encourage active participation between corporations and stakeholders in creating wealth, jobs and the sustainability of financially sound enterprises.</u> (Principle 3)</p> <p>The corporate governance framework should ensure that the rights of stakeholders that are protected by law are respected. (Recommendation 3.1)</p> <p>Where law protects stakeholder interests, stakeholders should have the opportunity to seek effective redress for violation of their rights. (Recommendation 3.2)</p> <p>The corporate governance framework should encourage the role of stakeholders in the corporation in a manner that enhances the performance of the corporation and the market. There should be provision for the disclosure of information which is relevant to the interests of stakeholders. (Recommendation 3.3)</p> <p>Where stakeholders participate in the corporate governance processes, they should have access to relevant information. (Recommendation 3.4)</p> <p>See Recommendation 1.7 (The solution of problems and the settlement of differences among the corporation's agents [i.e., parties-in-interest including stakeholders] is encouraged to be done by consensus, taking into account the long-term interests of the corporation.).</p> | <p><i>Not covered directly, but see</i> §1.1 (Corporate governance is a system of principles providing a basis for the organization, operation and management of a public limited liability company (or "A.E."), in a manner that ensures the protection and satisfaction of the legitimate interests of all persons linked to the company in the framework of the company's interests.).</p> <p><i>See also</i> §1.2 (Corporate governance aims at serving, on a continuous basis, the company's interests, which are a combination of the interests of the company as a distinct legal entity and the legitimate interests of all stakeholders linked to that company.).</p> <p><i>See also</i> §1.5 (The principles and procedures of corporate governance are reflected in the overall structure and operation of the company, and apply to its administrative bodies (the board of directors and the shareholders' assembly), as well as the manner in which these are structured and operate, but also the more general lines of communication between the company's different stakeholders.).</p> | <p><i>Not covered directly, but see:</i></p> <ul style="list-style-type: none"> § Guidelines 11 & 13 (<i>employee participation in Long Term Incentive Schemes (LTISs)</i>); § Guideline 19 (<i>Profit Sharing Schemes (PSSs)</i>); § Guideline 20 (<i>Save As You Earn (SAYE) schemes</i>); and <p>Guideline 21 (<i>Employee Share Ownership Plans (ESOPs)</i>).</p> | <p>The Committee has identified the maximisation of shareholder value as the primary objective of good Corporate Governance, considering that, in the longer term, the pursuit of this goal can give rise to a virtuous circle in terms of efficiency and company integrity, with beneficial effects for other stakeholders – such as customers, creditors, consumers, suppliers, employees, local communities and the environment – whose interests are already protected in the Italian legal system. (Report, 4)</p> |

| Peters Report (The Netherlands) | VEB Recommendations (The Netherlands) | SCGOP Handbook and Guidelines (The Netherlands) | Securities Market Comm'n Recommendations (Portugal) |
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| 3. The Role of Stakeholders | | | |
| <p>[Companies] must seek a good balance between the interests of the providers of risk capital (investors) and the other stakeholders. In the long-term, this should not mean a conflict of interests. (Recommendation 1.1)</p> <p>The company is accountable to its various stakeholders.... (Recommendation 1.1)</p> <p>Supervisory Board members [should ensure] ... a division of duties and responsibilities and powers effecting the satisfactory balance of influence of all the stakeholders. The basic principle here is that members of the [Management Board] and Supervisory Board members should – also in public – be accountable for their conduct. (Recommendation 1.2)</p> <p>See Recommendation 4.6 (<i>employee stock option plan</i>).</p> | <p>Companies should maximise shareholders value in the long run, on the condition that other stakeholders are treated in a reasonable and responsible way. (Recommendation 1)</p> | <p>The works council can advise management. (Handbook, p. 8)</p> <p>See Handbook, p. 27 (Corporate governance and socially responsible investing are subjects that are not directly linked. But since both concepts are often intertwined, it's important to point out the differences clearly. The corporate governance policy of pension funds is focused on improving the risk/reward relationship of share investments. The term socially responsible investing is applied to investments that follow criteria other than just financial return.</p> <p>In early 2001, the Social Economic Council (SER) published advice on socially responsible business entitled "The profit of values". In a paragraph on the investment policy of pension funds, the SER does not link socially responsible investing to corporate governance. The SER says it assumes that employers organisations and labor unions, "given their direct or indirect involvement in the policy of pension funds, are well placed to promote socially responsible investment policy at pension funds – of course all within the framework of the pension and savings fund law". It has been agreed to discuss this matter in the context of the 'Stichting van de Arbeid', the forum where these representative organisations meet.</p> <p>SCGOP does not consider socially responsible investing one of its subject areas either. Corporate governance policy is of course aimed at paying closer attention to the wishes of shareholders. If a majority of shareholders wanted companies to be more socially responsible, a company with a good corporate governance structure would be more receptive than one without.</p> <p>In this way, the attention pension funds give to corporate governance will contribute to the creation of a climate in which the case for socially responsible investing – like that to be formulated by the 'Stichting van de Arbeid', has a greater chance of succeeding.).</p> | <p><i>Not covered.</i></p> |

| Olivencia Report (Spain) | Swedish Shareholders Ass'n Policy (Sweden) | ICSA Code (United Kingdom) | ISC Statement of Best Practice (United Kingdom) |
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| 3. The Role of Stakeholders | | | |
| <p><i>Not covered.</i></p> | <p>For personnel not covered by existing legislation concerning security of employment, it would appear that there is generally a need for special employment contracts. These agreements should regulate, among other things, the conditions that apply if the company wishes to rapidly remove people from employment. Examples of other similar situations are cases when the corporate leadership has the right to terminate employment contracts on account of a changed ownership relationship. (Guideline 2.4.1)</p> <p>All stakeholders need information so they can form an opinion of the company's financial standing and development, thereby giving them a basis for a true evaluation of the company's stock. This information must therefore be open, correct, relevant and current, and its contents must be clear, true and fair. (Guideline 4)</p> <p><i>See</i> Guideline 2.2 (The owners should ensure that the board takes responsibility for ... ensuring that communication between the company's owners and other stakeholders is characterized by openness and correctness.).</p> <p><i>See also</i> Guideline 3, Incentive Programmes, including 3.7 (The purpose ... is that the employees become shareholders in the company.).</p> | <p><i>Not covered.</i></p> | <p>The Companies Act 1985 states inter alia that "the matters to which the directors of a company are to have regard in the performance of their functions include the interests of the company's employees in general, as well as the interests of its members."</p> <p>The ISC considers it important that this onus placed on directors by the Companies Act should not be overlooked. Directors should appreciate the significance of the role played in a company's progress by its workforce and should always consider the interests of all those involved in working together to improve their company's performance. (p. 5)</p> |

| Cadbury Report (United Kingdom) | Greenbury Report (United Kingdom) | Hampel Report (United Kingdom) | The Combined Code/Turnbull Report (United Kingdom) |
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| 3. The Role of Stakeholders | | | |
| <p><i>Not covered directly, but see Report, 2.7</i> (Although the reports of the directors are addressed to the shareholders, they are important to a wider audience, not least to employees whose interests boards have a statutory duty to take into account.)</p> <p><i>See also Report, 3.2</i> (Openness on the part of companies, within the limits set by their competitive position, is the basis for the confidence which needs to exist between business and all those who have a stake in its success.)</p> <p><i>See also Report, 4.29</i> (It is important that all employees should know what standards of conduct are expected of them. We regard it as good practice for boards of directors to draw up codes of ethics or statements of business practice and to publish them both internally and externally.)</p> <p><i>See also Report, 4.50</i> (What shareholders (and others) need from the report and accounts is a coherent narrative, supported by the figures, of the company's performance and prospects. We recommend that boards should pay particular attention to their duty to present a balanced and understandable assessment of their company's position.)</p> | <p><i>Not covered.</i></p> | <p>Good governance ensures that constituencies (stakeholders) with a relevant interest in the company's business are fairly taken into account (Guideline 1.3)</p> <p>[T]he directors' relationship with shareholders is different in kind from their relationship with other stakeholder interests. The shareholders elect the directors.... [D]irectors as a board are responsible <u>for relations with</u> stakeholders, but they are accountable <u>to</u> the shareholders. This is not simply a technical point. From a practical point of view, to redefine directors' responsibilities in terms of stakeholders would mean identifying all the various stakeholder groups and deciding the nature and extent of the directors' responsibility to each. The result would be that the directors were not effectively accountable to anyone since there would be no clear yardstick for judging their performance. This is a recipe neither for good governance nor for corporate success. (Guideline 1.17)</p> <p>As regards stakeholders, different types of company will have different relationships, and directors can meet their legal duties to shareholders, and can pursue the objective of long-term shareholder value successfully, only by developing and sustaining these stakeholder relationships. We believe that shareholders recognize that it is in their interests for companies to do this and – increasingly – to have regard to the broader public acceptability of their conduct. (Guideline 1.18)</p> | <p><i>Not covered directly by the Combined Code, but see the Turnbull Report, APPENDIX, 2, Control environment and control activities</i> (Does the company communicate to its employees what is expected of them, and the scope of their freedom to act? This may apply to areas such as customer relations; service levels for both internal and outsourced activities; [and] health, safety and environmental protection.)</p> <p><i>See also the Turnbull Report, APPENDIX, 4, Monitoring</i> (Are there ongoing processes embedded within the company's overall business operations, and addressed by senior management, which monitor the effective application of the policies, processes and activities related to internal control and risk management? (Such processes may include ... confirmation by personnel of compliance with policies and codes of conduct.))</p> <p><i>See also Turnbull Report, APPENDIX, 1</i> (Are the significant internal and external operational, financial, compliance and other risks identified and assessed on an ongoing basis? (Significant risks may, for example, include those related to market, credit, liquidity, technological, legal, health, safety and environmental, reputation, and business probity issues).</p> |

| NAPF Corporate Governance Code (United Kingdom) | AUTIF Code (United Kingdom) | Hermes Statement (United Kingdom) | PIRC Shareholder Voting Guidelines (United Kingdom) |
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| 3. The Role of Stakeholders | | | |
| <p>The NAPF supports all-employee share schemes because they serve to align the interests of both employees and companies. Any such schemes should be assessed by the investor, particularly those affecting the dilution of existing shareholdings and the grant of options at a discount to market price. (§20(i))</p> <p><i>See</i> §24 ([P]ension fund trustees are now required, under Pensions Act regulation, to state in the SIP [Statements of Investment Principles] the extent, if at all, that social, environmental and ethical considerations are taken into account in connection with their investment strategy.</p> <p>Over time, this requirement is likely to have a significant impact on UK governance practices as institutional investors seek to establish the extent and nature of corporate activity in these areas in order that their impact on long-term shareholder value can be better assessed. At the same time, boards of directors will increasingly incorporate these concepts into corporate strategy and companies will strive to respond to investor concerns.</p> <p>Companies should now ensure that they report to shareholders on these developments.).</p> <p><i>See</i> §20(ii) (All-employee share schemes and dilution limits).</p> | <p><i>Not covered directly, but see</i> Key Principle 9 (Where member firms have a policy on wider issues affecting the companies in which they invest, such as attitudes towards environmental or social issues, or on donations to political parties, AUTIF encourages firms to disclose this to investors.).</p> <p><i>See also</i> Guidance Note on Key Principle 6.D.3 (Member firms may wish to take into account the policy of the companies in which they invest towards environmental and social issues and on political donations.).</p> | <p>A company run in the long-term interests of its shareholders will need to manage effectively relationships with its employees, suppliers, and customers, to behave ethically and to have regard for the environment and society as a whole. (1.2)</p> <p>These guidelines are intended to assist the companies in which Hermes invests on behalf of its clients meet the concerns of those clients on social, environmental and ethical (SEE) matters. These guidelines reflect both the need for pension fund trustees to take SEE matters into consideration in investing the funds entrusted to them and the disclosure recommendations of the Turnbull Report on financial and non-financial risks. They are intended to compliment existing standards.... Underlying these guidelines is an assumption that the effective management of the risks associated with SEE matters can lead to long-term financial benefits for the companies concerned. (APPENDIX 4, Introduction)</p> <p><i>See generally</i> APPENDIX 4: GUIDELINES FOR REPORTING ON SOCIAL, ENVIRONMENTAL AND ETHICAL MATTERS.</p> | <p>Our pension fund clients in particular are ... developing socially responsible investment strategies.... The extent to which [such] considerations are taken into account by pension fund investors, and whether such concerns should be expressed through a voting policy, is currently under debate.... PIRC is an active participant in this debate and has launched our Socially Responsible Investment Service, which provides profiles and ratings of companies' policies and practices on stakeholder issues. (Part 1: Introduction, p. 3)</p> <p>Remuneration structures should reward the efforts of all staff since a motivated and well-rewarded workforce is an important component of company performance.... Companies should have bonus and incentive structures which reward all employees for business success.... (Part 3: Directors' Remuneration, p. 11)</p> <p>Although the prime focus is on the board and accountability to shareholders, directors should identify their key stakeholders, and should report on and be held accountable for the quality of these relationships since they underpin long-term business success.... [C]ompanies should identify their key stakeholder relationships and adopt an appropriate format to report on each. Specifically in relation to stakeholder issues, companies should disclose policies for managing relationships, lines of accountability, methods and scope of engagement, performance targets and measurement systems, and any external independent verification procedures. (Part 4: Audit and Reporting, p. 12)</p> <p><i>See</i> Part 6: Other Voting Issues, p. 18 (<i>employee share option schemes</i>).</p> <p><i>See also</i> Part 7: Environmental Reporting, pp. 20-21.</p> |

| OECD Principles/Millstein Report (International) | ICGN Statement/Global Voting Principles (International) | Euroshareholders Guidelines (Pan-European) | EASD Principles and Recommendations (Pan-European) |
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| 4. Board Job Description | | | |
| <p>The board should fulfill certain key functions, including:</p> <ol style="list-style-type: none"> 1. Reviewing and guiding corporate strategy, major plans of action, risk policy, annual budgets and business plans; setting performance objectives; monitoring implementation and corporate performance; and overseeing major capital expenditures, acquisitions and divestitures. 2. Selecting, compensating, monitoring and, when necessary, replacing key executives and overseeing succession planning. 3. Reviewing key executive and board remuneration, and ensuring a formal and transparent board nomination process. 4. Monitoring and managing potential conflicts of interest of management, board members and shareholders, including misuse of corporate assets and abuse in related party transactions. 5. Ensuring the integrity of the corporation's accounting and financial reporting systems, including the independent audit, and that appropriate systems of control are in place, in particular, systems for monitoring risk, financial control, and compliance with the law. 6. Monitoring the effectiveness of the governance practices under which it operates and making changes as needed. 7. Overseeing the process of disclosure and communications. (OECD Principle V.D) | <p><i>The ICGN Statement adopts</i> OECD Principle V.D (The board should fulfill certain key functions, including:</p> <ol style="list-style-type: none"> 1. Reviewing and guiding corporate strategy, major plans of action, risk policy, annual budgets and business plans; setting performance objectives; monitoring implementation and corporate performance; overseeing major capital expenditures, acquisitions, divestitures. 2. Selecting, compensating, monitoring and ... replacing key executives and overseeing succession planning. 3. Reviewing key executive and board remuneration, and ensuring a formal and transparent board nomination process. 4. Monitoring and managing potential conflicts of interest of management, board members and shareholders, including misuse of corporate assets and abuse in related party transactions. 5. Ensuring the integrity of the corporation's accounting and financial reporting systems, including the independent audit, and that appropriate systems of control are in place, in particular, systems for monitoring risk, financial control, and compliance with the law. 6. Monitoring the effectiveness of governance practices under which it operates and making changes as needed. 7. Overseeing the process of disclosure and communications.). | <p>The board of directors is responsible for the management of the company and therefore for setting the company's objectives, defining its strategy and policy and the ensuing development of results. The executive members should report to the non-executive members or the members of the supervisory board on the company's objectives and strategy, and the associated risks. The members of the board are also responsible for adequate disclosure to shareholders.</p> <p>The primary responsibility of the executives for effective systems of internal control follows naturally from their responsibility for the company's strategy and the achievement of its business objectives. (Commentary on Recommendations 10(a) & 10(b))</p> <p>Non-executive members of the board, as well as – in a two-tier structure – members of the supervisory board, are concerned with the supervision of management policy and the general state of affairs in the company. Their main tasks are (in order of importance):</p> <ul style="list-style-type: none"> § to control and supervise the executive board members; § to ensure the good quality of the executive board; § to advise the executive board. <p>(Commentary on Recommendations 10(a) and 10(b))</p> | <p>Key areas of concern These should, at least, include: objectives, strategy, risks, major acquisitions and investments, accounts and budgets, performance, corporate governance, stakeholder policies, senior executive nomination, remuneration and succession planning, conflicts of interest, corporate ethics and behaviour, audit and control systems, disclosure and communication of information. (Recommendation V.2)</p> <p>It is the function of management to run the business of the company in accordance with the strategies, policies and criteria defined [by the board]. (Recommendation VII.1)</p> <p>Management is accountable to the board, the company and its shareholders as a whole. (Recommendation VII.2)</p> <p>The board should determine the powers delegated [to management] and the decision-making process. (Recommendation VII.4.a)</p> <p><i>See</i> Principle VII (Management should have sufficient latitude to propose and implement corporate strategy.).</p> |

| Recommendations of Federation of Companies (Belgium) | Dual Code of the BXS/CBF (Belgium) | The Director's Charter (FDA) (Belgium) | (Reserved) |
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| 4. Board Job Description | | | |
| <p>If there is a Secretary of the Board of Directors, the directors must be able to consult with him and call upon his services. The Secretary of the Board must ensure that the procedures in relation to the functioning of the Board and the regulations which apply to it are complied with.</p> <p>If there is no Secretary of the Board of Directors, the Board shall take the necessary action so that a person is given the task of monitoring compliance with the procedures in connection with the functioning of the Board and the applicable regulations.</p> <p>In both cases, he can only be replaced by a decision of the Board itself. (1.5)</p> <p>The Board of Directors defines the appointments which are within its powers. (Note to 2.1)</p> <p><i>See Topic Heading 2, above.</i></p> | <p>The board of directors is responsible for ensuring that proper rules of corporate governance are in place. The board of directors is accountable for its administration to the general meeting of shareholders. (Part I: A.2)</p> <p>Non-executive directors should bring an independent judgement to bear on issues relating to the company's strategy, performance and resources, including key appointments and standards of conduct. (Part I: B.2.1)</p> <p>The board shall see to it that executive management develops and implements the tools necessary to allow appropriate and effective internal control. (Part I: B.4.4)</p> | <p>THE COMPANY DIRECTOR, IN THE EXERCISE OF HIS FUNCTIONS, UNDERTAKES TO:</p> <ol style="list-style-type: none"> 1. Act independently in all circumstances. 2. Actively protect the company's interests. 3. Ensure the effective functioning of the Board of Directors. 4. Protect the interests of all shareholders. 5. Take into account the legitimate expectations of all the company's partners (the community, clients, executives, employees, suppliers and creditors). 6. Ensure that the company respects its obligations and commitments, and the laws, regulations and codes of good practice. 7. Avoid any conflict between his or her direct personal interests and those of the company. 8. Avoid any improper use of information or insider trading. 9. Permanently develop his or her professional capacities. 10. Adhere to the spirit of this Charter. <p>(p. 2)</p> <p>The Director undertakes to acquire a sufficient understanding of the company and of its economic, social and legal context.</p> <p>[I]t is the role of the board, upon proposals made by the management, to define the company's mission and values, to lay down its strategic objectives, to appoint the management, to implement permanent structures for the attainment of its objectives, and to ensure the implementation of an operational plan and control of the company to furnish the necessary explanations to the shareholders. (p. 4)</p> | |

| Danish Shareholders Ass'n Guidelines (Denmark) | Nørby Report & Recommendations (Denmark) | Chamber of Commerce/Confederation Code (Finland) | Ministry of Trade & Industry Guidelines (Finland) |
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| 4. Board Job Description | | | |
| <p><i>Not covered directly, but see II. Governance.</i></p> | <p>The board must handle the overall strategic management and the financial and the managerial supervision of the company and continuously evaluate the management's work. The board's most essential tasks include:</p> <ul style="list-style-type: none"> § establishing the overall goals and strategies and following up on these. § ensuring clear guidelines for responsibility, distribution of responsibilities, planning and follow-up, as well as risk management. § appointing a qualified management, establish the managers' conditions of employment, including preparing guidelines for the appointment and composition of the management, as well as ensuring that the remuneration of the managers reflects the results they achieve. § ensuring that relations to the company's stakeholders are good and constructive. <p>(IV.1)</p> <p>It is recommended that the company prepares a work and task description containing a description of the tasks, duties and responsibilities of the chairman, and the deputy chairman, if required. (IV.2)</p> <p><i>See Topic Heading 32, below (risk management).</i></p> | <p>The Board of Directors of the company shall define the central terms of the employment relationship of the Managing Director in a Managing Director Agreement, which shall be approved by the body appointing the Managing Director. (English Summary, 2)</p> <p><i>See English summary, 1 (The areas of responsibility shall be defined in particular in the case of a full-time Chairman of the Board of Directors or another member of the Board of Directors employed by the company.).</i></p> <p><i>See Topic Heading 2, above.</i></p> | <p>The Board of Directors shall annually discuss the ways in which it aims to tend to its tasks. (2.1.1)</p> <p>The Board of Directors shall discuss the ways of measuring the profitability of the company's actions. It is essential to make sure that the activities produce economic value-added measured by the <u>economic profit</u> meter or by other corresponding methods. (2.1.2)</p> <p><i>See generally 2.1 (Operations of the Board of Directors).</i></p> |

| Viénot I Report (France) | Hellebuyck Commission Recommendations (France) | Viénot II Report (France) | (Reserved) |
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| 4. Board Job Description | | | |
| <p>With the exception of the powers which the law expressly reserves to the board as a whole, both the board of directors and the chairman have the widest powers to act in the company's name in all circumstances. (p. 4)</p> <p>While a company is instituted by private agreement, in France the respective powers of its governing bodies are determined by law and may not be altered by the terms of this agreement. (p. 5)</p> <p>The only conflicts of authority which have given rise to some dispute have concerned the divestment of major business operations and assets. The case law in this area is perfectly clear, making the board or its chairman alone competent to effect such divestments, except in the event that they prejudice the company's objects [<i>sic</i>], which the extraordinary general meeting of shareholders alone is competent to modify.</p> <p>Clearly, then, the board must respect the rights of the general meeting of shareholders when it envisages a transaction which is of a nature to affect, <i>de jure</i> or <i>de facto</i>, the company's objects, which represent the purposes for which it was established. Even if this is not the case, it is the Committee's opinion that the board should also ask the general meeting of shareholders to consider any divestment representing a preponderant portion of the company's assets or activities. (p. 6)</p> <p>In addition to strict compliance with legal obligations to shareholders, the board of directors of a listed company bears special responsibility to the market. (p. 6)</p> <p><i>See pp. 20-21 (directors' rights and obligations).</i></p> <p><i>See also Topic Heading 2, above.</i></p> | <p>The shareholders' meeting is the occasion when the Board of Directors renders its accounts to the shareholders on the exercise of its duties. The directors' presence is therefore essential. (§ I.B)</p> <p><i>See Topic Heading 2, above.</i></p> | <p>The French position ... offers the option between a unitary system (Board of Directors) and a dual system (Supervisory Board and Management Board) in all corporations, including listed corporations. (p. 5)</p> <p>The Committee is favorable to the introduction in French law of an alternative allowing the Board of Directors to opt for combination or separation of the offices of chairman and chief executive officer.... As a result of such a statutory reform:</p> <p>[T]he rules of operation of the Board will have to specify the duties assigned to the chairman of the Board of Directors, by delimitation in relation to the powers of the chief executive officer and those of the Board itself (frequency of meetings, agenda, presiding at the meeting of shareholders, monitoring of the corporation's operations, etc.).</p> <p>In that situation, the chief executive officer will need to be a Director and be appointed by the Board upon the chairman's motion, will have full powers to act in all circumstances in the corporation's name, and will have the title of <i>directeur général exécutif</i> (chief executive officer).</p> <p>Regardless of the choice made, the rules of operation of the Board will have to specify clearly the division of powers between the Board of Directors on the one hand, and the chairman and chief executive officer (combination), or the chief executive officer (separation), on the other hand.</p> <p>In particular, areas such as the group's indebtedness and its major acquisitions and divestments will have to be subjected to resolutions passed in due time by the Board of Directors of the parent company, even if they are not legally mandatory. (pp. 21-22)</p> | |

| Berlin Initiative Code (Germany) | German Panel Rules (Germany) | Cromme Commission Code (Germany) | (Reserved) |
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| 4. Board Job Description | | | |
| <p>The Management Board operates as initiator of measures, while the Supervisory Board takes up the role of informed discussion partner (sounding board). (Code, II.3.2)</p> <p><u>Supervisory Board</u> [C]o-operation between representatives of the stockholders and of the employees on the Supervisory Board is based on consent. It is the joint discussions in Supervisory Board committees which offer the chance of preventing or breaking up dysfunctional formations of fractions between the two sides. (Code, V.2.5)</p> <p>In the case of insurmountable divergences of opinion between the representatives of the stockholders and of the employees in a Supervisory Board where the members have parity, the Chairman of the Supervisory Board, who is normally appointed from the stockholder side, has a second vote for resolving the stalemate. (Code, V.2.6)</p> <p>See Code, II.3 (<i>decision-making when setting fundamental directions</i>); II.4 (<i>promotion of the culture of discussion</i>).</p> <p>See also Code, IV (<i>governance standards for the Supervisory Board</i>).</p> <p><u>Management Board</u> [R]esponsibility for developing the value of the company lies primarily with ... the Management Board. (Code, I.7)</p> <p>A member of the Management Board is responsible for the core activity of work and social services within the ambit of the Co-determination Act 1976 (director for employee relations). (Code, V.2.4)</p> <p>See Code, III (<i>governance standards for the Management Board</i>).</p> | <p><u>Supervisory Board</u> The Supervisory Board can subject certain transactions to its approval (§ 111 German Stock Corporation Act). This refers in particular to investment projects, loans, the establishment of subsidiaries as well as the acquisition or disposal of shareholdings above a certain size. (Code, III.2.b)</p> <p>The Supervisory Board issues its own Standing Rules and stipulates the information and reporting duties of the Management Board. (Code, III.2.d)</p> <p>(For a list of additional responsibilities, see Code, III.2.a - h).</p> <p><u>Management Board</u> [A]ccording to § 77 German Stock Corporation Act, the Management Board is bound by Corporate interest, Company policy and the Group's guidelines, as well as the basic principles of proper management. (Code, II.1.a)</p> <p>The Management Board is responsible for ensuring compliance with legal requirements within the Group and to ensure their observation by the Group companies. (Code, II.1.c)</p> <p>(For a list of additional duties, see Code, II.2.a - j).</p> | <p>The Management Board and Supervisory Board work closely together for the benefit of the enterprise. (§III.1)</p> <p><u>Supervisory Board</u> For transactions of fundamental importance, the Articles of Association or the Supervisory Board specify approval provisions reserved to the Supervisory Board. They include decisions or measures which fundamentally change the asset, financial or profit situations of the enterprise. (§III.3)</p> <p>The task of the Supervisory Board is to advise regularly and supervise the Management Board in the management of the enterprise. It must be involved in decisions of fundamental importance to the enterprise. (§V.1.1)</p> <p>The Supervisory Board appoints and dismisses the members of the Management Board. (§V.1.1)</p> <p>The Supervisory Board shall issue Terms of Reference. (§V.1.3)</p> <p><u>Management Board</u> The shareholders' General Meeting is to be convened by the Management Board.... (§II.3.1)</p> <p>The Management Board ensures that all provisions of law are abided by and works towards their compliance by group companies. (§IV.1.3)</p> <p>The Management Board ensures appropriate risk management and risk controlling in the enterprise. (§IV.1.4)</p> <p>The Management Board shall establish principles and guidelines for the enterprise. (§IV.1.5)</p> <p>Terms of Reference shall regulate the allocation of business in the Management Board. (§IV.2.1)</p> <p>See Topic Heading 34, below.</p> | |

| Mertzanis Report (Greece) | Federation of Greek Industries Principles (Greece) | IAIM Guidelines (Ireland) | Preda Report (Italy) |
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| 4. Board Job Description | | | |
| <p>The Board of Directors has the responsibility, more specifically, for the following:</p> <p>§ The design of the general strategy and planning of the corporation, the formation of the corporation's annual budget and business plan, the determination of the corporation's performance targets and the monitoring of the efficiency of governance practices followed during the operation of the corporation and in large capital transactions.</p> <p>§ The adoption and implementation of the corporation's general policy based on the suggestions and recommendations by executive management.</p> <p>§ The selection, appointment and monitoring of executive management and the determination of their compensation by taking account of the corporation's interests as well as the executive management's dismissal and replacement.</p> <p>§ The consistency of disclosed accounting and financial statements, including the report of the (independent) certified accountants, the existence of risk evaluation procedures, supervision, and the degree of compliance of the corporation's activities to existing legislation.</p> <p>§ The monitoring and resolution of conflicts among executive management, the members of the Board of Directors and the shareholders, including the cases of mismanagement of the corporation's assets and of privately beneficial transactions.</p> <p>§ The reporting of the corporation's activities to its shareholders.</p> <p>(Recommendation 5.3)</p> <p><i>See also Footnote 4 to Recommendation 5.1 (legally specified functions of the board).</i></p> | <p>The executive members [of the board] are top executives of the company responsible for its management. Non-executive members are persons with particular professional experience and social status, and with proven objective judgment. (§2.3)</p> <p>The internal controller* is appointed by the company's board of directors. A member of the board, an active director with other duties in the company, or a person linked to these persons through a direct or indirect family relationship of up to the second degree may not be appointed internal controller. The company must inform the Capital Market Commission, within ten working days, of any changes to the person or the organization of its internal control. (§4.3)</p> <p>* The internal controller is hierarchically integrated in the management of the company but remains independent in the exercise of his duties. (§4.2)</p> | <p><i>Not covered directly, but see</i> Introduction, § 3 (The fundamental responsibility for initiating, operating and controlling share option and other incentive schemes lies with companies themselves.).</p> | <p><u><i>Board of Directors</i></u></p> <p>The board of directors shall:</p> <ol style="list-style-type: none"> a) examine and approve the company's strategic, operational and financial plans, and the corporate structure. b) delegate powers to managing directors and the executive committee. c) determine ... remuneration. d) supervise the general performance of the company, with special reference to situations of conflict of interest. e) examine and approve transactions having a significant impact on the company's profitability, assets and liabilities or financial position. f) check the adequacy of the general organisational and administrative structure. g) report to the shareholders at shareholders' meetings. <p>(Code, 1.2)</p> <p>Managing directors shall endeavour to inform the board of the main statutory and regulatory innovations.... (Code, 1.4)</p> <p>Non-executive directors shall bring their specific expertise to board discussions and contribute to the taking of decisions that are consistent with the shareholders' interests. (Code, 2.2)</p> <p>The managing directors shall ensure the effectiveness and adequacy of the internal control system [and] define its procedures. (Code, 9.1)</p> <p><u><i>Board of Auditors</i></u></p> <p>The members of the board of auditors are required to treat the documents and information they acquire in the performance of their duties as confidential and to comply with the procedure for the disclosure to third parties of such documents and information. (Code, 13.3)</p> |

| Peters Report (The Netherlands) | VEB Recommendations (The Netherlands) | SCGOP Handbook and Guidelines (The Netherlands) | Securities Market Comm'n Recommendations (Portugal) |
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| 4. Board Job Description | | | |
| <p>The Supervisory Board is responsible for the supervision of management policy and the general course of affairs in the company. (Recommendation 2.1)</p> <p>The Supervisory Board advises the [Management Board]. It acts as a body with collective responsibility, without a mandate and independently of subsidiary interests associated with the company. (Recommendation 2.1)</p> <p>If the company, whether at its own request or not, is subjected to a rating agency, the report prepared by such an agency should be discussed in the Supervisory Board. (Recommendation 6.5)</p> <p><i>See</i> Topic Heading 2, <i>above</i>.</p> | <p><i>Not covered directly, but see</i> Recommendation 2 (Companies should clearly state in writing the financial objectives and strategy and should outline them in the annual report.).</p> <p><i>See also</i> Commentary on Recommendation 2 (Clear objectives and strategies give investors a hold to investment decisions and holding managers accountable for their actions and management.).</p> | <p><i>Not covered directly, but see</i> Topic Heading 2, <i>above</i>.</p> | <p><i>Not covered directly, but see</i> Topic Heading 2, <i>above</i>.</p> |

| Olivencia Report (Spain) | Swedish Shareholders Ass'n Policy (Sweden) | ICSA Code (United Kingdom) | ISC Statement of Best Practice (United Kingdom) |
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| 4. Board Job Description | | | |
| <p>Internal regulations of the company must lay out the obligations arising from the general duties of diligence and loyalty, especially covering situations of conflicting interests, the obligation of confidentiality, and the use of business opportunities and corporate assets. (Code, Recommendation 16)</p> <p>[The] Committee recommends that the Board of Directors explicitly assume the following responsibilities:</p> <ul style="list-style-type: none"> (a) approval of the general corporate strategy; (b) appointment, remuneration and, as the case may be, removal of top management; (c) control of management and evaluation of performance; (d) identification of major corporate risks and implementation and follow-up of internal control and information systems; (e) establishment of information and report policies in respect of shareholders, markets and the public opinion. <p>The Committee considers that the Board of Directors should take the above as functions that cannot be delegated. (Report, 1.2)</p> <p>Directors as such have no specific function within the Board structure. All of them have to take part in the deliberations and collective decisions and are accountable for them.... Directors coming from the executive line are especially expected to provide information, strategic assessment and decision proposals, whereas outside directors are basically expected to provide an independent view, evaluation capacity and authority to solve conflicting interests. (Report, 3.4)</p> | <p>The board should engage a permanent secretary, preferably a corporate lawyer. (Guideline 2.1)</p> <p>By law, the board is required to draw up a program of work, managing director directives, and reporting instructions, the contents of which shall be adapted to the individual company's particular situation. (Guideline 2.3)</p> <p>The board has the ultimate responsibility for the company's remuneration policy and the total costs for this. (Guideline 2.4.2)</p> | <p>The board should establish written procedures for the conduct of its business which should include the matters covered in this Code. A copy of these written procedures should be given to each director. Compliance should be monitored, preferably by an audit committee of the board, and breaches of the procedures should be reported to the board. (Code, §1)</p> <p>[A]ll material contracts, and especially those not in the ordinary course of business, should be referred to the board for decision prior to the commitment of the company. (Code, §5)</p> <p>The company secretary should be responsible to the chairman for the proper administration of the meetings of the company, the board and any committees thereof. To carry out this responsibility the company secretary should be entitled to be present at (or represented at) and prepare (or arrange for the preparation of) minutes of the proceedings of all such meetings. (Code, §9)</p> | <p>Where companies feel that they must provide for divisional or assistant directors or some other category whose title includes the word director, such persons must be clearly seen not to have any statutory authority or ability to act on behalf of the company in the capacity of a director. (p. 2)</p> <p>[Independent directors] have a primary function to comment on corporate strategy where they can bring an objectivity and independence of view borne by their outside experience. While it is recognized that in some instances professional advisers bring their own particular expertise to this role, the value of the independent non-executive director is the independence, personality and experience which he or she can contribute to the deliberations of the Board. (p. 3)</p> <p>[T]asks of non-executive directors [include]:</p> <ul style="list-style-type: none"> i. to contribute an independent view to the Board's deliberations; ii. to help the Board provide the company with effective leadership; iii. to ensure the continuing effectiveness of the executive directors and management; iv. to ensure high standards of financial probity on the part of the company. <p>(p. 3)</p> <p>The Insolvency Act 1986 imposes obligations on a director once he knows that the company is unlikely to avoid insolvent liquidation. (p. 5)</p> |

| Cadbury Report (United Kingdom) | Greenbury Report (United Kingdom) | Hampel Report (United Kingdom) | The Combined Code/Turnbull Report (United Kingdom) |
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| 4. Board Job Description | | | |
| <p>The board should have a formal schedule of matters specifically reserved to it for decision to ensure that the direction and control of the company is firmly in its hands. (Code, 1.4)</p> <p>All directors should have access to the advice and services of the company secretary, who is responsible to the board for ensuring that board procedures are followed and that applicable rules and regulations are complied with. (Code, 1.6; <i>see</i> Report, 4.25)</p> <p>Non-executive directors should bring an independent judgement to bear on issues of strategy, performance, resources, including key appointments, and standards of conduct. (Code, 2.1)</p> <p>It is the board's duty to present a balanced and understandable assessment of the company's position. (Code, 4.1)</p> <p>The directors should report on the effectiveness of the company's system of internal control. (Code, 4.5)</p> <p>Shareholders have delegated many of their responsibilities as owners to the directors who act as their stewards. (Report, 6.6)</p> <p><i>See also</i> Topic Heading 2, <i>above</i>.</p> | <p>Boards should develop clear terms of reference for their remuneration committees. (Commentary on Remuneration Committees, 4.4)</p> <p>Remuneration committees should be constituted as sub-committees of the Board of Directors with a special responsibility to discharge, on behalf of the Board, certain functions which the Board itself should not discharge. The Board should elect both the Chairman and the members. (Commentary on Remuneration Committees, 4.7)</p> <p><i>See</i> Code, A3 (Where necessary, companies' Articles of Association should be amended to enable remuneration committees to discharge [their] functions on behalf of the Board.)</p> <p><i>See also</i> Commentary on Remuneration Committees, Membership and Qualifications, 4.10 (It is sometimes suggested that remuneration committees should include one or more independent members not associated with the company's Board or management. In our view, this would be wrong. The Board must be responsible for all aspects of a company's affairs.)</p> <p><i>See also</i> Commentary on Remuneration Committees, Membership and Qualifications, 4.8 (The remuneration committee should consist exclusively of Non-Executive Directors with relevant experience who:</p> <ul style="list-style-type: none"> § have a good knowledge of the company and its Executive Directors, a keen interest in its progress and a full understanding of shareholders' concerns; and § have a good understanding, enhanced as necessary by appropriate training or access to expert advice, of the areas of remuneration committee business.) | <p>Executive directors share with their non-executive colleagues overall responsibility for the leadership and control of the company. As well as speaking for the business area or function for which he or she is directly responsible, an executive director should exercise individual judgement on every issue coming before the board, in the overall interests of the company. (Guideline 3.6)</p> <p>Non-executive directors are normally appointed to the board primarily for their contribution to the development of the company's strategy. (Guideline 3.8)</p> <p>The prime responsibility of the board of directors is to determine the broad strategy of the company and to ensure its implementation. To do this successfully requires high quality leadership. It also requires that the directors have sufficient freedom of action to exercise their leadership. The board can only fulfil its responsibilities if it meets regularly and reasonably often. (Guideline 3.11)</p> | <p>All directors should have access to the advice and services of the company secretary, who is responsible to the board for ensuring that board procedures are followed and that applicable rules and regulations are complied with. Any question of removal of the company secretary should be a matter for the board as a whole. (Code § 1, A.1.4)</p> <p>All directors should bring an independent judgement to bear on issues of strategy, performance, resources, including key appointments, and standards of conduct. (Code § 1, A.1.5)</p> <p>Companies which do not have an internal audit function should from time to time review the need for one. (Code § 1, D.2.2)</p> <p>The board of directors is responsible for the company's system of internal control. It should set appropriate policies on internal control and seek regular assurance that will enable it to satisfy itself that the system is functioning effectively [and] is effective in managing risks in the manner which it has approved. (Turnbull Report, ¶16)</p> <p>Reviewing the effectiveness of internal control is an essential part of the board's responsibilities.... Management is accountable to the board for monitoring the system of internal control and providing assurance to the board that it has done so. (Turnbull Report, ¶25)</p> <p>Should the board become aware at any time of a significant failing or weakness in internal control, it should determine how the failing or weakness arose and reassess the effectiveness of management's ongoing processes for designing, operating and monitoring the system of internal control. (Turnbull Report, ¶34)</p> <p><i>See</i> Turnbull Report, ¶¶17, 20-24 (<i>policies and components of internal control</i>).</p> |

| NAPF Corporate Governance Code (United Kingdom) | AUTIF Code (United Kingdom) | Hermes Statement (United Kingdom) | PIRC Shareholder Voting Guidelines (United Kingdom) |
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| 4. Board Job Description | | | |
| <p>Non-executive directors have the capacity to look at the interests of the company as a whole over the longer term and should be capable, therefore, of exercising independent judgement with an ability to influence board decision-making. (§2)</p> <p>Independent directors play an essential role by using their unfettered judgement on the issues of strategy, performance, resources, key appointments and standards of conduct. Such independent assessment of strategic direction is probably the greatest value to be derived from an independent non-executive director. (§3)</p> | <p>Principle D.1 [of the Combined Code] states that the board should present a balanced and understandable assessment of the company's position and prospects....</p> <p>Guidance for directors on the implementation of these recommendations was set out in the report of the Internal Control Working Party of the Institute of Chartered Accountants in England and Wales (the Turnbull Committee). The Stock Exchange considers that compliance with the Turnbull guidance will constitute compliance with the relevant provisions of the Combined Code. (Guidance Note on Key Principle 6)</p> | <p>Non-executive directors (NEDs) should work co-operatively with their executive colleagues and demonstrate objectivity and robust independence of judgement in their decision-making. (1.3)</p> <p>The key role of NEDs is to ensure that the chief executive and the board as a whole concentrate on maximizing long-term shareholder value. There are three aspects to this for which NEDs should expect to be held accountable:</p> <ul style="list-style-type: none"> § Strategic function – Bringing their independent judgement to strategic decision-making; § Expertise – Providing skills and experience that may not otherwise be readily available to the company; § Governance function – Ensuring compliance with best practice, participating in the appointment of new directors and monitoring the performance of NEDs. <p>(2.2)</p> <p>The senior NED should [be] available for confidential discussions with other non-executive directors who may have concerns which they believe have not been properly considered by the board as a whole. (APPENDIX 2.2)</p> | <p>PRINCIPLE: The directors ... should describe their respective responsibilities for the accounts. (p. 13)</p> <p>There are a variety of roles to be performed within a unitary board, notwithstanding the legal position that all directors are equally responsible for the board's actions and all are equally accountable to the shareholders. Directors should act in the interests of the company as a whole, and not be beholden to a particular shareholder.</p> <p>Two-tier board structures can be a means of overcoming some of the tensions within a unitary board between the executive function and the monitoring function. (Part 2, Directors, p. 4)</p> <p>Non-executive directors are central to an effective and accountable board structure. They fulfill two functions which may be broadly described as supervisory and advisory. They bring an independent perspective to bear on issues where the executive directors face a conflict of interest. They also strengthen the board by expanding its range of experience. They have a crucial role to play in reviewing the performance of the executives, upon which commercial success will be substantially reliant. (Part 2: Directors, p. 5)</p> <p>[I]t is the board's responsibility to set internal control policies. (Part 4: Audit and Reporting, p. 12)</p> <p>See Part 4: Audit and Reporting, p. 12 (<i>list of directors' stewardship issues</i>).</p> |

| OECD Principles/Millstein Report (International) | ICGN Statement/Global Voting Principles (International) | Euroshareholders Guidelines (Pan-European) | EASD Principles and Recommendations (Pan-European) |
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| 5. Board Membership Criteria | | | |
| <p><i>Not covered directly, but see OECD Principle I Annotation at 25 (Shareholders' rights to influence the corporation centre on certain fundamental issues, such as ... influencing the composition of the board.).</i></p> | <p><i>Not covered directly, but see ICGN Amplified OECD Principle IV at 8 (The ICGN further asserts that corporations should disclose upon appointment to the board and thereafter in each annual report or proxy statement sufficient information on the identities, core competencies, professional backgrounds, other board memberships, factors affecting independence, and overall qualifications of board members and nominees so as to enable the assessment of the value they add to the company. Information on the appointment procedure should also be disclosed annually.).</i></p> | <p><i>Not covered directly, but see Recommendation 10(b) (No more than one non-executive board member should have served as an executive board member of the company.).</i></p> | <p><i>Not covered.</i></p> |

| Recommendations of Federation of Companies (Belgium) | Dual Code of the BXS/CBF (Belgium) | The Director's Charter (FDA) (Belgium) | (Reserved) |
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| 5. Board Membership Criteria | | | |
| <i>Not covered directly, but see Topic Heading 6, below.</i> | <i>Not covered directly, but see Part I: B.1.1 ([The board of directors] must be capable of monitoring the executive management.).</i> | <i>Not covered.</i> | |

| Danish Shareholders Ass'n Guidelines (Denmark) | Nørby Report & Recommendations (Denmark) | Chamber of Commerce/Confederation Code (Finland) | Ministry of Trade & Industry Guidelines (Finland) |
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| 5. Board Membership Criteria | | | |
| <p><i>Not covered directly, but see Topic Heading 6, below.</i></p> | <p>It is essential that the board is composed in such a manner that it is capable of handling its managerial tasks, including the strategic tasks of the company in an efficient and forward looking manner, and that it acts as a constructive and qualified sparring partner for the management at the same time. It is also essential that the directors always act independently of special interests. The board must continuously ensure that its composition and its procedures reflect the demands posed by the company's current situation and circumstances. (V)</p> <p>[T]he board should state the recruitment criteria which the board has established, including the requirements of professional qualifications, international experience etc. which, in the opinion of the board, represent essential qualities with regard to the board. (V.1)</p> | <p><i>Not covered directly, but see English Summary, 5</i> (The personal and interest-group information of the persons nominated as members of the Board of Directors have to be notified, at the latest, at the General Meeting of Shareholders. . . . After the election, the information has to be mentioned in the Annual Report and in the Listing Particulars.</p> <p>The same publication criteria that govern the members of the Board of Directors shall be applied to the members of the Supervisory Board and, after the election, to the Managing Director. . . . The Listing Particulars shall also contain the personal and interest-group information of the members of the Supervisory Board.</p> <p>The following items shall be disclosed as personal and interest-group information:</p> <ul style="list-style-type: none"> § name and age; § education and the most central work or other experience; § main job at the time of nomination; and § the most central simultaneous tasks or known future tasks.). | <p><i>Not covered.</i></p> |

| Viénot I Report (France) | Hellebuyck Commission Recommendations (France) | Viénot II Report (France) | (Reserved) |
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| 5. Board Membership Criteria | | | |
| <p><i>Not covered directly but see p. 14 (Cross-shareholdings frequently, but not inevitably, result in reciprocal board membership, with one company holding a seat on the board of another company, which in turn has a seat on the board of the first company. This situation naturally raises some questions on the market.</i></p> <p>The Committee thus believes that when a board is considering how best to structure its membership, it should take care to avoid including an excessive number of such reciprocal directorships.</p> <p><i>See also Topic Heading 6, below.</i></p> | <p><i>Not covered directly, but see § II.B.3 (The Commission favors each Board having a nominating committee responsible for proposing candidates to Board membership.... This committee should draw up a report, with supporting information, on the recommendations it makes.).</i></p> | <p><i>Not covered directly but see p. 24 (When a director's appointment or the extension of his or her term of office is referred to the meeting of shareholders, the annual report and notice calling the shareholders should include, in addition to the statutory statements, a biographical notice outlining his or her résumé.).</i></p> <p><i>See also Topic Heading 6, below.</i></p> | |

| Berlin Initiative Code (Germany) | German Panel Rules (Germany) | Cromme Commission Code (Germany) | (Reserved) |
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| 5. Board Membership Criteria | | | |
| <p><u>Supervisory Board</u> In its proposals to the annual general meeting for the election of new members as well as re-appointments to office, the Supervisory Board allows itself to be guided by the consideration that, as to suitability of the persons appointed, the decisive factor is ability. In order to ensure the necessary quality in proposals for appointment, the Supervisory Board discusses and makes decisions based on transparent criteria for the assessment of the candidates who come up for election. (Code, IV.4.1)</p> <p>In particular, the Supervisory Board makes certain with its proposals as to appointments that the representatives of the stockholders possess those various qualifications which are required for competent control of the Management Board according to the realities of the company. (Code, IV.4.2)</p> <p><u>Management Board</u> <i>Not covered directly, but see Code, II.1.1 ([A] balanced multiplicity of qualifications and the ability of the individual Management Board members to work together as a team has to be ensured.)</i></p> <p><i>See also Code, II.1.2 (Making certain of an optimal qualification of Management Board members belongs to [the Supervisory Board's] tasks.)</i></p> | <p><u>Supervisory Board</u> <i>Not covered directly, but see Code, III.1.a) (The proposals for elections of Supervisory Board members to the General Meeting shall ensure that the proposed candidates have both the required knowledge and skills as well as the relevant professional experience.)</i></p> <p><i>See also Code, III.1.b) (The proposal for election to the Supervisory Board shall not include, as a matter of course, the election of retiring Management Board members.)</i></p> <p><u>Management Board</u> <i>Not covered.</i></p> | <p><u>Supervisory Board</u> For nominations for the election of members of the Supervisory Board, care shall taken that, at all times, there are members on the Supervisory Board who, as a whole, have the required knowledge, abilities and expert experience to properly complete their tasks and are sufficiently independent. Furthermore, the international activities of the company, potential conflicts of interest and an age limit to be specified for the members of the Supervisory Board [should] be taken into account. (§V.4.1)</p> <p>To ensure the Supervisory Board's independent advising and supervising of the Management Board, the Supervisory Board shall have no more than two former members of the Management Board and Supervisory Board members shall exercise no directorships or similar positions or advisory tasks for important competitors of the enterprise. (§V.4.2)</p> <p><u>Management Board</u> <i>Not covered directly, but see §V.1.1 (The Supervisory Board appoints and dismisses the members of the Management Board.)</i></p> <p><i>See also §V.1.2 (The Supervisory Board can transfer preparations for the appointment of members of the Management Board to a committee, which also determines the conditions of the employment contracts....)</i></p> | |

| Metzanis Report (Greece) | Federation of Greek Industries Principles (Greece) | IAIM Guidelines (Ireland) | Preda Report (Italy) |
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| 5. Board Membership Criteria | | | |
| <i>Not covered.</i> | The executive members [of the board] are top executives of the company responsible for its management. Non-executive members are persons with particular professional experience and social status, and with proven objective judgment. (§2.3) | <i>Not covered directly, but the IAIM Guidelines adopt the Combined Code. See the Combined Code § 1, A.6.2 (The names of directors submitted for election or reelection should be accompanied by sufficient biographical details to enable shareholders to take an informed decision on their election.).</i> | [E]ach company should determine the ... experience and personal traits of its non-executive directors in relation to its size, the complexity and specific nature of its sector of activity, and the total membership of the board. (Commentary on Code, 2.2) |

| Peters Report (The Netherlands) | VEB Recommendations (The Netherlands) | SCGOP Handbook and Guidelines (The Netherlands) | Securities Market Comm'n Recommendations (Portugal) |
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| 5. Board Membership Criteria | | | |
| <p>The basic principle is that the [Management Board] and the Supervisory Board should have the confidence of the shareholders' meeting. The Committee therefore recommends that this be borne in mind when appointing board members. [Management Boards] and Supervisory Boards cannot perform satisfactorily in the long run without that confidence. (Recommendation 5.3)</p> <p><u>Supervisory Board</u></p> <p>The Supervisory Board of each company should draw up a desired profile of itself in consultation with the [Management Board]. The Supervisory Board should evaluate this profile periodically and draw conclusions regarding its own composition, size, duties and procedures. New developments, for example technological and financial innovations, are also of importance.... The profile should reflect, <i>inter alia</i>, the nature of activities, the degree of internalization [and] the size ... of the company. (Recommendation 2.2)</p> <p>No more than one former member of the Company's [Management Board] should serve on the Supervisory Board. (Recommendation 2.5)</p> <p>The Committee advocates that the number of Supervisory Board memberships which one person can hold in (listed) companies should be limited so as to guarantee a proper performance of duties. (Recommendation 2.10)</p> <p><u>Management Board</u></p> <p><i>Not covered.</i></p> | <p><i>Not covered.</i></p> | <p><u>Supervisory Board</u></p> <p><i>Not covered directly, but see</i> Guideline 13(d) (Former members of the executive board should not be automatically appointed as members of the supervisory board. Should a former executive board member be appointed to the supervisory board, he should not act as chairman.)</p> <p><i>See also</i> Guideline 17 (Profiles of the supervisory board ... should be made available to shareholders.).</p> <p><u>Management Board</u></p> <p><i>Not covered.</i></p> | <p><i>Not covered.</i></p> |

| Olivencia Report (Spain) | Swedish Shareholders Ass'n Policy (Sweden) | ICSA Code (United Kingdom) | ISC Statement of Best Practice (United Kingdom) |
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| 5. Board Membership Criteria | | | |
| <p>[T]here is no single independent director profile. Therefore, it is not advisable to select them exclusively from among the significant executives of other companies, although this provenance might especially qualify them in directing the strategy and efficiently performing the supervision function. It is also convenient to incorporate individuals from other professional extractions. (Report, 5.2)</p> <p>The ownership structure of the companies making up our stock market features ... a noticeable capital concentration and hence a strong presence of significant shareholders (shareholders able to influence, either individually or collectively, the control of the company). Recognition of this fact has led us to encourage the participation of these shareholders on the Board of Directors ("proprietary directors"). (Report, 8.6)</p> <p>See Report, 5.1 (The Nomination Committee's mission is to ... define and review the criteria to be followed in determining the composition of the Board of Directors and the selection of candidates.).</p> | <p>The board should be composed of capable members representing all-round competence.</p> <p>No employees apart from the managing director should be included on the board. (Guideline 2.1)</p> <p>See Guideline 1.2.1 (Representatives of the nomination committee should always be present at the general meeting and be prepared to explain the reasons the committee's proposals are based on.).</p> | <p><i>Not covered.</i></p> | <p>Brief biographical details of each director should be set out in the Annual Report showing the director's relevant experience and suitability. In particular, the Annual Report should disclose the ages of all directors and in the cases of those aged over 70, on occasion when they stand for election or re-election, an explanation of why it is felt appropriate that such directors be retained. (p. 2)</p> |

| Cadbury Report (United Kingdom) | Greenbury Report (United Kingdom) | Hampel Report (United Kingdom) | The Combined Code/Turnbull Report (United Kingdom) |
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| 5. Board Membership Criteria | | | |
| <p><i>Not covered directly, but see</i> Report, 4.15 (Given the importance of their distinctive contribution, non-executive directors should be selected with the same impartiality and care as senior executives. We recommend that their appointment should be a matter for the board as a whole and that there should be a formal selection process, which will reinforce the independence of non-executive directors and make it evident that they have been appointed on merit and not through any form of patronage. We regard it as good practice for a nomination committee to carry out the selection process and to make proposals to the board.).</p> | <p><i>Not covered directly, but see</i> Commentary on Remuneration Committees, Membership and Qualifications, 4.8 (The remuneration committee should consist exclusively of Non-Executive Directors with relevant experience.).</p> | <p>Executive directors share with their non-executive colleagues overall responsibility for the leadership and control of the company.... Boards should only appoint as directors executives whom they judge to be able to contribute [by showing leadership, speaking for the area for which he/she is directly responsible, and exercising independent judgement]. Board appointment should not be regarded simply as a reward for good performance in an executive role. (Guideline 3.6)</p> <p>Non-executive directors are normally appointed to the board primarily for their contribution to the development of the company’s strategy.... [T]he non-executive directors should command the respect of the executives and should be able to work with them in a cohesive team to further the company’s interests. (Guideline 3.8)</p> <p>Most non-executive directors are executives or former executives of other companies. This experience qualifies them both in constructive policy making and in the monitoring role. Non-executive directors from other backgrounds are often appointed for their technical knowledge, their knowledge of overseas markets or their political contacts.... We do not favour diversity for its own sake, to give a politically correct appearance to the list of board members or to represent stakeholders. But we believe, given the diversity of business and size of listed companies, that there are people from other fields who can make a real contribution on the board. (Guideline 3.15)</p> | <p><i>Not covered directly, but see</i> Code § 1, A.3.1 (The board should include non-executive directors of sufficient calibre ... for their views to carry significant weight in the board’s decisions.).</p> <p><i>See also</i> Code § 1, A.6.2 (The names of directors submitted for election or reelection should be accompanied by sufficient biographical details to enable shareholders to take an informed decision on their election.).</p> |

| NAPF Corporate Governance Code (United Kingdom) | AUTIF Code (United Kingdom) | Hermes Statement (United Kingdom) | PIRC Shareholder Voting Guidelines (United Kingdom) |
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| 5. Board Membership Criteria | | | |
| <p><i>Not covered directly, but see §8 (The names of directors submitted for election or re-election should be accompanied by sufficient biographical details to enable shareholders to take an informed decision on their election.).</i></p> | <p><i>Not covered directly, but see Guidance Note on Principle 5 (AUTIF encourages member firms, as part of their dialogue with the companies in which they invest and when scrutinizing the annual reports and accounts, to pay particular attention to the companies' compliance with the Combined Code in the area ... [of] board balance....).</i></p> | <p>The expression of fresh views and genuine debate across the board table are of considerable value and importance. For this reason at least one new independent NED should join the board every three years, and NEDs should not normally serve for more than ten years. (2.6)</p> | <p>The composition and effectiveness of the board is a crucial element in determining corporate performance. (Part 2: Directors, p. 4)</p> <p>In order to widen the basis of experience on boards and improve their accountability and representativeness, [boards] should extend their search for non-executives beyond the boards of other listed companies to include individuals with a greater diversity of backgrounds. International candidates, those with relevant experience in the public, academic or voluntary sectors, or at divisional level in other companies, may well fulfill the task. (Part 2: Directors, p. 5)</p> |

| OECD Principles/Millstein Report (International) | ICGN Statement/Global Voting Principles (International) | Euroshareholders Guidelines (Pan-European) | EASD Principles and Recommendations (Pan-European) |
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| 6. Selecting, Inviting and Orienting New Directors | | | |
| <p>Basic shareholder rights include the right to ... elect members of the board. (OECD Principle I.A)</p> <p>Shareholders' rights to influence the corporation centre on certain fundamental issues, such as the election of board members, or other means of influencing the composition of the board. (OECD Principle I Annotation at 25)</p> <p>The board should fulfill certain key functions, including ... ensuring a formal and transparent board nomination process. (OECD Principle V.D.3)</p> <p>In order to improve board practices and the performance of its members, some companies have found it useful to engage in training and voluntary self-evaluation that meet the needs of the individual company. This might include that board members acquire appropriate skills upon appointment, and thereafter remain abreast of relevant new laws, regulations, and changing commercial risks. (OECD Principle V.E.2 Annotation at 42)</p> | <p><i>The ICGN Statement adopts</i> OECD Principle I.A (Basic shareholder rights include the right to ... elect members of the board.).</p> <p><i>See also</i> OECD Principle V.D.3 (The board should fulfil certain key functions, including ... ensuring a formal and transparent board nomination process.).</p> <p><i>See also</i> ICGN Amplified OECD Principle IV at 8 (Information on the appointment procedure should be disclosed annually.).</p> <p><i>See also</i> OECD Principle V.E.2 Annotation at 42 (In order to improve board practices and the performance of its members, some companies have found it useful to engage in training and voluntary self-evaluation that meets the needs of the individual company. This might include that board members acquire appropriate skills upon appointment, and thereafter remain abreast of relevant new laws, regulations, and changing commercial risks.).</p> <p><i>See also</i> Topic Heading 5, above.</p> | <p>[P]rior to the election [of directors], shareholders should be able to suggest candidate members to the board. (Recommendation 9)</p> | <p>Basic shareholder rights include ... electing and removing members of the board. (Recommendation I.1.d)</p> <p>Once elected, board members should be properly inducted in the company's affairs. (Recommendation VI.2.b)</p> |

| Recommendations of Federation of Companies (Belgium) | Dual Code of the BXS/CBF (Belgium) | The Director's Charter (FDA) (Belgium) | (Reserved) |
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| 6. Selecting, Inviting and Orienting New Directors | | | |
| <p>According to Belgian law, the General Meeting appoints all directors, whether they are executive or not.</p> <p>For non-executive directors, however, this appointment must take place on a proposal from the Board of Directors.... The appointments committee should make proposals to the Board of Directors. (Note to 2.3)</p> | <p>[T]he General Meeting of Shareholders is responsible for appointing the members of the board of directors.... (Part I: A.2)</p> <p>Non-executive directors should be selected through a formal procedure, and both this procedure and proposals for the nomination of non-executive directors should be a matter for the board as a whole.</p> <p>The Belgian Commission on Corporate Governance regards it as good practice for a nomination committee, where such exists, to carry out the selection process and to make recommendations to the board for the nomination of both executive and non-executive directors, singling out the non-executive directors. (Part I: B.2.4)</p> | <p><i>Not covered directly, but see p. 6</i> (The Director undertakes to develop his or her professional capacities so as to maintain a high level of expertise within a context in constant change.).</p> | |

| Danish Shareholders Ass'n Guidelines (Denmark) | Nørby Report & Recommendations (Denmark) | Chamber of Commerce/Confederation Code (Finland) | Ministry of Trade & Industry Guidelines (Finland) |
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| 6. Selecting, Inviting and Orienting New Directors | | | |
| <p>[C]andidates' identity and profile should be presented prior to the [AGM], and more candidates than seats available should be proposed – elections should take place directly at the AGM and for a period of one year only. (I. The Annual General Meeting)</p> | <p>It is recommended that the directors ensure that the candidates for the board, who are nominated by the directors, have the relevant and necessary knowledge and professional experience in relation to the requirements of the company, including the necessary international background and experience if this is relevant. When nominating the individual candidates, the directors should ensure that a given board composition as a whole will provide the board with the skills that are necessary for the board to be able to perform its tasks in the best possible way.</p> <p>It is recommended that the board enclose a description of the nominated candidates' background in the notice of the AGM when the election of the directors is on the agenda. At the same time, the board should state the recruitment criteria which the board has established, including the requirements of professional qualifications, international experience etc. which, in the opinion of the board, represent essential qualities with regard to the board. (V.1)</p> <p>When directors join the board it is recommended that they are given an introduction to the company and that the chairman, in collaboration with the individual director, decides if it is necessary to offer the director in question any relevant, supplementary training. The training, which can also be offered continuously, should be adjusted to the individual director's needs and should ensure that each of the directors are capable of:</p> <ul style="list-style-type: none"> § taking part in a qualified dialogue with the management about the company's strategic development and prospects. § acquiring and keeping an overview of the company's core areas, activities and the conditions of the industry in question. § actively participating in the board work. <p>(V.2)</p> | <p><i>Not covered directly, but see</i> English Summary, 4 (The company shall explain in the Annual Report and in the Listing Particulars which body elects the Board of Directors and the Managing Director of the company and when. Proposals to the General Meeting of the Shareholders regarding the election of the members of the Board of Directors and the Supervisory Board that have come to the knowledge of the Board of Directors of the company shall be made public, at the latest, at the General Meeting of the Shareholders when the proposal is supported by at least 20% of all the votes in the company and the person nominated has given his consent for the task.).</p> | <p><i>Not covered.</i></p> |

| Viénot I Report (France) | Hellebuyck Commission Recommendations (France) | Viénot II Report (France) | (Reserved) |
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| 6. Selecting, Inviting and Orienting New Directors | | | |
| <p>While the power to appoint and dismiss directors belongs to the general meeting of shareholders, the board has considerable power over its own membership, since it can co-opt members and propose their appointment by shareholders' meetings.</p> <p>At present, the identification of potential board members and corporate officers is a highly informal process, and there is thus little guarantee that all the factors contributing to the desirable balance in board membership have been considered and taken into account.</p> <p>The absence of formal procedures also leads markets to assume that chairmen have undue influence on the choice of board members.</p> <p>The Committee thus recommends that boards should set up special committees to select board members and corporate officers or, if this is not practicable, that the tasks ... be carried out by its remunerations committee.</p> <p><u>Selection committee:</u> Made up of 3 to 5 members, including the chairman and at least 1 independent director, this committee would be charged with proposing candidates after due examination of all relevant factors. Such factors include in particular the desirable balance in board membership, considering the structure and development of shareholdings, the desirable number of independent directors, the possible representation of interest groups, the identification and assessment of possible candidates and the desirability of renewing existing directorships. (p. 14-15)</p> <p><i>See p. 14 ([T]he existence of cross-shareholdings may be viewed as a transitional phenomenon in French capitalism....</i></p> <p>The Committee thus believes that when a board is considering how best to structure its membership, it should take care to avoid including an excessive number of such reciprocal directorships.</p> | <p>The Commission favors each Board having a nominating committee responsible for proposing candidates to Board membership. (§ II.B.3)</p> | <p>In order to give full weight to the process for appointment of Directors by the shareholders, it is essential for the latter to have all the information relevant to their decision. The annual report should therefore specify systematically the dates of the beginning and expiry of each Director's term of office, and therefore the staggering of terms, together with the following information: age, main position held, directorships in French or foreign listed corporations other than group affiliates, and, if applicable, membership on a Board committee. When the meeting of shareholders is required to act upon the appointment or extension of a Director's term, both the annual report and the notice calling the meeting should present the candidate for appointment through a biographical notice outlining his or her resumé, without prejudice to the existing statutory rules. (p. 14)</p> | |

| Berlin Initiative Code (Germany) | German Panel Rules (Germany) | Cromme Commission Code (Germany) | (Reserved) |
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| 6. Selecting, Inviting and Orienting New Directors | | | |
| <p><u>Supervisory Board</u> [The annual meeting of shareholders] elects the members of the Supervisory Board insofar as they may be appointed by the stockholders – depending on the co-determination situation – either completely, or as to two-thirds, or as to one half. (Code, I.5)</p> <p>[E]mployees elect either one-third or one-half of the members of the Supervisory Board, depending on the size of the corporation. They thus participate in all responsibilities of this organ. The one-third equal footing co-determination applies according to Labour-Management Relations Act 1952 to all corporations with at least 500 but fewer than 2,000 employees, and parity co-determination according to the Co-determination Act 1976 in companies with a workforce exceeding 2,000. (Code, V.2.3)</p> <p><u>Management Board</u> The Supervisory Board decides on the selection of the members of the Management Board... The decision of the Supervisory Board is prepared by the personnel committee or a search committee. (Code, II.1.2)</p> <p>As soon as a vacancy in the Management Board becomes evident, the Management Board members, in conjunction with the personnel committee of the Supervisory Board, should present concrete appointment proposals... Notwithstanding such possible suggestions of the management organ, the Supervisory Board remains master of the appointment procedure. (Code, II.1.7)</p> <p><i>See generally Code, II.1 (composition of the Management Board).</i></p> | <p><u>Supervisory Board</u> [M]andatory law (§ 23 German Stock Corporation Act) [covers] election of members of the Supervisory Board (§ 101). (Code, I)</p> <p>The proposals [made] to the General Meeting [by the Nominations Committee] for elections of Supervisory Board members shall ensure that the proposed candidates have both the required knowledge and skills as well as the relevant professional experience. (Code, III.1.a)</p> <p>To enable regular adjustments to material developments, the election or re-election of Supervisory Board members can take place at different dates. (Code, III.1.c)</p> <p>The Nomination Committee is in charge of the composition, size and balance of the Supervisory Board and the proposals for election to the General Meeting. (Code, III.3)</p> <p><u>Management Board</u> The Supervisory Board appoints the members of the Management Board. (Code, III.2.a)</p> <p>The Mediation Committee ... delivers proposals for the appointment of Management Board members if the required two-thirds majority for the appointment or termination of Management Board members has not been achieved. (Code, III.3)</p> | <p><u>Supervisory Board</u> The members of the Supervisory Board are elected by the shareholders at the General Meeting. For enterprises with more than 500 or 2000 employees respectively in Germany, employees are represented in the Supervisory Board, which then is composed of employee representatives to one-third or to one-half. (§I)</p> <p>The General Meeting ... elects the shareholders' representatives to the Supervisory Board.... (§II.2.1)</p> <p><u>Management Board</u> The Supervisory Board can transfer preparations for the appointment of members of the Management Board to a committee, which also determines the conditions of the employment contracts including compensation. (§V.1.2)</p> | |

| Mertzanis Report (Greece) | Federation of Greek Industries Principles (Greece) | IAIM Guidelines (Ireland) | Preda Report (Italy) |
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| 6. Selecting, Inviting and Orienting New Directors | | | |
| <p>Shareholders should have the right to participate equitably and efficiently in the general shareholder meetings and be sufficiently, timely and properly informed on the decisions that need to be made regarding fundamental changes in the corporation. These changes include ... the approval of the appointment and/or dismissal of the members of the Board of Directors. (Recommendation 1.2.5)</p> | <p><i>Not covered.</i></p> | <p><i>Not covered directly, but the IAIM Guidelines adopt the Combined Code. See the Combined Code:</i></p> <p>Principle A.5 (There should be a formal and transparent procedure for the appointment of new directors to the board.);</p> <p>Code § 1, A.1.6 (Every director should receive appropriate training on the first occasion that he or she is appointed to the board of a listed company, and subsequently as necessary.);</p> <p>Code, § 1, A.6.2 (The names of directors submitted for election or re-election should be accompanied by sufficient biographical details to enable shareholders to take an informed decision on their election.).</p> | <p><u><i>Board of Directors</i></u></p> <p>Proposals for appointments to the position of director, accompanied by detailed information on the personal traits and professional qualifications of the candidates, shall be deposited at the company's registered office at least 10 days before the date fixed for the shareholders' meeting or at the time the election lists, if provided for, are deposited. (Code, 7.1; <i>see</i> Report, 4.5.1)</p> <p>In general, proposals for the election of directors are put forward by the majority or controlling shareholders, who obviously make a preliminary selection of the candidates.</p> <p>In the case of companies with a broad shareholder base, instead, candidates are also put forward, sometimes by means of election lists provided for in the by-laws, by minority or non-controlling shareholders. (Commentary on Code, 7)</p> <p><u><i>Board of Auditors</i></u></p> <p>Proposals to be submitted to the shareholders' meeting for appointments to the position of auditor, accompanied by detailed information on the personal traits and professional qualifications of the candidates, shall be deposited at the company's registered office at least 10 days before the date fixed for the shareholders' meeting or at the time the related lists are deposited. (Code, 13.1)</p> |

| Peters Report (The Netherlands) | VEB Recommendations (The Netherlands) | SCGOP Handbook and Guidelines (The Netherlands) | Securities Market Comm'n Recommendations (Portugal) |
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| 6. Selecting, Inviting and Orienting New Directors | | | |
| <p><u>Supervisory Board</u> It is important that Supervisory Board members are selected from a wide circle. One means of helping to achieve this would be via a further internationalization of the composition of the Supervisory Board. (Recommendation 2.10)</p> <p>Preparation of the selection criteria and nomination procedures for Supervisory Board members, executive directors and higher management posts [may be conducted by a selection and nomination committee]. (Recommendation 3.2)</p> <p><u>Management Board</u> Under the full “structure regime,” the Supervisory Board is responsible for appointments to the [Management Board]. In companies not subject to the full “structure regime,” nominations for such appointments will be the duty of the Supervisory Board. (Recommendation 2.1)</p> | <p><u>Supervisory Board</u> <i>Not covered directly, but see</i> Commentary on Recommendation 7 (A significant objection to the ‘structure regime’ (members of the supervisory board elect their own colleagues or successors) is uncontrolled co-optation which enables the board of a company not to draw obvious conclusions from a lack of trust from shareholders.).</p> <p><u>Management Board</u> <i>Not covered directly, but see</i> Recommendation 7 (Shareholders should be able to file a resolution for dismissal of a member of the executive board. Adoption of this resolution requires at least two-thirds support and a quorum of fifty percent.).</p> <p><i>See also</i> Commentary on Recommendation 7 (The possibility of dismissal will be used rarely but does offer sanctions when members of the supervisory board fail to replace dysfunctional management. This situation already exists in companies where the structure regime does not apply.)</p> | <p><u>Supervisory and Management Boards</u> Unless the law or articles of association determine otherwise, it is the task of shareholders to appoint the members of the supervisory board [and] management board.... (Handbook, p. 8)</p> | <p><i>Not covered.</i></p> |

| Olivencia Report (Spain) | Swedish Shareholders Ass'n Policy (Sweden) | ICSA Code (United Kingdom) | ISC Statement of Best Practice (United Kingdom) |
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| 6. Selecting, Inviting and Orienting New Directors | | | |
| <p>The Board's intervention in the selection and re-election of its members should adjust to a formal and transparent procedure and should issue from a reasonable proposal made by the Nomination Committee. (Code, Recommendation 11)</p> <p>The Nomination Committee's mission is to watch over the integrity of the process of appointing directors; to this end, it seems wise to entrust it with ... submit[ing] appointment proposals to the Board of Directors, so that it can either appoint them directly (co-optation) or relay those proposals to the General Shareholders' Meeting. (Report, 5.1)</p> <p>[C]ompanies receiving this report should have an induction program for new directors to top the appointment process. The purpose of this program would be to provide them with advice on their legal duties, inform them about corporate governance rules and provide a briefing on the company's features, situation and environment. (Report, 5.3)</p> | <p>The notice of a general meeting where the board is to be elected should include the names of people the committee intends to propose and information about them. Representatives of the nomination committee should always be present at the general meeting and be prepared to explain the reasons the committee's proposals are based on. (Guideline 1.2.1)</p> | <p>The board should ensure that each director is given on appointment sufficient information to enable him/her to perform his/her duties. In particular, guidance for non-executive directors should cover the procedures:</p> <ul style="list-style-type: none"> § for obtaining information concerning the company; and § for requisitioning a meeting of the board. <p>(Code, §2)</p> | <p>A director must be elected by the Company in General Meeting unless provision is made otherwise. The directors may appoint additional directors if the Articles so provide and any change in the directorate must be notified to the International Stock Exchange immediately. Such an appointment terminates at the next Annual General Meeting when the director would normally be eligible for election at that meeting. (p.2)</p> |

| Cadbury Report (United Kingdom) | Greenbury Report (United Kingdom) | Hampel Report (United Kingdom) | The Combined Code/Turnbull Report (United Kingdom) |
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| 6. Selecting, Inviting and Orienting New Directors | | | |
| <p>Non-executive directors should be selected through a formal process, and both this process and their appointment should be a matter for the board as a whole. (Code, 2.4)</p> <p>We recommend that [a non-executive director's] appointment should be a matter for the board as a whole and that there should be a formal selection process, which will reinforce the independence of non-executive directors and make it evident that they have been appointed on merit and not through any form of patronage. (Report, 4.15)</p> <p>One approach to making board appointments, which makes clear how these appointments are made and assists boards in making them, is through the setting up of a nomination committee, with the responsibility of proposing to the board, in the first instance, any new appointments, whether of executive or of non-executive directors. A nomination committee should have a majority of non-executive directors on it and be chaired either by the chairman or a non-executive director. (Report, 4.30)</p> <p>The formal relationship between the shareholders and the board of directors is that the shareholders elect the directors [and] the directors report on their stewardship to the shareholders.... Thus the shareholders, as owners of the company, elect the directors to run the business on their behalf and hold them accountable for its progress. (Report, 6.1)</p> | <p><i>Not covered.</i></p> | <p>There should be a formal and transparent procedure for the appointment of new directors to the board. (Principle A.V)</p> <p>We endorse the view that it is the board's responsibility to appoint new directors.... (Guideline 2.8)</p> <p>[O]n the first occasion that an individual is appointed to the board of a listed company, he or she should receive induction into the responsibilities of a director. It is the board's responsibility to ensure that this help is available. It is equally important that directors should receive further training from time to time, particularly on relevant new laws and regulations and changing commercial risks. (Guideline 3.5)</p> <p>Appointment to the board should be a transparent process. Decisions should be taken, in reality as well as in form, by the whole board. We support the Cadbury committee's endorsement of the nomination committee (Cadbury Report, 4.30); indeed, we believe that the use of such a committee should be accepted as best practice, with the proviso that smaller boards may prefer to fulfil the function themselves. (Guideline 3.19)</p> <p>In general, we see appointment of directors to represent outside interests as incompatible with board cohesion, but there may be exceptional cases where it is appropriate for a major creditor or a major shareholder to nominate a director. (Guideline 3.20)</p> <p>We recommend that all names submitted for election or re-election as directors should be accompanied by biographical details indicating their relevant qualifications and experience. This will enable shareholders to make an informed decision whether to support the director's re-election. (Guideline 3.21)</p> | <p>There should be a formal and transparent procedure for the appointment of new directors to the board. (Principle A.5)</p> <p>Every director should receive appropriate training on the first occasion that he or she is appointed to the board of a listed company, and subsequently as necessary. (Code § 1, A.1.6)</p> <p>Unless the board is small, a nomination committee should be established to make recommendations to the board on all new board appointments. (Code § 1, A.5.1)</p> <p>The names of directors submitted for election or reelection should be accompanied by sufficient biographical details to enable shareholders to take an informed decision on their election. (Code § 1, A.6.2)</p> |

| NAPF Corporate Governance Code (United Kingdom) | AUTIF Code (United Kingdom) | Hermes Statement (United Kingdom) | PIRC Shareholder Voting Guidelines (United Kingdom) |
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| 6. Selecting, Inviting and Orienting New Directors | | | |
| <p>All directors, particularly when first appointed to the board of a listed company, should receive appropriate training. (§1)</p> <p>There should be a formal and transparent procedure for the appointment of new directors to the board.</p> <p>Boards should establish a sub-committee (normally called the nomination committee) to deal with director appointments. The nomination committee's role is to filter proposals and recommend candidates to the board. Final appointments are the responsibility of the whole board. Where boards are very small, say five or less, there is likely to be a case for the entire process to be undertaken by the board itself, dispensing with the need for a nomination committee. (§7)</p> <p>All directors must be put forward for election by shareholders at the first AGM after their appointment. (§8)</p> | <p>Principle A.5 of the Combined Code recommends that there should be a formal and transparent procedure for the appointment of new directors to the board. Code Provision A.5.1 recommends the establishment of a nomination committee, chaired by the chairman of the board or a non-executive director, and with the chairman and members identified in the annual report. The company should provide an explanation if there is no nomination committee. (Guidance Note on Key Principle 6)</p> <p>AUTIF encourages all member firms to provide training for relevant staff on corporate governance issues.... (Key Principle 10)</p> <p>See Guidance Note on Principle 5 (AUTIF encourages member firms, as part of their dialogue with the companies in which they invest and when scrutinizing the annual reports and accounts, to pay particular attention to the companies' compliance with the Combined Code in the area ... [of] board balance....).</p> | <p>The expression of fresh views and genuine debate across the board table are of considerable value and importance. For this reason at least one new independent non-executive director should join the board every three years. (2.6)</p> <p>The role of NED is becoming increasingly complex, and Hermes recommends that companies encourage NEDs to participate in the range of seminars and workshops ... which encourage a participatory approach and include case studies illustrating difficult situations. (2.8)</p> <p>Hermes recommends that the nomination committee be responsible, after consultation with other directors, for finalizing the candidate specification for all board appointments and for approving the process by which suitable candidates are identified and short-listed.... Confirmation of the appointment should be the responsibility of the board as a whole. (APPENDIX 3.5)</p> <p>The nomination committee should ensure that all board appointees undergo an appropriate induction program. (APPENDIX 3.6)</p> | <p>PRINCIPLE: There should be an independent and transparent appointments and review process. (Part 2: Directors, p. 6)</p> <p>Voting on the appointment of the directors is the most important routine issue for shareholders to consider at general meetings. (Part 2, Directors, p. 4)</p> <p>[On two-tiered boards,] we consider that ... shareholders should have the right to elect [all] directors [on the supervisory board] and hold them accountable through regular election.... This applies [even] to stakeholder representatives. (Part 2, Directors, p. 4)</p> <p>Directors should receive general training on their responsibilities and also company-specific training. Companies should have a formal induction policy for new directors, and specialist training on particular issues related to certain committees, such as remuneration and internal controls. There should be a continuing development program, and standards of competence should be established in core skills, knowledge and expertise. (Part 2: Directors, p. 7)</p> |

| OECD Principles/Millstein Report (International) | ICGN Statement/Global Voting Principles (International) | Euroshareholders Guidelines (Pan-European) | EASD Principles and Recommendations (Pan-European) |
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| 7. Separation of Chairman and CEO | | | |
| <p>The Chairman as the head of the board can play a central role in ensuring the effective governance of the enterprise and is responsible for the board's effective function. The Chairman may in some countries be supported by the company secretary. In unitary board systems, the separation of the roles of the Chief Executive and Chairman is often proposed as a method of ensuring an appropriate balance of power, increasing accountability and increasing the capacity of the board for independent decision-making. (OECD Principle V.E Annotation at 42)</p> | <p><i>The ICGN Statement adopts OECD Principle V.E Annotation at 42 (In unitary board systems, the separation of the roles of the Chief Executive and Chairman is often proposed as a method of ensuring an appropriate balance of power, increasing accountability and increasing the capacity of the board for independent decision-making.).</i></p> | <p><i>Not covered directly, but see Commentary on Recommendation 9 (In the "two-tier" system, the [management and supervisory] functions are divided over two bodies.).</i></p> | <p>In one-tier board systems, the positions of chief executive officer and chairman of the board should preferably be distinct, subject to legal constraints; if not, the company should disclose and explain its decision. (Recommendation V.4)</p> |

| Recommendations of Federation of Companies (Belgium) | Dual Code of the BXS/CBF (Belgium) | The Director's Charter (FDA) (Belgium) | (Reserved) |
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| 7. Separation of Chairman and CEO | | | |
| <p><i>Not covered directly, but see Topic Heading 8, below.</i></p> | <p>The Belgian Commission on Corporate governance recommends that there should be a clear division of responsibilities at the head of a company to ensure a sound balance of power and authority. (Part I: B.1.3)</p> | <p><i>Not covered directly, but see p. 4 ([T]he Director will be attentive [t]hat no one person exercises an unlimited discretionary power within the company.).</i></p> <p><i>See also p. 4 (The Director undertakes to verify that the powers and responsibilities of the Board of Directors and of the Management are clearly established, and specifically that the powers of management accorded to the Management are clearly defined.).</i></p> | |

| Danish Shareholders Ass'n Guidelines (Denmark) | Nørby Report & Recommendations (Denmark) | Chamber of Commerce/Confederation Code (Finland) | Ministry of Trade & Industry Guidelines (Finland) |
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| 7. Separation of Chairman and CEO | | | |
| <i>Not covered.</i> | <i>Not covered directly, but see V.12 (the “managing director” and the “chairman of the board” are referenced as separate individuals).</i> | <i>Not covered directly, but see English Summary, 1 (The areas of responsibility shall be defined in particular in the case of a full-time Chairman of the Board of Directors or another member of the Board of Directors employed by the company.).</i> | <i>Not covered.</i> |

| Viénot I Report (France) | Hellebuyck Commission Recommendations (France) | Viénot II Report (France) | (Reserved) |
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| 7. Separation of Chairman and CEO | | | |
| <p>[T]he Committee noted that separation [of Chairman and CEO roles] was the rule in France prior to the Second World War, and that it was precisely because this led to difficulties that the present arrangement was adopted. Separation may well have its advantages where directors also exercising a management role represent a significant or even preponderant proportion of board membership. This is not the case in France, since not only does the law impose a ceiling on the number of <u>directeurs généraux</u> (executive directors) who are also board members, but this limit is rarely reached in practice. Moreover, under French law, companies wishing to create a strict distinction between management and supervision may achieve this by opting for organization based on a legal system providing for distinct supervisory and executive boards...</p> <p>Nonetheless, the fact that most French listed companies and <u>sociétés anonymes</u> (business corporations) in general have opted for a board of directors rather than supervisory and executive boards suggests, in the Committee's view, that in most cases there is no clear need for a stricter division of responsibilities, and such division is not usually a guarantee of better management or supervision. (pp. 8-9)</p> | <p>AFG-ASFFI invites companies to deliberate on ... the separation of the functions of the Chairman of the Board and the Managing Director. AFG-AFSSI is in favor of this separation in the interest of shareholders. (§ I.I.A.3)</p> | <p>The Committee considers that introduction into French law of great flexibility in the unitary system with a Board of Directors is particularly desirable, and that [when a unitary system is chosen] the Boards of corporations should be allowed an open choice between combination or separation of the offices of Chairman and Chief Executive Officer.</p> <p>At present, the law imposes a uniform requirement of combination of duties [in the CEO/Chairman, or else a choice of the dual board] structure ..., which is not without rigid and cumbersome features of its own.</p> <p>A change in the law would allow achievement of the desired flexibility since, in the system using a [unitary] Board of Directors, it would make the option between combination and separation of duties the general rule.... (p. 6)</p> <p>The Committee recommends first that the company statute provide for the following system: The statute would require listed corporations with Boards of Directors to refer to the extraordinary meeting of their shareholders, within a period in the order of 18 months after its enactment, the appropriate amendment of the by-laws to allow the option between combination and separation of the offices of Chairman of the Board of Directors and Chief Executive Officer. (p. 7)</p> <p>The statutory rules with respect to civil and criminal liability would need to be amended so as to provide for the situation where the Board of Directors elects to separate the positions of Chairman and Chief Executive Officer. (p. 8)</p> <p><i>See</i> p. 5 ([A]mong the leading listed corporations, the proportion of those separating the offices [by choosing a dual board system] is the same as in the USA.).</p> <p><i>See generally</i> Part One: Separation of the offices of Chairman and Chief Executive Officer, pp. 5-9.</p> | |

| Berlin Initiative Code (Germany) | German Panel Rules (Germany) | Cromme Commission Code (Germany) | (Reserved) |
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| 7. Separation of Chairman and CEO | | | |
| <i>Not covered directly, but the German system assumes a two-tier board structure with separate Chairmen of each Board.</i> | <i>Not covered directly, but the German system assumes a two-tier board structure, and candidates proposed for election to the Supervisory Board shall not include, as a matter of course, retiring Management Board members. See Code, III.1.b).</i> | <i>Not covered directly, but the German system assumes a two-tier board structure with separate Chairmen of each Board.</i> | |

| Mertzanis Report (Greece) | Federation of Greek Industries Principles (Greece) | IAIM Guidelines (Ireland) | Preda Report (Italy) |
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| 7. Separation of Chairman and CEO | | | |
| <p>The separation of duties and responsibilities in the highest levels of the corporation's governance should be encouraged with the purpose of achieving a balance between authority, functions and their control. The effectiveness of the chairman of the Board of Directors in monitoring the operation of the Board is obviously weakened when that person exercises simultaneously the duties of the Chief Executive Officer (CEO) of the corporation. (Recommendation 5.5)</p> | <p><i>Not covered.</i></p> | <p><i>Not covered directly, but the IAIM Guidelines adopt the Combined Code. See the Combined Code, Principle A.2 (There are two key tasks at the top of every public company – the running of the board and the executive responsibility for the running of the company's business. There should be a clear division of responsibilities at the head of the company which will ensure a balance of power and authority, such that no one individual has unfettered powers of decision.).</i></p> <p><i>See also the Combined Code § 1, A.2.1 (A decision to combine the posts of chairman and chief executive officer in one person should be publicly justified.).</i></p> | <p>The Committee has found that it is not uncommon in Italy for management powers to be delegated to the chairman, either alone or together with other managing directors. Accordingly, it does not recommend the separation of the two roles as a matter of principle. It does, however, recommend that listed companies should make the division of tasks and responsibilities among the various positions absolutely clear and disclose adequate information in this respect. (Report, 5.2)</p> |

| Peters Report (The Netherlands) | VEB Recommendations (The Netherlands) | SCGOP Handbook and Guidelines (The Netherlands) | Securities Market Comm'n Recommendations (Portugal) |
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| 7. Separation of Chairman and CEO | | | |
| <p><i>Not covered directly but, in the context of the two-tier board structure, the Peters Report states:</i></p> <p>The Supervisory Board has a chairman who ensures that the Supervisory Board functions properly. The chairman has specific duties regarding discussions on relevant issues, communication between the Supervisory Board members and the [Management Board], the accountant and the external advisers appointed by the Supervisory Board. The chairman keeps in frequent contact with the chairman of the [Management Board]. The specific duties of the Supervisory Board and those of its chairman are laid down in the regulations for the Supervisory Board. (Recommendation 3.1)</p> | <p><i>Not covered directly, but the VEB Recommendations assume a two-tier board structure in which the chairman of the supervisory board and the chairman of the management board are not the same person.</i></p> | <p><i>Not covered directly, but see</i> Guideline 13(d) (Former members of the executive board should not be automatically appointed as members of the supervisory board. Should a former executive board member be appointed to the supervisory board, he should not act as chairman.).</p> | <p><i>Not covered.</i></p> |

| Olivencia Report (Spain) | Swedish Shareholders Ass'n Policy (Sweden) | ICSA Code (United Kingdom) | ISC Statement of Best Practice (United Kingdom) |
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| 7. Separation of Chairman and CEO | | | |
| <p>[C]onsidering that holding both [Chairman and CEO] positions is the most widespread practice in Spain and in surrounding countries, the Committee recognizes that at present it is not proper to offer a general guideline. Nevertheless, the concern of maintaining optimal conditions for the proper fulfillment of the general function of supervision leads us to recommend that some cautionary measures be adopted whenever one individual is to hold the two positions. It is a question of creating counter-weights allowing the Board of Directors to operate independently from the management team and to keep its power to control it. (Report, 3.2)</p> | <p>The board should normally consist of 6-9 members that do not have assignments for, or business connections with, the company. Nor should the chairman of the board have any such connections.</p> <p>It is not suitable to appoint a so-called working chairman, nor that the board chairman be appointed group chief executive. (Guideline 2.1)</p> | <p><i>Not covered.</i></p> | <p>The combination of the roles of Chairman and Chief Executive constitutes a concentration of power and can give rise to conflicts. The Board has the power to appoint, monitor the performance of and, if necessary, dismiss the Chief Executive. This may be difficult if the Chief Executive is also the chairman. The roles of Chairman and Chief Executive should not, therefore, normally be combined. (p. 2)</p> |

| Cadbury Report (United Kingdom) | Greenbury Report (United Kingdom) | Hampel Report (United Kingdom) | The Combined Code/Turnbull Report (United Kingdom) |
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| 7. Separation of Chairman and CEO | | | |
| <p>Given the importance and particular nature of the chairman's role, it should in principle be separate from that of the chief executive. (Report, 4.9)</p> <p><i>See</i> Code, 1.2 (There should be clearly accepted division of responsibilities at the head of a company, which will ensure a balance of power and authority, such that no one individual has unfettered powers of decision.)</p> | <p><i>Not covered directly, but see</i> Commentary on Remuneration Committees, Membership and Qualifications, 4.9 (The Non-Executive Chairman of a company should not act as Chairman of the remuneration committee if he or she is involved in the day-to-day running of the company or his or her own remuneration arrangements would involve any conflict of interest.)</p> | <p>There are two key tasks at the top of every public company – the running of the board and the executive responsibility for the running of the company's business. A decision to combine these roles in one individual should be publicly explained. (Principle A.II)</p> <p>Cadbury recommended that the roles of chairman and chief executive officer should in principle be separate; if they were combined in one person, that represented a considerable concentration of power. We agree with Cadbury's recommendation and reasoning, and we also note that in the largest companies these may be two full-time jobs. But a number of companies have combined the two roles successfully, either permanently or for a time. Our view is that, other things being equal, the roles of chairman and chief executive officer are better kept separate, in reality as well as in name. Where the roles are combined, the onus should be on the board to explain and justify the fact. (Guideline 3.17)</p> | <p>There are two key tasks at the top of every public company – the running of the board and the executive responsibility for the running of the company's business. There should be a clear division of responsibilities at the head of the company which will ensure a balance of power and authority, such that no one individual has unfettered powers of decision. (Principle A.2)</p> <p>A decision to combine the posts of chairman and chief executive officer in one person should be publicly justified. (Code § 1, A.2.1)</p> |

| NAPF Corporate Governance Code (United Kingdom) | AUTIF Code (United Kingdom) | Hermes Statement (United Kingdom) | PIRC Shareholder Voting Guidelines (United Kingdom) |
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| 7. Separation of Chairman and CEO | | | |
| <p>There are two discrete roles which must be performed by those leading a company. Firstly, the board requires a chairman to guide it and, secondly, a chief executive officer who will understand the business, formulate proposals on strategy for the board and implement its decisions. There should be a clear division of these responsibilities at the head of the company to ensure a balance of power and authority, such that no one individual has unfettered control.</p> <p>The different functions of chairman and chief executive officer must not be confused. Therefore, it is generally preferable for different people to perform the two functions. The Combined Code (§ 1, A.2.1) allows one person to fulfil both roles, provided this is publicly justified. The NAPF rejects this as a valid option. (§4)</p> | <p>Principle A.2 of the Combined Code recommends that there should be a clear division of responsibilities at the head of a company. Code Provision A.2.1 states that a decision to combine the roles of chairman and chief executive should be publicly justified. (Guidance Note on Key Principle 6)</p> <p><i>See</i> Guidance Note on Key Principle 5 (AUTIF encourages member firms, as part of their dialogue with the companies in which they invest and when scrutinizing the annual reports and accounts, to pay particular attention to the companies' compliance with the Combined Code in the area ... [of the] role of chairman and chief executive....).</p> | <p>Hermes favours separation of the roles of chairman and chief executive and is generally opposed to a chief executive becoming chairman in the same company. Hermes prefers to discuss any departure from this guideline in advance of decisions being taken. The overriding consideration will be whether the composition and balance of the board will ensure that no individual can wield undue influence on the board. (2.4)</p> | <p>PRINCIPLE: There should be a clear division of responsibilities at the head of the company.</p> <p>A. <u>There is a separate chairman and chief executive.</u> The roles of chairman and chief executive should be separate. Combining the two roles in one person represents a concentration of power which is potentially detrimental to board balance. Equally, in terms of ensuring effective functioning of the board, the chairman should have a key role in determining board appraisal in which the performance of the chief executive and their succession must be considered objectively. This can only be done if the posts are separate. The combination of roles is only justified on a temporary basis under exceptional circumstances.</p> <p>B. <u>There is a non-executive chairman.</u> Chairmen should not be executive directors and should not have any operational involvement in the company's affairs, as this will detract from their ability to stand back from the company and its executives and apply objective judgment.</p> <p>C. <u>The chairman has not previously been chief executive.</u> Former chief executives should not be appointed as chairmen (whether executive or non-executive) as this may also inhibit an objective assessment of the executive management and their strategy. It may also obstruct the ability of the new chief executive in developing different policies. (Part 2: Directors, p. 6)</p> <p>Given the board's role in holding the executive management accountable, the board chairman should be seen as a separate role to that of an executive director with operational responsibilities. The role expected of the chairman may well also affect his or her ability to perform the function of a fully independent director, with implications for board structure. We consider that the chairman's position should be non-executive. (Part 2: Directors, p. 4)</p> |

| OECD Principles/Millstein Report (International) | ICGN Statement/Global Voting Principles (International) | Euroshareholders Guidelines (Pan-European) | EASD Principles and Recommendations (Pan-European) |
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| 8. Lead Director | | | |
| <i>Not covered directly, but see Topic Heading 7, above.</i> | <i>Not covered directly, but see Topic Heading 7, above.</i> | <i>Not covered.</i> | <i>Not covered.</i> |

| Recommendations of Federation of Companies (Belgium) | Dual Code of the BXS/CBF (Belgium) | The Director's Charter (FDA) (Belgium) | (Reserved) |
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| 8. Lead Director | | | |
| <p>The division of responsibilities between the Board of Directors and the Executive Directors must be clearly defined. If the chairmanship of these governing bodies is entrusted to the same person, it is necessary to ensure that there are one or more prominent individuals on the Board of Directors who can form a counter-balance to the influence of the chairman.</p> <p>This is because it is necessary to ensure that no one can exercise discretionary powers without control. (1.2)</p> | <p>Where the chairman is also the chief executive, it is essential that there should be strong and independent persons on the board whose authority is acknowledged. (Part I: B.1.3)</p> | <p><i>Not covered directly, but see Topic Heading 7, above.</i></p> | |

| Danish Shareholders Ass'n Guidelines (Denmark) | Nørby Report & Recommendations (Denmark) | Chamber of Commerce/Confederation Code (Finland) | Ministry of Trade & Industry Guidelines (Finland) |
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| 8. Lead Director | | | |
| <i>Not covered.</i> | It is recommended that the company appoints a deputy chairman. The deputy chairman must be able to act in the chairman's absence and in addition be an efficient sparring partner to the chairman. (IV.2) | <i>Not covered directly, but see Topic Heading 7, above.</i> | <i>Not covered.</i> |

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| Viénot I Report (France) | Hellebuyck Commission Recommendations (France) | Viénot II Report (France) | (Reserved) |
| 8. Lead Director | | | |
| <i>Not covered directly, but see Topic Heading 7, above.</i> | <i>Not covered directly, but see Topic Heading 7, above.</i> | <i>Not covered directly, but see Topic Heading 7, above.</i> | |

| Berlin Initiative Code (Germany) | German Panel Rules (Germany) | Cromme Commission Code (Germany) | (Reserved) |
|--|--|--|------------|
| 8. Lead Director | | | |
| <i>Not covered directly, but see Topic Heading 7, above.</i> | <i>Not covered directly, but see Topic Heading 7, above.</i> | <i>Not covered directly, but see Topic Heading 7, above.</i> | |

| Mertzanis Report (Greece) | Federation of Greek Industries Principles (Greece) | IAIM Guidelines (Ireland) | Predia Report (Italy) |
|--|---|---|--------------------------|
| 8. Lead Director | | | |
| <i>Not covered directly, but see Topic Heading 7, above.</i> | <i>Not covered.</i> | <i>Not covered directly, but the IAIM Guidelines adopt the Combined Code. See the Combined Code § 1, A.2.1 (Whether the posts [of chairman and chief executive officer] are held by different people or by the same person, there should be a strong and independent non-executive element on the board, with a recognized senior member other than the chairman to whom concerns can be conveyed. The chairman, chief executive officer and senior independent director should be identified in the annual report.).</i> | <i>Not covered.</i> |

| Peters Report (The Netherlands) | VEB Recommendations (The Netherlands) | SCGOP Handbook and Guidelines (The Netherlands) | Securities Market Comm'n Recommendations (Portugal) |
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| 8. Lead Director | | | |
| <i>Not covered.</i> | <i>Not covered.</i> | <i>Not covered directly, but see Topic Heading 7, above.</i> | <i>Not covered.</i> |

| Olivencia Report (Spain) | Swedish Shareholders Ass'n Policy (Sweden) | ICSA Code (United Kingdom) | ISC Statement of Best Practice (United Kingdom) |
|--|--|-------------------------------|--|
| 8. Lead Director | | | |
| <p><i>Not covered directly but see Code, Recommendation 5 (In the event that the Board of Directors chooses to adjoin the position of Chairman and CEO in the same individual, the necessary cautionary measures should be taken to reduce the risks arising from concentrating power in the hands of one individual.).</i></p> <p><i>See also Code, Recommendation 6 (The Secretary of the Board should be granted more prominence, reinforcing his/her independence and stability and emphasizing his/her function of watching over the material and formal lawfulness of Board proceedings.).</i></p> <p><i>See also Report, 3.2 ([T]he concern of maintaining optimal conditions for the proper fulfillment of the general function of supervision leads us to recommend that some cautionary measures be adopted whenever one individual is to hold the two positions [of CEO and Chairman]. It is a question of creating counter-weights allowing the Board of Directors to operate independently from the management team and to keep its power to control it. Said measures can be issued in many ways, although the most effective one could be to appoint, among the independent Directors, a Vice-President with co-ordination functions. This individual could be empowered to call the Board meeting, put down new points on the agenda, submit information to directors, and voice their concerns.).</i></p> | <p><i>Not covered directly but see Guideline 2.1 (It is not suitable to appoint a so-called working chairman...).</i></p> <p><i>See also Topic Heading 7, above.</i></p> | <p><i>Not covered.</i></p> | <p><i>Not covered directly, but see p. 2 (In circumstances where [the roles of Chairman and Chief Executive] are combined it is unlikely that institutional shareholders will be satisfied unless there is a strong body of independent non-executive directors who are aware of their overall responsibilities to shareholders.).</i></p> |

| Cadbury Report (United Kingdom) | Greenbury Report (United Kingdom) | Hampel Report (United Kingdom) | The Combined Code/Turnbull Report (United Kingdom) |
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| 8. Lead Director | | | |
| <p>Where the chairman is also the chief executive, it is essential that there should be a strong and independent element on the board, with a recognized senior member. (Code, 1.2; see Report, 4.9)</p> <p>If the chairman is also the chief executive, board members should look to a senior non-executive director, who might be the deputy chairman, as the person to whom they should address any concerns about the combined office of chairman/chief executive and its consequences for the effectiveness of the board. A number of companies have recognized that role and some have done so formally in their Articles. (Report, 4.5)</p> | <p><i>Not covered directly, but see Topic Heading 7, above.</i></p> | <p>Cadbury also recommended that where the roles of chairman and chief executive officer were combined, there should be a strong and independent element on the board, with a recognized senior member (Cadbury Report, 1.2). But even where the roles of chairman and chief executive officer are separated, we see a need for vigorously independent non-executive directors. There can, in particular, be occasions when there is a need to convey concerns to the board other than through the chairman or chief executive officer. To cover this eventuality, we recommend that a senior independent non-executive director – <u>e.g.</u>, a deputy chairman or the chairman of the remuneration committee – should have been identified in the annual report. We do not envisage that this individual would for this purpose need special responsibilities or an independent leadership role, nor do we think that to identify him or her should be divisive. (Guideline 3.18)</p> | <p>Whether the posts [of chairman and chief executive officer] are held by different people or by the same person, there should be a strong and independent non-executive element on the board, with a recognized senior member other than the chairman to whom concerns can be conveyed. The chairman, chief executive officer and senior independent director should be identified in the annual report. (Code § 1, A.2.1)</p> |

| NAPF Corporate Governance Code (United Kingdom) | AUTIF Code (United Kingdom) | Hermes Statement (United Kingdom) | PIRC Shareholder Voting Guidelines (United Kingdom) |
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| 8. Lead Director | | | |
| <p><i>Not covered directly, but see Topic Heading 7, above.</i></p> | <p><i>Not covered directly, but see Guidance Note on Key Principle 6 (Principle A.2 of the Combined Code recommends.... [t]he chairman, chief executive and senior independent director should be identified in the annual report.).</i></p> | <p>Hermes supports the appointment of a senior NED and sees the role as an extension of that of deputy chairman. This is an important position. (2.5)</p> <p>In many respects, Hermes sees the role [of senior NED] as an extension of that of deputy chairman and supports combining the roles of independent deputy chairman and senior non-executive director. Hermes believes that the main responsibilities of the role are to ensure that the views of each NED are given due consideration and to provide a communication channel between NEDs and shareholders. This communication channel should be in addition to, and not replace, existing channels. For many companies, this new channel may have only occasional ... use. (APPENDIX 2, Introduction)</p> <p>Where the board chairman either combines the role of chairman and chief executive, or has at any time been an executive director of the company, then the senior NED might chair both the nomination committee and the remuneration committee. (APPENDIX 2.1)</p> <p><i>See generally</i> APPENDIX 2, THE ROLE OF THE SENIOR NON-EXECUTIVE DIRECTOR.</p> | <p><i>Not covered directly, but see Topic Heading 7, above.</i></p> |

| OECD Principles/Millstein Report (International) | ICGN Statement/Global Voting Principles (International) | Euroshareholders Guidelines (Pan-European) | EASD Principles and Recommendations (Pan-European) |
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| 9. Board Size | | | |
| <i>Not covered.</i> | <i>Not covered.</i> | <i>Not covered.</i> | <i>Not covered.</i> |

| Recommendations of Federation of Companies (Belgium) | Dual Code of the BXS/CBF (Belgium) | The Director's Charter (FDA) (Belgium) | (Reserved) |
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| 9. Board Size | | | |
| <i>Not covered.</i> | <p>The Commission takes the view that, in most cases, the board of directors should not consist of more than twelve members.</p> <p>The board of directors should decide on the number of directors necessary to govern the company in the best possible manner, taking into account all relevant data. Therefore, the board must consist of enough members to allow a fruitful discussion; too high a number of directors will not enhance the exchange of ideas. (Part I: B.1.8)</p> | <i>Not covered.</i> | |

| Danish Shareholders Ass'n Guidelines (Denmark) | Nørby Report & Recommendations (Denmark) | Chamber of Commerce/Confederation Code (Finland) | Ministry of Trade & Industry Guidelines (Finland) |
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| 9. Board Size | | | |
| <i>Not covered directly, but see Topic Heading 10, below.</i> | It is important that the board has a size which allows for a constructive debate and an efficient decision process, in which it is possible for all the directors to play an active part. Against this background it is recommended that the board consists of no more than six directors elected by the general meeting. The board must consider if the number of directors is appropriate in relation to the requirements of the company on an on-going basis. (V.3) | <i>Not covered.</i> | <i>Not covered.</i> |

| Viénot I Report (France) | Hellebuyck Commission Recommendations (France) | Viénot II Report (France) | (Reserved) |
|--|--|---|------------|
| 9. Board Size | | | |
| <p><i>Not covered directly, but see p. 10 ([T]he number of members should not be increased to a point where it would be difficult for each to contribute to discussion....).</i></p> | <p>Under French law, the board must be composed of at least three and no more than eighteen. The Commission recommends that the number of directors be kept at a reasonable number to ensure the board's proper functioning, with a limit of sixteen members. (§ II.D.1)</p> | <p><i>Not covered directly, but see Viénot I Report, at left.</i></p> | |

| Berlin Initiative Code (Germany) | German Panel Rules (Germany) | Cromme Commission Code (Germany) | (Reserved) |
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| 9. Board Size | | | |
| <p><u>Supervisory Board</u> The Supervisory Board has – insofar as it is permissible – six or nine members. If the number required by law is higher, the Supervisory Board should ordinarily not exceed the minimum size stipulated by statute. (Code, IV.3.2)</p> <p><u>Management Board</u> Normally, [the Management Board] has at least three and at most nine members. (Code, III.3.1)</p> | <p><u>Supervisory Board</u> <i>Not covered directly, but see Code, III.3 (The Nomination Committee is in charge of the ... size ... of the Supervisory Board.).</i></p> <p><i>See also Code, III.1.a) (To ensure efficiency, regard will be given to size and composition of the Supervisory Board.).</i></p> <p><u>Management Board</u> <i>Not covered.</i></p> | <p><u>Supervisory Board</u> <i>Not covered.</i></p> <p><u>Management Board</u> The Management Board shall be comprised of several persons and have a Chairman or Spokesman. Terms of Reference shall regulate the allocation of business in the Management Board. (§IV.2.1)</p> | |

| Mertzanis Report (Greece) | Federation of Greek Industries Principles (Greece) | IAIM Guidelines (Ireland) | Preda Report (Italy) |
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| 9. Board Size | | | |
| <p>For reasons of flexibility in the decision-making process, it is recommended that the maximum number of Board members be no higher than thirteen. (Recommendation 5.11)</p> <p>The Board of Directors should recommend to the general shareholder meeting the number of Board members required for the corporation's efficient and flexible governance in the best possible way and having available all relevant information. Therefore, the Board of Directors should consist of a sufficient number of members in order to secure conditions of efficient interaction and exchange of ideas. (Footnote 8 to Recommendation 5.11)</p> | <p><i>Not covered directly, but see §2.1 (The board of directors of a company listed on the Athens Stock Exchange must include a number of members necessary to ensure the required distinction between executive and non-executive members, and the allocation, to certain of these members, of tasks resulting from the necessity to ensure proper corporate governance.).</i></p> | <p><i>Not covered.</i></p> | <p>[E]ach company should determine the number ... of its non-executive directors in relation to its size, the complexity and specific nature of its sector of activity, and the total membership of the board. (Commentary on Code, 2.2)</p> |

| Peters Report (The Netherlands) | VEB Recommendations (The Netherlands) | SCGOP Handbook and Guidelines (The Netherlands) | Securities Market Comm'n Recommendations (Portugal) |
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| 9. Board Size | | | |
| <p><u>Supervisory Board</u> As regards the desired size ... of the Supervisory Board, the nature and the size of the company should be taken into account. (Recommendation 2.2)</p> <p><u>Management Board</u> <i>Not covered.</i></p> | <p><i>Not covered.</i></p> | <p><i>Not covered.</i></p> | <p>[E]ach board should balance the number of members with due efficiency, taking into consideration that an excessive number of members may hamper the desired cohesion and contribution of each member in discussion and decision-taking. (Commentary on Recommendation 14)</p> |

| Olivencia Report (Spain) | Swedish Shareholders Ass'n Policy (Sweden) | ICSA Code (United Kingdom) | ISC Statement of Best Practice (United Kingdom) |
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| 9. Board Size | | | |
| The Board of Directors should adjust its size to achieve a most efficient and participative operation. In principle, the appropriate size could range from five to fifteen members. (Code, Recommendation 4) | The board should normally consist of 6-9 members.... (Guideline 2.1) | <i>Not covered.</i> | The Articles should provide for a maximum as well as a minimum number of directors. (p. 2) |

| Cadbury Report (United Kingdom) | Greenbury Report (United Kingdom) | Hampel Report (United Kingdom) | The Combined Code/Turnbull Report (United Kingdom) |
|------------------------------------|--------------------------------------|-----------------------------------|---|
| 9. Board Size | | | |
| <i>Not covered.</i> | <i>Not covered.</i> | <i>Not covered.</i> | <i>Not covered directly, but see Topic Heading 10, below.</i> |

| NAPF Corporate Governance Code (United Kingdom) | AUTIF Code (United Kingdom) | Hermes Statement (United Kingdom) | PIRC Shareholder Voting Guidelines (United Kingdom) |
|--|--------------------------------|--|---|
| 9. Board Size | | | |
| <i>Not covered.</i> | <i>Not covered.</i> | The precise number of ... directors ... for any company is for its board to determine with the approval of its shareholders. (2.1) | [B]oards with large numbers of directors may become unwieldy. Fifteen is probably the maximum upper limit if the board is able to function effectively. (Part 2: Directors, p. 4) |

| OECD Principles/Millstein Report (International) | ICGN Statement/Global Voting Principles (International) | Euroshareholders Guidelines (Pan-European) | EASD Principles and Recommendations (Pan-European) |
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| 10. Mix of Inside and Outside Directors | | | |
| <p>The corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board’s accountability to the company and the shareholders. (OECD Principle V)</p> <p>The board should be able to exercise objective judgement on corporate affairs independent, in particular, from management. (OECD Principle V.E)</p> <p>Boards should consider assigning a sufficient number of non-executive board members capable of exercising independent judgement to tasks where there is a potential for conflict of interest. Examples of such key responsibilities are financial reporting, nomination and executive and board remuneration. (OECD Principle V.E.1)</p> <p>Policy makers and regulators should encourage some degree of independence in the composition of corporate boards. Stock exchange listing requirements that address a minimal threshold for board independence ... have proved useful, while not unduly restrictive or burdensome. However, ... corporate governance – including board structure and practice – is not a “one-size-fits-all” proposition, and should be left, largely, to individual participants. (Millstein Report, Perspective 15)</p> <p>Whether in a single-tier or two-tier board system, individual corporations should ensure that an effective number of board of director members – or in certain nations, board of auditor members – are persons who are capable of exercising judgement independent of management views. Generally, this will require that such board members are persons who are not employed by the company. (Millstein Report, Perspective 24)</p> | <p>[E]ach board should include sufficient independent non-executive members with appropriate competencies. Responsibilities should include monitoring and contributing effectively to the strategy and performance of management, staff key committees of the board, and influence the conduct of the board as a whole. Accordingly, independent non-executives should comprise no fewer than 3 members and as much as a substantial majority. (ICGN Amplified OECD Principle V at 9)</p> <p><i>The ICGN Statement adopts</i> OECD Principle V.E (The board should be able to exercise objective judgement on corporate affairs independent, in particular, from management.).</p> <p><i>See</i> OECD Principle V.E.I. (Boards should consider assigning a sufficient number of non-executive board members capable of exercising independent judgment to tasks where there is a potential for conflict of interest. Examples of such key responsibilities are financial reporting, nomination and executive and board remuneration.).</p> | <p><i>Not covered.</i></p> | <p>There should be a sufficient number of board members of character and skill who are independent of management, influential shareholders and other conflicting interests, such as staff, the state or suppliers of goods and services to the company and its group. (Recommendation VI.1.b)</p> <p><i>See</i> Preamble at 5 (To overcome the coordination and monitoring problems that can arise when ownership and voting rights are dispersed, the committee has endorsed many views which promote the role of independent directors.).</p> |

| Recommendations of Federation of Companies (Belgium) | Dual Code of the BXS/CBF (Belgium) | The Director's Charter (FDA) (Belgium) | (Reserved) |
|---|--|--|------------|
| 10. Mix of Inside and Outside Directors | | | |
| <p>The Board of Directors must include non-executive directors, <i>i.e.</i>, directors who do not exercise any leading role in the company. They must be sufficiently capable, influential and numerous to assert their point of view and make it count in decisions taken by the Board of Directors. (1.3)</p> <p>The non-executive directors must be sufficiently numerous in comparison with the executive directors. Some of the non-executive directors may represent the dominant shareholders of the company.</p> <p>Certain non-executive directors must be independent of the dominant shareholders and also of the management. They are called independent directors. (2.2)</p> | <p>The board should consist of a majority of non-executive directors of sufficient calibre for their views to carry significant weight in the board's decisions. (Part I: B.1.4; <i>cf.</i> B.2.2)</p> <p>A number of non-executive directors should be independent of the executive management and of the dominant shareholders, and free from any business or other relationship with the company which could interfere with their independent judgement.... (Part I: B.2.2)</p> <p><i>See</i> Part I: B.1.5 (The board should operate on the principle of collective responsibility, with no one category of directors exerting greater influence than any other.).</p> | <p><i>Not covered directly, but see</i> p. 4 (The Director undertakes to verify that the powers and responsibilities of the Board of Directors and of the Management are clearly established, and specifically that the powers of management accorded to the Management are clearly defined.).</p> | |

| Danish Shareholders Ass'n Guidelines (Denmark) | Nørby Report & Recommendations (Denmark) | Chamber of Commerce/Confederation Code (Finland) | Ministry of Trade & Industry Guidelines (Finland) |
|--|---|---|--|
| 10. Mix of Inside and Outside Directors | | | |
| <p>The board should have four members independent of day-to-day management.</p> <p>At the most, one present or past [executive] of the company should be a member of the board. (II. Governance)</p> | <p>[I]t is recommended that the majority of the directors elected by the general meeting are independent. (V.4)</p> | <p><i>Not covered directly, but see English Summary, 7 (assumes that there are some directors who are not employees of the company.).</i></p> | <p>International guidelines stress the significance of “external” members, <u>i.e.</u>, members of the Board of Directors who do not belong to the hired top management of the company, in ensuring the independence of the decision-making by the Board of Directors.... The larger the company is, the more important is the role of the external members of the Board of Directors. (2.2.1)</p> |

| Viénot I Report (France) | Hellebuyck Commission Recommendations (France) | Viénot II Report (France) | (Reserved) |
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| 10. Mix of Inside and Outside Directors | | | |
| <p>French law already imposes strict limits on the board membership of management, setting a ceiling on the number of <i>directeurs généraux</i> (executive directors) and on the number of directors who may at the same time be employees of the company.* (p. 2)</p> <p>* Article L93 of the <u>Code des Sociétés</u> (code of company law) limits the number of directors holding a contract of employment with the company to a third of board members, and article L115 limits the number of <u>directeurs généraux</u> to five. (Footnote, p. 2)</p> <p>The appropriate balance between independent directors, shareholder directors and executive directors varies from one company to another, although in general the last should in any case not be too numerous. The Committee thus concludes that the boards of all listed companies should have at least two independent members, although it is up to each board to determine the most appropriate balance in its membership. (pp. 11-12)</p> <p>Some have suggested that board members should include representatives of certain interest groups, but the Committee believes that a move in this direction would not be desirable.... [T]he presence of independent directors should suffice to ensure that all legitimate interests are taken into account. (p. 12)</p> <p>French law ... allows for full board membership of representatives of employees (by ministerial order of 1986) or of employee shareholders (under legislation dated 1994). (p. 12)</p> <p>Where a company is controlled by a majority shareholder or a group of shareholders acting in concert, ... the Committee believes that the best solution is to appoint several independent directors ... rather than to provide for special representation of minority shareholders. (pp. 12-13)</p> | <p>AFG-ASFFI recommends that at least one-third of the Board shall comprise independent directors.</p> <p>These directors should be “free of any interest” in the company, which means they should have no conflicts of interest. (§ II.B.1)</p> | <p>The Committee confirms that the presence of genuinely independent Directors in sufficient numbers on Boards of Directors and Board committees is an essential factor in guaranteeing that the interests of all the shareholders will be taken into account in the corporation’s decisions.</p> <p>In order to establish the role recognized for independent Directors, the Committee considers that they should account for at least one-third of the Board of Directors. (p. 15)</p> | |

| Berlin Initiative Code (Germany) | German Panel Rules (Germany) | Cromme Commission Code (Germany) | (Reserved) |
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| 10. Mix of Inside and Outside Directors | | | |
| <p><u>Supervisory Board</u> On the independence of Supervisory Board members, see Topic Heading 6, above.</p> <p>See also Code, V.2.6 (In the case of insurmountable divergences of opinion between the representatives of the stockholders and of the employees in a Supervisory Board where the members have parity, the Chairman of the Supervisory Board, who is normally appointed from the stockholder side, has a second vote for resolving the stalemate.).</p> <p><u>Management Board</u> Members of the Management Board are, by definition, insiders.</p> | <p><u>Supervisory Board</u> The Supervisory Board shall ensure independent advice and monitoring of the Management Board through a sufficient number of independent persons who have no current or former business association with the Group. (Code, III.1.b)</p> <p><u>Management Board</u> Members of the Management Board are, by definition, insiders.</p> | <p><u>Supervisory Board</u> On the independence of Supervisory Board members, see Topic Heading 6, above, and Topic Heading 11, below.</p> <p>See also §I (For enterprises with more than 2000 employees the Chairman of the Supervisory Board, who is practically always a representative of the shareholders, has a deciding second vote for resolutions.).</p> <p><u>Management Board</u> Members of the Management Board are, by definition, insiders.</p> | |

| Mertzanis Report (Greece) | Federation of Greek Industries Principles (Greece) | IAIM Guidelines (Ireland) | Preda Report (Italy) |
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| 10. Mix of Inside and Outside Directors | | | |
| <p>It is considered a good practice to have the majority of the members of the Board of Directors consisting of non-executive members so that independent judgement is ensured. (Recommendation 5.6)</p> <p>The number of independent Board members should be sufficient for their views to carry adequate weight in the decision-making process. (Footnote 9 to Recommendation 6.2)</p> <p>See Introduction (It is important to establish the specification and distribution of tasks between executive and non-executive Board members and management.).</p> | <p>The board of directors of a company listed on the Athens Stock Exchange must include a number of members necessary to ensure the required distinction between executive and non-executive members, and the allocation, to certain of these members, of tasks resulting from the necessity to ensure proper corporate governance. (§2.1)</p> | <p><i>Not covered directly, but the IAIM Guidelines adopt the Combined Code. See the Combined Code § 1, A.3.1 (The board should include non-executive directors of sufficient calibre and number for their views to carry significant weight in the board’s decisions.).</i></p> | <p>The board of directors shall be made up of executive directors (i.e., the managing directors, including the chairman where he or she has delegated powers, and those directors who perform management functions within the company) and non-executive directors. The number and standing of the non-executive directors shall be such that their views can carry significant weight in taking board decisions. (Code, 2.1; see Commentary on Code, 3 and Report, 5.1)</p> <p>In Italy, non-executive directors normally outnumber executive directors. The Committee recommends that, in practice, each company should determine the number, experience and personal traits of its non-executive directors in relation to its size, the complexity and specific nature of its sector of activity, and the total membership of the board. (Commentary on Code, 2.2)</p> <p>See Commentary on Code, 3 and Report, 5.1 ([T]he Committee believes that the presence on the board of directors of members who can be considered “independent” is the best way to guarantee the consideration of the interests of all the shareholders, majority and minority alike.).</p> |

| Peters Report (The Netherlands) | VEB Recommendations (The Netherlands) | SCGOP Handbook and Guidelines (The Netherlands) | Securities Market Comm'n Recommendations (Portugal) |
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| 10. Mix of Inside and Outside Directors | | | |
| <p><u>Supervisory Board</u> The Supervisory Board should be composed in such a way that its members operate independently and critically in relation to each other and the [Management Board]. (Recommendation 2.3)</p> <p>Supervisory Board members who have been appointed on the basis of a nomination should perform their duties without a mandate from those who nominated them and independently of the subsidiary interests associated with the company. (Recommendation 2.6)</p> <p><u>Management Board</u> <i>Management Board directors are, by definition, insiders.</i></p> | <p><i>Not covered.</i></p> | <p><i>Not covered directly, but The Netherlands has a two-tier board system in which some supervisory board members are expected to be outsiders (i.e., not former management board members). See Topic Headings 7, above, and 11, below.</i></p> | <p>The board should be composed of a number of members who provide effective guidance for the management of the company to its managers. (Recommendation 14)</p> <p><i>See Commentary on Recommendation 14 ([T]he efficiency of board meetings depends significantly on the diversity of opinions and the vitality of the deliberation process.).</i></p> |

| Olivencia Report (Spain) | Swedish Shareholders Ass'n Policy (Sweden) | ICSA Code (United Kingdom) | ISC Statement of Best Practice (United Kingdom) |
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| 10. Mix of Inside and Outside Directors | | | |
| <p>The Board of Directors should incorporate a reasonable number of independent directors who have a good reputation in their profession and are detached from the management team and from the significant shareholders. (Code, Recommendation 2)</p> <p>Outside directors (proprietary and independent directors) should widely outnumber executive directors on the Board of Directors, and the proportion between proprietary and independent directors should be established bearing in mind the relationship between share capital made up by significant packages and the rest. (Code, Recommendation 3)</p> <p>Among outside directors we must distinguish, on the one hand, the above-mentioned independent directors and, on the other hand, those who could be called proprietary directors. The former, as has already been stated, are those called to the Board of Directors because of their high professional qualifications, regardless of whether they are shareholders. The latter are those who are members of the Board because they are shareholders or represent important packages of shareholdings.... [T]he composition of the group of outside directors should be subject to certain regulations that ensure a due balance between independent and proprietary directors.)* (Report, 2.2)</p> <p><i>* Independent outside directors are viewed as representing the interests of a large number of smaller shareholders ("free-floating capital"), while the proprietary outside directors are viewed as linked to the controlling shareholder or controlling group ("steady capital"). See Report, II.2.2.</i></p> | <p>The board should normally consist of six to nine members that do not have assignments for, or business connections with, the company. (Guideline 2.1)</p> <p>No employees, apart from the managing director, should be included on the board. (Guideline 2.1)</p> | <p><i>Not covered.</i></p> | <p>Institutional shareholders strongly support the presence of independent directors on Boards of companies. There has been a growing awareness of the value of audit committees and the importance of non-executive directors has become evident, particularly in matters concerning top management succession, remuneration of the senior management and in circumstances where there is potential for conflict of interest such as management buy-outs. (p. 2)</p> <p>The non-executive directors should be sufficient in number and calibre for their views to carry significant weight on the Board. This is particularly necessary if the roles of Chairman and Chief Executive are combined. (p. 3)</p> |

| Cadbury Report (United Kingdom) | Greenbury Report (United Kingdom) | Hampel Report (United Kingdom) | The Combined Code/Turnbull Report (United Kingdom) |
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| 10. Mix of Inside and Outside Directors | | | |
| <p>The board should include non-executive directors of sufficient calibre and number for their views to carry significant weight in the board's decisions. (Code, 1.3)</p> <p>Non-executive directors should bring an independent judgement to bear on issues of strategy, performance, resources, including key appointments, and standards of conduct. (Code, 2.1)</p> <p>Every public company should be headed by an effective board which can both lead and control the business.... [T]his means a board made up of a combination of executive directors, with their intimate knowledge of the business, and of outside, non-executive directors, who can bring a broader view to the company's activities, under a chairman who accepts the duties and responsibilities which the post entails. (Report, 4.1)</p> | <p><i>Not covered directly, but the Code requires that the members of the remuneration committee should consist exclusively of Non-Executive Directors.</i></p> <p><i>See Topic Heading 12, below.</i></p> | <p>The board should include a balance of executive directors and non-executive directors (including independent non-executives) such that no individual or small group of individuals can dominate the board's decision taking. (Principle A.III)</p> <p>[I]t is important that there should be a sufficient number of non-executive directors, a majority of them independent and seen to be independent; and that these individuals should be able both to work co-operatively with their executive colleagues and to demonstrate objectivity and robust independence of judgement when necessary. (Guideline 2.5)</p> <p>Non-executive directors have an important part to play in corporate governance. We believe that it is difficult for them to be effective if they make up less than one-third of the board. (Guideline 3.14)</p> | <p>The board should include a balance of executive and non-executive directors (including independent non-executives) such that no individual or small group of individuals can dominate the board's decision-taking. (Principle A.3)</p> <p>The board should include non-executive directors of sufficient calibre and number for their views to carry significant weight in the board's decisions. Non-executive directors should comprise not less than one-third of the board. (Code § 1, A.3.1)</p> <p>The majority of non-executive directors should be independent of management and free from any business or other relationship which could materially interfere with the exercise of their independent judgement. Non-executive directors considered by the board to be independent in this sense should be identified in the annual report. (Code § 1, A.3.2)</p> |

| NAPF Corporate Governance Code (United Kingdom) | AUTIF Code (United Kingdom) | Hermes Statement (United Kingdom) | PIRC Shareholder Voting Guidelines (United Kingdom) |
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| 10. Mix of Inside and Outside Directors | | | |
| <p>The board should be composed of both executive and non-executive directors (including independent non-executives) such that no individual or small group of individuals can dominate the board’s decision-making. Non-executive directors should comprise not less than one-third of the board with a minimum of three. (§2)</p> <p>The majority of non-executive directors should be independent of management and identified as such in the annual report. (§3)</p> | <p>Principle A.3 of the Combined Code recommends that a company board should include a balance of executive and non-executive directors (including independent non-executives) such that no individual or small group of individuals can dominate the board’s decision taking. (Guidance Note to Key Principle 6)</p> | <p>The precise number of executive directors and non-executive directors for any company is for its board to determine with the approval of its shareholders. It is the overall balance of the board that is important. Not all non-executive directors need to be independent but there should be a strong core of NEDs that are both independent and seen to be independent. (2.1)</p> <p>Hermes accepts that not all NEDs need to be independent ... and that there can be a role for other NEDS, provided that a majority of NEDs satisfy the ... test of independence. (2.3)</p> <p>At least three, and a majority, of the directors of an investment trust should be clearly independent.... The chairman [of an investment trust] should always be fully independent and there should be no more than one representative of the trust’s fund manager on the board. (8.1)</p> | <p>PRINCIPLE: The board should contain sufficient numbers of independent non-executives.</p> <p>D. Non-executives comprise more than 50% of the board....</p> <p>E. There are at least three non-executives on the board....</p> <p>F. A clear majority of the [non-executive directors] are independent by PIRC Guidelines. (Part 2: Directors, p. 6)</p> <p>The ratio of different types of director is important as is the overall size of the board. Independent directors may find themselves outnumbered and outvoted on large boards where there are many executive directors. (Part 2: Directors, p. 4)</p> <p>[On unitary boards,] there should be a balance of executive directors and non-executive directors with broader experience who are in a position to act independently.... Two-tier board structures can be a means of overcoming some of the tensions within a unitary board between the executive function and the monitoring function.... [On two-tiered boards,] appropriate divisions of responsibility and checks and balances should be in place. (Part 2, Directors, p. 4)</p> <p>In order that non-executives can properly fulfill their role, we consider that a majority of the board should be non-executive. (Part 2: Directors, p. 5)</p> <p>PIRC does not consider that each non-executive director can be expected to fulfill both an advisory and a supervisory function. For example, it may benefit the company to retain a former employee in a non-executive capacity, although the individual will not have an outsider’s independent perspective. However, in order to ensure that there is a strong independent voice on the board, a majority of the non-executives should be independent. (Part 2: Directors, p. 5)</p> |

| OECD Principles/Millstein Report (International) | ICGN Statement/Global Voting Principles (International) | Euroshareholders Guidelines (Pan-European) | EASD Principles and Recommendations (Pan-European) |
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| 11. Definition of “Independence” | | | |
| <p>The board should be able to exercise objective judgement on corporate affairs independent, in particular, from management. (OECD Principle V.E)</p> <p>The variety of board structures and practices in different countries will require different approaches to the issue of independent board members. Board independence usually requires that a sufficient number of board members not be employed by the company and not be closely related to the company or its management through significant economic, family or other ties. This does not prevent shareholders from being board members. (OECD Principle V.E Annotation at 41)</p> <p>See Millstein Report, 1.4.34 (For the board to play [its] role in a meaningful way, it needs to be capable of acting independently of management. This requires board members (or in some nations, board of auditor members) capable of exercising business judgement independently of management – whether in a single-tier or two-tier board.).</p> | <p>[The ICGN] endorses the [OECD] assertion that “the board should be able to exercise objective judgment on corporate affairs independent, in particular, from management.” To meet this challenge, the ICGN holds that each company should ... acknowledge that the board of directors, or supervisory board, as an entity, and each of its members, as an individual, is a fiduciary for all shareholders, and should be accountable to the shareholder body as a whole. (ICGN Amplified OECD Principle V at 8-9)</p> <p>The ICGN Statement <i>adopts</i> OECD Principle V.E (The board should be able to exercise objective judgement on corporate affairs independent, in particular, from management.).</p> <p>See also OECD Principle V.E Annotation at 41 (The variety of board structures and practices in different countries will require different approaches to the issue of independent board members. Board independence usually requires that a sufficient number of board members not be employed by the company and not be closely related to the company or its management through significant economic, family or other ties. This does not prevent shareholders from being board members.).</p> | <p><i>Not covered directly, but see</i> Commentary on Recommendation 9 (In the “two-tier” system, the [management and supervisory] functions are divided into two bodies. In order to be able to effectively fulfill the respective responsibilities, members of a one-tier board should nevertheless have a significant degree of independence between the executive members and the non-executive members.).</p> <p>See also Commentary on Recommendations 10(a) and 10(b) (Non-executive members of the board, as well as – in a two-tier structure – members of the supervisory board, are concerned with the supervision of management policy and the general state of affairs in the company. Their main tasks are (in order of importance):</p> <ul style="list-style-type: none"> § to control and supervise the executive board members; § to ensure the good quality of the executive board; § to advise the executive board.). | <p>[Independent directors are those who are] independent of management, influential shareholders and other conflicting interests such as staff, the state, or suppliers of goods and services to the company and its group. (Recommendation VI.1.b)</p> <p>See Preamble at 4 (“[I]ndependent” directors are a sub-group of “non-executive” directors: not all non-executive directors are independent – such as appointees of major blockholders or staff, or directors who have material ongoing service contracts with the company.).</p> |

| Recommendations of Federation of Companies (Belgium) | Dual Code of the BXS/CBF (Belgium) | The Director's Charter (FDA) (Belgium) | (Reserved) |
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| 11. Definition of "Independence" | | | |
| <p>[D]irectors ... independent of the dominant shareholders and also of the management ... are called independent directors. (2.2)</p> <p><i>See 1.2</i> (The division of responsibilities between the Board of Directors and the Executive Directors must be clearly defined.... This is because it is necessary to ensure that no one can exercise discretionary powers without control.).</p> <p><i>See also 1.3</i> (The Board of Directors must include non-executive directors, <u>i.e.</u>, directors who do not exercise any leading role in the company.).</p> <p><i>See also 2.1</i> (The non-executive directors must be able to make an independent judgement on the company's strategy, performance and resources.).</p> <p><i>See also Note to 2.2</i> (It is desirable that non-executive directors should not take part in plans in relation to the granting of share options and should not receive pensions by virtue of their mandate. The reason for this is to ensure their independence.).</p> | <p>Non-executive directors are directors who do not perform a management function within the company or its subsidiaries. (Part I: B.1.4)</p> <p>[A] director may be considered independent if:</p> <p>§ he/she is not a member of the executive management or of the board of associated companies (subsidiaries etc.) ... ;</p> <p>§ he/she has no family ties with any of the executive directors which might interfere with the exercise of his/her independent judgement;</p> <p>§ he/she is not a member of the executive management or board of directors of one of the dominant shareholders and has ... no business, financial or other relationship with the latter;</p> <p>§ he/she is not a supplier of goods or services of a nature which might interfere with the exercise of his/her independent judgement, nor is he/she a member of the firm of which the company's adviser or consultant is part;</p> <p>§ he/she has no other relationship with the company which ... might interfere with the exercise of his/her judgement....</p> <p>(Part I: B.2.2)</p> <p><i>See Part I: B.1.9</i> ([A]ll directors, including those related to the dominant shareholders, are to exercise their duty in an independent manner, in the sole interest of the company.).</p> <p><i>See also Part I: B.2.2</i> (It is for the board to decide whether an independent director satisfies the definition of independence.).</p> <p><i>See Topic Heading 12, below.</i></p> | <p>The Director undertakes to maintain, in all circumstances, his or her independence of analysis, of decision, and of action; and to reject any pressure, direct or indirect, which could be exercised upon him or her....</p> <p>The Director undertakes not to seek or accept ... any unreasonable advantages that could be considered as compromising his or her independence.</p> <p>In the event that the Director finds that a decision of the Board may harm the company, the Director undertakes to clearly express his or her opposition and to employ all methods to convince the Board of the pertinence of the Director's position. (p. 3)</p> <p><i>See p. 2 (THE COMPANY DIRECTOR, IN THE EXERCISE OF HIS FUNCTIONS, UNDERTAKES TO:</i></p> <ol style="list-style-type: none"> 1. Act independently in all circumstances. 2. Actively protect the company's interests. 7. Avoid any conflict between his or her direct personal interests and those of the company. 8. Avoid any improper use of information or insider trading.) <p><i>See generally p. 3 (acting independently in all circumstances).</i></p> <p><i>See also p. 5</i> (The Director undertakes to verify that the company's decisions are taken solely in its interests ... that the company's decisions do not favour one party or class of shareholders to the detriment of another.).</p> <p>The Director undertakes to see to it that the interests of the company and the entirety of its shareholders prevail, in all circumstances, over his or her direct or indirect personal interests. (p. 6)</p> <p><i>See Topic Heading 12 and Topic Heading 13 below.</i></p> | |

| Danish Shareholders Ass'n Guidelines (Denmark) | Nørby Report & Recommendations (Denmark) | Chamber of Commerce/Confederation Code (Finland) | Ministry of Trade & Industry Guidelines (Finland) |
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| 11. Definition of "Independence" | | | |
| <p><i>Not covered directly, but see Topic Heading 10, above.</i></p> | <p>It is ... essential that the directors always act independently of special interests. (V)</p> <p>It is important that the board is composed in such a way that its directors can act independently of special interests.... In this context, an independent director elected by the general meeting cannot:</p> <p>§ be an employee in the company or be someone who has been employed in the company in the past five years.</p> <p>§ have been a member of the management of the company.</p> <p>§ be a professional consultant to the company or be employed by, or have a financial interest in, a company which is a professional consultant to the company.</p> <p>§ have some other essential strategic interest in the company other than that of a shareholder.</p> <p>We cannot recommend that managers of a company are also directors of the company. This also applies to situations in which major shareholders are managers of a company as well as directors at the same time. In companies with one major shareholder, the board should pay special attention to the safeguarding of the other shareholders' interests on equal terms with the major shareholder's interests at all times. (V.4)</p> | <p><i>Not covered directly, but see English Summary, 7 (assumes that there are some directors who are not employees of the company and, by implication, exercise independence from management.).</i></p> | <p>"[E]xternal" members ... of the Board of Directors ... do not belong to the hired top management of the company. [They ensure] the independence of the decision-making by the Board of Directors.</p> <p>§ In smaller companies, this can be arranged by handling certain issues without the presence of the members of the Board of Directors that belong to the hired top management of the company....</p> <p>§ The larger the company is, the more important is the role of the external members of the Board of Directors. Thus, the forming of working groups ("committees") from the external members should be discussed, at least by the Boards of Directors of listed companies.</p> <p>(2.2.1)</p> <p><i>See 2</i> (The Ministry of Trade and Industry draws the attention of civil servants on the Board of Directors especially to ... ensuring the independence of the Board of Directors.).</p> |

| Viénot I Report (France) | Hellebuyck Commission Recommendations (France) | Viénot II Report (France) | (Reserved) |
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| 11. Definition of “Independence” | | | |
| <p>The notion of independent director is opposed not only to that of executive directors, it is also opposed to that of any director with any sort of special interest in the company, whether as a shareholder, a supplier or a customer. (p. 11).</p> <p><i>See p. 10</i> (Debate concerning board membership has concerned in particular the representation of interest groups and expertise, reflecting public doubts as to the independence and impartiality of current members.</p> <p>Having examined such criticism and related suggestions, the Committee can only affirm its attachment to the traditional principles of French law and practice. However it is made up, and whoever its members may be, the board of directors collectively represents all company shareholders, and is not the sum of conflicting interests. It must carry out its duties in the interests of the company and, if it fails to do so, its members are jointly and severally liable.).</p> | <p>[A] director free of any interest is one without any direct or indirect tie to the company or companies of the group, and therefore may be reputed to participate with objectivity in board discussions. He must neither be now, nor ever have been, an employee, nor chairman, nor chief executive of the company or of any company of the group. He must neither be a lead shareholder of the company nor of a company of the group, nor be related in any way to such a shareholder. Finally, he must not in any way whatsoever be related to a significant or regular commercial or financial partner of the group or of any group company. (§ II.B.1)</p> <p><i>See § II.A.2</i> (In the Commission’s view, the Board’s accountability to all shareholders requires that it be independent in relation to company management.).</p> <p><i>See also § II</i> (The portfolio manager’s advisory role requires that his activity, and that of his employees, be governed by the principle of independence. He may therefore not serve as a member of the Board of Directors or any company whose shares are held in the portfolios he manages.).</p> | <p>An independent Director is to be understood not only as a “non-executive Director,” <i>i.e.</i>, one not performing management duties in the corporation or its group, but also one devoid of particular bonds of interest (significant shareholder, employee, other) with them. For the sake of simplicity, an independent Director can be defined as follows: “A Director is independent of the corporation’s management when he or she has no relationship of any kind whatsoever with the corporation or its group that is such as to jeopardize exercise of his or her free judgment.” (p. 15)</p> | |

| Berlin Initiative Code (Germany) | German Panel Rules (Germany) | Cromme Commission Code (Germany) | (Reserved) |
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| 11. Definition of “Independence” | | | |
| <p><i>Not covered directly, but see Code, IV.4 (appointments to the Supervisory Board of directors who represent the stockholders).</i></p> <p><i>See also Topic Headings 6 & 10, above, and Topic Heading 34, below.</i></p> | <p><i>Not covered directly, but see Code, III.1.b) (The Supervisory Board shall ensure independent advice and monitoring of the Management Board through a sufficient number of independent persons who have no current or former business association with the Group.... The proposal for election to the Supervisory Board shall not include, as a matter of course, the election of retiring Management Board members.).</i></p> | <p><i>Not covered directly, but see §V.4.2 (To ensure the Supervisory Board’s independent advising and supervising of the Management Board, the Supervisory Board shall have no more than two former members of the Management Board and Supervisory Board members shall exercise no directorships or similar positions or advisory tasks for important competitors of the enterprise.).</i></p> | |

| Mertzanis Report (Greece) | Federation of Greek Industries Principles (Greece) | IAIM Guidelines (Ireland) | Preda Report (Italy) |
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| 11. Definition of “Independence” | | | |
| <p>Certain non-executive members of the Board should be independent from executive members and the majority shareholders in the corporation, and have no business relation with the corporation. (Recommendation 6.2)</p> <p>Director independence requires that:</p> <p>§ s/he is not a member of executive management or of a Board of Directors of a corporation directly or indirectly connected with the corporation....</p> <p>§ s/he is not related to other executive members of the Board.</p> <p>§ s/he is not simultaneously a member of the group forming the majority of shareholders of the corporation [nor] involved in any transactions with the group.</p> <p>§ s/he has no other relationship with the corporation which, by its nature, may affect his/her independent judgement. (Recommendation 6.3)</p> <p><i>See Recommendation 5.12 (All members of the Board of Directors should exercise their duties in an independent manner.).</i></p> <p><i>See also Recommendation 6.1 (Non-executive members of the Board should form independent judgements especially with respect to the corporation’s strategy, performance, asset management and the appointment of management.).</i></p> <p><i>See also Footnote 4 to Recommendation 5.1 (current legislation is inadequate as regards board independence).</i></p> <p><i>See also Footnote 9 to Recommendation 6.2 (board judgement is ultimate arbiter of independence).</i></p> <p><i>See also Footnote 10 to Recommendation 6.3 (restrictions as to spouses/relatives).</i></p> | <p>Independent non-executive members are those that do not have a family link up to the second degree with the shareholder controlling the majority of the company’s capital or do not own shares of more than five percent in the company or any of its subsidiaries, and are not executive managers of a subsidiary. (§2.3)</p> <p><i>See §§4.2 & 4.3 (The internal controller is hierarchically integrated in the management of the company but remains independent in the exercise of his duties.</i></p> <p>The internal controller is appointed by the company’s board of directors. A member of the board, an active director with other duties in the company, or a person linked to these persons through a direct or indirect family relationship of up to the second degree may not be appointed internal controller.).</p> | <p><i>Not covered directly, but the IAIM Guidelines adopt the Combined Code. See the Combined Code § 1, A.3.2 (The majority of non-executive directors should be independent of management and free from any business or other relationship which could materially interfere with the exercise of their independent judgement.).</i></p> | <p><u>Board of Directors</u></p> <p>Directors are independent who:</p> <p>a) do not entertain business relationships with the company, its subsidiaries, the executive directors or the shareholder or group of shareholders who controls the company of a significance able to influence their autonomous judgement;</p> <p>b) do not own, directly or indirectly, a quantity of shares such that they may control the company, nor participate in shareholders’ agreements to control the company.</p> <p>(Code, 3; <i>see</i> Code, 1.3; Report, 5.1)</p> <p>Directors shall act and decide autonomously ... and pursue the objective of creating value for the shareholders.</p> <p>The decisions of each director are autonomous to the extent that they are taken in the light of his or her unbiased assessment of the facts in the interest of the generality of shareholders. Accordingly, even when operational choices have already been assessed by the controlling shareholders ..., each director is required to cast his or her vote autonomously, making choices that can reasonably be expected to maximise shareholder value. (Code, 1.3, Commentary on Code, 1.3)</p> <p><u>Board of Auditors</u></p> <p>The members of the board of auditors shall act autonomously with respect to shareholders, including those that elected them. (Code, 13.2)</p> <p>[M]embers of the board of auditors proposed or elected by the majority or the minority [of shareholders] are not their “representatives” [nor are they] authorized to communicate information [to them]. (Commentary on Code, 13)</p> |

| Peters Report (The Netherlands) | VEB Recommendations (The Netherlands) | SCGOP Handbook and Guidelines (The Netherlands) | Securities Market Comm'n Recommendations (Portugal) |
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| 11. Definition of "Independence" | | | |
| <p>A point for consideration ... should be [t]he influence that a person's former membership on the [Management board] may have on that individual's functioning on the Supervisory Board, as well as on the functioning of the Supervisory Board itself and the [Management Board].</p> <p>This applies especially in cases where a former chairman of the [Management Board] is the intended chairman of the Supervisory Board. (Recommendation 2.5)</p> <p>Neither hierarchic subordination within an interest group, cross bonds nor any other relations with persons under their supervision should prevent members of the Supervisory Board from performing their duties independently. (Recommendation 2.11)</p> | <p><i>Not covered.</i></p> | <p>Under the Dutch system, supervisory board directors are expected to be independent. That means that they must not be allied to any particular shareholder, to the management board or to other interested parties. (Handbook, p. 9)</p> <p><i>See</i> Guideline 13(a) (The supervisory board is expected to provide independent expertise in carrying out its responsibility.).</p> | <p><i>Not covered directly, but see</i> Recommendation 15 (The inclusion on the board of one or more members who are independent in relation to the dominant shareholders is encouraged, so as to maximise the pursuit of corporate interests.).</p> <p><i>See also</i> Commentary on Recommendation 15 (Independent [board] members should exercise a significant influence on collective decision-making and should contribute to the development of the company strategy, thereby favouring the interests of the company.).</p> |

| Olivencia Report (Spain) | Swedish Shareholders Ass'n Policy (Sweden) | ICSA Code (United Kingdom) | ISC Statement of Best Practice (United Kingdom) |
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| 11. Definition of "Independence" | | | |
| <p>[T]he name [independent director] applies to those directors who are neither linked to the management team nor to the core of shareholder groups that control and exert a great influence upon management. (Report, 2.1)</p> <p>[T]he first thing to be checked [regarding nominees to the Board of Directors] is the candidate's independence with respect to the management team, examining whether he/she has any significant bond – whether it be a family, professional, business or any other connection – with anyone in management positions. (Report, 5.2)</p> <p>See Topic Heading 10, <i>above</i>.</p> | <p>[B]oard members should be self-governed and independent in respect of the company's leadership. The board should normally consist of six to nine members that do not have assignments for, or business connections with, the company. (Guideline 2.1)</p> <p>The members of the board shall act with great thoroughness and care in the best interests of the company and all the shareholders. The members of the board should have the capacity to make independent and objective judgements of the company's operations, especially in relation to corporate leadership. (Guideline 2.2)</p> <p>See Topic Heading 10, <i>above</i>.</p> | <p><i>Not covered.</i></p> | <p>Non-executive directors should be independent, <u>i.e.</u>, free from bias, involvement or partiality.... Independence is more likely to be assured, <u>inter alia</u>, when the director:</p> <ul style="list-style-type: none"> i. Has not been employed in any executive capacity by the company concerned within the last few years; ii. Is not retained as a professional adviser by the company (either personally or through his or her firm) and iii. Is not a significant supplier or customer of the company. <p>(p. 3)</p> <p>See p. 3 (In order not to impair their impartiality, non-executive directors should not, under normal circumstances, be offered participation in share option schemes, nor in performance related or other incentivized remuneration schemes, nor in any company pension schemes. They should not be entitled to any compensation for loss of office.).</p> |

| Cadbury Report (United Kingdom) | Greenbury Report (United Kingdom) | Hampel Report (United Kingdom) | The Combined Code/Turnbull Report (United Kingdom) |
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| 11. Definition of “Independence” | | | |
| <p>The majority [of non-executive directors] should be independent of management and free from any business or other relationship which could materially interfere with the exercise of their independent judgement, apart from their fees and shareholding. Their fees should reflect the time which they commit to the company. (Code, 2.2)</p> <p>We recommend that the majority of non-executives on a board should be independent of the company. This means that apart from their directors’ fees and shareholdings, they should be independent of management and free from any business or other relationship which could materially interfere with exercise of their independent judgement. It is for the board to decide in particular cases whether this definition is met. Information about the relevant interests of directors should be disclosed in the Directors’ Report. (Report, 4.12)</p> | <p><i>Not covered directly, but see</i> Introduction, 1.14 (Boards of Directors need to delegate responsibility for determining executive remuneration to a group of people ... with no personal financial interest in the remuneration decisions they are taking.).</p> <p><i>See also</i> Commentary on Remuneration Committees, Membership and Qualifications, 4.8 (The remuneration committee should consist exclusively of Non-Executive Directors with relevant experience who:</p> <ul style="list-style-type: none"> § have no personal financial interest, other than as shareholders, in the committee’s decisions; § have no “cross-directorships” with the Executive Directors which could be thought to offer scope for mutual agreements to bid up each others’ remuneration; § have a good knowledge of the company and its Executive Directors, a keen interest in its progress and a full understanding of shareholders’ concerns; and § have a good understanding, enhanced as necessary by appropriate training or access to expert advice, of the areas of remuneration committee business.). <p><i>See also</i> Commentary on Remuneration Committees, Membership and Qualifications, 4.13 (To ensure that remuneration committee members have no personal financial interest in the remuneration arrangements they decide for the Executive Directors, their own remuneration should normally take the form of fixed fees set by the Board as a whole within the limits set in the Articles of Association.).</p> | <p>The Cadbury committee recommended that a majority of non-executive directors should be independent, and defined this as ‘independent of management and free from any business or other relationship which could materially interfere with the exercise of their independent judgement.’ (Cadbury Report 4.12) We agree with this definition, and after careful consideration we do not consider that it is practicable to lay down more precise criteria for independence. We agree with Cadbury that it should be for the board to take a view on whether an individual director is independent in the above sense.... We recognize, however, that non-executive directors who are not in this sense “independent” may nonetheless make a useful contribution to the board. (Guideline 3.9)</p> | <p>The majority of non-executive directors should be independent of management and free from any business or other relationship which could materially interfere with the exercise of their independent judgement. (Code § 1, A.3.2)</p> |

| NAPF Corporate Governance Code (United Kingdom) | AUTIF Code (United Kingdom) | Hermes Statement (United Kingdom) | PIRC Shareholder Voting Guidelines (United Kingdom) |
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| 11. Definition of “Independence” | | | |
| <p>Independence can be determined by the following criteria:</p> <p>An individual director’s integrity is highly relevant and the level of a director’s independence can vary, depending on the particular issue under discussion. In assessing the independence of a non-executive director the assumption is that the individual is independent unless, in relation to the company, the director:</p> <ul style="list-style-type: none"> § was formerly an executive § is, or has been, paid by the company in any capacity other than as a non-executive director § represents a trading partner or is connected to a company or partnership (or was prior to retirement) which does business with the company § has been a non-executive director for nine years – <i>i.e.</i> three 3-year terms § is closely related to an executive director § has been awarded share options, performance-related pay or is a member of the company’s pension fund § represents a controlling or significant shareholder § is a new appointee selected other than by a formal process § has cross-directorships with any executive director § is deemed by the company, for whatever reason(s), not to be independent. <p>(§3)</p> <p>Where the company identifies a non-executive director as independent, the independence test should be applied to those seeking re-election on each and every occasion. (§8)</p> <p><i>See §9(i) (Independent non-executive directors should not take “significant” holdings in the companies in which they are directors because this reduces their independence.)</i></p> | <p><i>Not covered directly, but see</i> Guidance Note on Key Principle 6 (Companies listed on the London Stock Exchange are required, as a continuing obligation of listing, to make two disclosure statements. Firstly, they must report on how they apply the principles [including the principles on director independence] in the Combined Code on Corporate Governance.... Secondly, listed companies are also required to confirm that they comply with the Code provisions or – where they do not – to provide an explanation.).</p> | <p>The board should have a core of at least three vigorously independent directors on whom shareholders can rely for the independence of their judgement and who can act as agents for change should the need arise. Hermes endorses the Cadbury committee’s definition of independence: that NEDs “should be independent of management and free from any business or other relationship that could materially interfere with the exercise of their independent judgement.”</p> <p>Hermes will interpret this to mean that, to be considered independent, a NED must not:</p> <ul style="list-style-type: none"> § be or have been an employee of the company; § serve as a director for more than ten years or be over seventy years of age; § represent significant shareholders or other single interest groups (<i>e.g.</i>, supplier, creditor); § receive an income from the company other than NED fees; § participate in the company’s share option or performance-related remuneration schemes; § have conflicting or cross directorships; § have any other significant financial or personal tie to the company or its management which could interfere with the director’s loyalty to shareholders. <p>.... We believe that the final decision on whether NEDs are independent lies with the shareholders who elect them. (2.3)</p> <p>The tests of independence in paragraph 2.3 above apply to investment trusts. In addition, directors who are not considered independent include employees or former employees of the trust’s fund manager or of related group or associated companies and directors of more than one investment trust managed by the same fund management company. The chairman should always be fully independent and there should be no more than one representative of the trust’s fund manager on the board. (8.1)</p> | <p>In order to be viewed as independent, PIRC considers that directors should not:</p> <ul style="list-style-type: none"> § have held an executive position within the company group; § have had an association with the company of more than nine years; § be related ... to other directors or advisors to the company; § have been appointed other than through an appropriately constituted nomination committee or equivalent ... ; § be [employed with] a professional adviser to the company; § have a service contract, hold share options or other conditional share awards, receive remuneration other than fees, receive consultancy payments or be eligible for pensions benefits or participate in bonus schemes; § receive fees ... indicative of significant involvement in the company’s affairs ... ; § receive remuneration from a third party in relation to the directorship; § benefit from related party transactions; § have cross directorships ... ; § hold ... a senior position with a political or charitable body to which the company makes contributions ...; § hold a notifiable holding ... or serve as a director or employee of a another company which has a notifiable holding in the company [or] in which the company has a notifiable holding; § be ... on the board of a significant customer or supplier to the company; § act as the appointee or representative of a stakeholder group other than the shareholders as a whole; § serve as a director or employee of a significant competitor of the company. § Other criteria are relevant for investment trusts (<i>see</i> Section 6). <p>(Part 2: Directors, p. 5)</p> |

| OECD Principles/Millstein Report (International) | ICGN Statement/Global Voting Principles (International) | Euroshareholders Guidelines (Pan-European) | EASD Principles and Recommendations (Pan-European) |
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| 12. Conflicts of Interest | | | |
| <p>The board should fulfill certain key functions including ... [m]onitoring and managing potential conflicts of interest of management, board members and shareholders, including misuse of corporate assets and abuse in related party transactions. (OECD Principle V.D)</p> <p>Boards should consider assigning a sufficient number of non-executive board members capable of exercising independent judgement to tasks where there is a potential for conflict of interest. Examples of such key responsibilities are financial reporting, nomination and executive and board remuneration. (OECD Principle V.E)</p> <p>Investors require information on individual board members and key executives in order to evaluate their experience and qualifications and assess any potential conflicts of interest that might affect their judgement. (OECD Principle IV Annotation at 37)</p> <p>Together with guiding corporate strategy, the board is chiefly responsible for monitoring managerial performance and achieving an adequate return for shareholders, while preventing conflicts of interest and balancing competing demands on the corporation. (OECD Principle V Annotation at 40)</p> <p>While the responsibility for financial reporting, remuneration and nomination are those of the board as a whole, independent non-executive board members can provide additional assurance to market participants that their interests are defended. Boards may also consider establishing specific committees to consider questions where there is a potential for conflict of interest. These committees may require a minimum number, or be composed entirely of, non-executive members. (OECD Principle V.E.1 and Annotation at 42)</p> <p><i>See Topic Headings 10 and 11, above.</i></p> | <p><i>The ICGN Statement adopts</i> OECD Principle V.D (The board should fulfill certain key functions including ... [m]onitoring and managing potential conflicts of interest of management, board members and shareholders, including misuse of corporate assets and abuse in related party transactions.).</p> <p><i>The ICGN Statement adopts</i> OECD Principle V.E (Boards should consider assigning a sufficient number of non-executive board members capable of exercising independent judgement to tasks where there is a potential for conflict of interest. Examples of such key responsibilities are financial reporting, nomination and executive and board remuneration.).</p> <p>The ICGN also backs active, independent board audit committees and, to limit the risks of possible conflicts of interest, disclosure of the fees paid to auditors for non-audit activities. (ICGN Amplified OECD Principle IV at 8)</p> <p>To further strengthen the professionalism of boards, the ICGN endorses earlier language considered by the OECD. “Certain key responsibilities of the board such as audit, nomination and executive remuneration, require the attention of independent, non-executive members of the board. Boards should consider establishing committees containing a sufficient number of independent non-executive board members in these areas where there is a potential for conflict of interest or where independent business judgment is advisable.” The ICGN considers that to meet this challenge, audit, remuneration and nomination board committees should be composed wholly or predominantly of independent non-executives. (ICGN Amplified OECD Principle V at 9; cf. ICGN Statement 4)</p> | <p><i>Not covered.</i></p> | <p>Conflicts of interest should be avoided and where they are not, must be properly managed and disclosed. (Principle IX)</p> <ol style="list-style-type: none"> 1. Self dealing contrary to the company’s interest is prohibited. 2. Insider trading is prohibited 3. Where material conflicts of interest occur, they should be disclosed (a) at least to the board; (b) where significant to the shareholders. 4. Transactions with related parties should take place ‘at arms length’... (a) the parties that have a conflict of interest should abstain from voting; (b) the transaction should, where sufficiently material, be subject to the approval of the board or ... by the shareholders. 5. Board members: (a) A distinction should be made between ongoing and incidental conflicts of interest. (b) In both cases, the board member concerned should be excluded from voting and, as appropriate, not present during the decision making process on the relevant item.... 6. Executives: (a) Ongoing conflicts of interest must be avoided. (b) Outside business activities of executives should be reported to and, if significant, approved by the board. <p>(Recommendation IX)</p> <p>[The board’s] [k]ey areas of concern ... should, at least, include ... conflicts of interest. (Recommendation V.2)</p> <p>There should be a majority of independent board members on all board committees where there is a potential for conflicts of interest. (Recommendation VI.4.a)</p> <p>The external auditors should be independent and free from conflicts of interests which, if they exist, must be disclosed. (Recommendation VIII.7)</p> <p><i>See Topic Heading 22, below.</i></p> |

| Recommendations of Federation of Companies (Belgium) | Dual Code of the BXS/CBF (Belgium) | The Director's Charter (FDA) (Belgium) | (Reserved) |
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| 12. Conflicts of Interest | | | |
| <p><i>Not covered directly, but see Note to 2.2 (It is desirable that non-executive directors should not take part in plans in relation to the granting of share options and should not receive pensions by virtue of their mandate. The reason for this is to ensure their independence.).</i></p> <p><i>See also 4.2 (The Board of Directors must ensure that objective relationships are developed with company auditors, based on the highest degree of professionalism.).</i></p> | <p>Information about the relevant interests of directors should be disclosed in the annual report. (Part I: B.2.2)</p> <p>A number of non-executive directors should be independent of the executive management and of the dominant shareholders and free from any business or other relationship with the company which would interfere with their independent judgement.... It is for the board to decide whether independence is preserved in the case of contractual relationships on an arm's length basis. Information about the relevant interests of directors should be disclosed in the annual report. (Recommendation I.A.2.2)</p> <p><i>See Recommendation I.A.1.9 (All transactions or relations between the company and its dominant shareholder(s) are to be on an arms' length basis and on a normal commercial basis.).</i></p> <p><i>See also Recommendation I.A.2.1 ([I]t is recommended that the remuneration of non-executive directors should not take the form of stock options, nor of a participation in the pension scheme of the company.).</i></p> <p><i>See also Recommendation I.A.4.2 (The board should ensure that the auditors have no relationship with the company, whether directly or indirectly, which could influence their judgement.).</i></p> <p><i>See also Topic Headings 10 and 11, above.</i></p> | <p>THE COMPANY DIRECTOR, IN THE EXERCISE OF HIS FUNCTIONS, UNDERTAKES TO ... [a]void any conflict between his or her direct personal interests and those of the company. (p. 2)</p> <p>The Director undertakes to completely inform the Board of any conflict of interest in which the Director could directly or indirectly be implicated, and this prior to any such potential conflict. The Director undertakes to abstain from participating in any discussions or decision-making on the matters involved.</p> <p>In the event that a Director, who in fact represents a third party within the Board, would find a possible conflict between the interests of this third party and those of the company, he or she will inform the Board, who will decide if the Director may participate in the discussion and decision-making on the matters involved.</p> <p>The Director undertakes to neither buy nor sell, directly or indirectly, shares of the company or any related company ... on the basis of any confidential information ... acquired as a result of his/her function, when public revelation of this information may or may not have had a significant influence on the shares. (p. 6)</p> <p><i>See Topic Headings 10 and 11, above.</i></p> | |

| Danish Shareholders Ass'n Guidelines (Denmark) | Nørby Report & Recommendations (Denmark) | Chamber of Commerce/Confederation Code (Finland) | Ministry of Trade & Industry Guidelines (Finland) |
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| 12. Conflicts of Interest | | | |
| <i>Not covered.</i> | Performance-related pay may result in conflicting interests between the shareholders and the managers, and may lead to the managers focusing on increasing the value creation of the company. It is important that there is openness about all important issues regarding incentive schemes. (VI) | <i>Not covered directly, but see English Summary, 5 (disclosure of personal and interest-group information on members of the Board of Directors, the Supervisory Board and, after the election, the Managing Director).</i> | <i>Not covered directly, but see Guideline 2.2.2 (To allow for the shareholders to be assured of the fact that the company management does not have any conditions that are more advantageous than those depending on the markets in their possible business activity with the company, the annual report should also state that members of the company management and their immediate circles do not have any related party transactions with the company.).</i> |

| Viénot I Report (France) | Hellebuyck Commission Recommendations (France) | Viénot II Report (France) | (Reserved) |
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| 12. Conflicts of Interest | | | |
| <p>[Where a company is controlled by a majority shareholder or a group of shareholders acting in concert] the board must be particularly attentive to avoid any conflict of interest, take all interests into due account and ensure transparency of information provided to the market. (p. 13)</p> <p>See p. 12 (Some have suggested that board members should include representatives of certain interest groups, but the committee believes that a move in this direction would not be desirable. The result could well be to make the board a focus for conflicts between such groups instead of collectively representing the interests of all shareholders as it is supposed to.</p> <p>[T]here may still be cases where it can be useful to include representatives of such interest groups.... However, once directors are appointed it is their duty to represent all shareholders and act in the sole interest of the company.).</p> <p>See also p. 14 ([T]he committee advises boards against appointing directors to their remuneration or audit committees when these directors represent another company where its own representatives are members of equivalent committees.).</p> <p>See Topic Headings 10 and 11, <i>above</i>.</p> | <p>The Commission believes that at least one-third of the Board shall comprise independent directors. These directors should be “free of any interest” in the company, which means they should have no conflicts of interest. (§ II.B.1)</p> <p><i>See also</i> Topic Headings 10 <i>and</i> 11, <i>above</i>.</p> | <p><i>Not covered directly, but see</i> Recommendation III, p. 17 (The independence of a corporation’s auditors should not be jeopardized by the award to entities belonging to their networks of assistance or consulting assignments (technical, legal, tax organisation, etc.) by the corporation itself or by other affiliates of its group, which are of material importance either in terms of stakes for the corporation and its group or in terms of related fees.</p> <p>[I]t is up to the audit committee to ascertain this, and to report on this matter to the Board of Directors every year.).</p> <p>See p. 15 (An independent Director is to be understood not only as a “non-executive Director,” <i>i.e.</i>, one not performing management duties in the corporation or its group, but also one devoid of particular bonds of interest (significant shareholder, employee, other) with them. For the sake of simplicity, an independent Director can be defined as follows: “A Director is independent of the corporation’s management when he or she has no relationship of any kind whatsoever with the corporation or its group that is such as to jeopardize exercise of his or her free judgment.”).</p> | |

| Berlin Initiative Code (Germany) | German Panel Rules (Germany) | Cromme Commission Code (Germany) | (Reserved) |
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| 12. Conflicts of Interest | | | |
| <p><u>Supervisory Board</u> Members of the Supervisory Board always personally remain loyal to the company. They must not pursue their own interests which conflict with the interests of the company. Even the suspicion of conflict must be avoided. (Code, IV.6.1)</p> <p><u>Management Board</u> Members of the Management Board always personally remain loyal to their company. They must not pursue their own interests which conflict with the interests of the company. Even the suspicion of conflict must be avoided. (Code, III.5.1)</p> <p>Participation by members of the Management Board in other companies must be revealed to the chairman of the Supervisory Board and has to be examined for any possible conflicts of interest. (Code, III.5.3)</p> <p><u>Depositary Banks</u> Depositary banks have a particular responsibility for safeguarding the interests of stockholders. They must keep clear of possible conflicts of interest which, for example, can result from simultaneous customer relations to the company or its own holdings of capital. Proper representation of the rights of the stockholders is also a duty of the protection associations. (Code, V.1.3)</p> | <p><u>Supervisory Board</u> Supervisory Board members must disclose any conflict of interest to the Chairman of the Supervisory Board or his deputy unless they do not participate for cause in a specific meeting or retire for cause due to a continuing conflict. In the event of serious conflict of interests, the Chairman of the Supervisory Board or his deputy shall decide to whom the information should be forwarded and whether the member of the Supervisory Board in question shall participate in a specific meeting.</p> <p>In their decisions Supervisory Board members must not pursue their own interests or those of associated persons or companies, which are in conflict with the interests of the company or any Group Company.... In the event of possible conflicts of interest, ... the Supervisory Board members concerned must abstain from voting. (Code, III.4.a - b)</p> <p><u>Management Board</u> Management Board members must not pursue any own interest that could be in conflict with the interest of the company. (Code, II.4.a)</p> <p>Members of the Management Board must disclose to the Supervisory Board material personal interests in transactions of the Company and Group companies as well as other conflicts of interest. They must also inform their Management Board colleagues. (Code, II.4.b)</p> <p>Management Board members and Senior Group executives are also prohibited from conducting transactions, conflicting with the interests of the company or any Group company, for themselves or for associated persons. (Code, II.4.e)</p> <p><u>Auditor</u> [P]articular regard shall be given ... that no conflicts of interest exist for the auditor. (Code, III.2.e)</p> | <p><u>Supervisory Board</u> Each member of the Supervisory Board shall inform the Chairman of the Supervisory Board of any conflicts of interest which may result from a consultant or directorship function with clients, suppliers, lenders or other business partners. The Chairman of the Supervisory Board shall inform the Supervisory Board or a committee commissioned for this purpose of any personal conflicts of interest. (§V.5.2)</p> <p>In its report, the Supervisory Board shall inform the General Meeting of any conflicts of interest which have occurred together with their treatment. (§V.5.3)</p> <p><i>See generally §V.5 (Supervisory Board conflicts of interest).</i></p> <p><u>Management Board</u> During their employment for the enterprise, members of the Management Board are subject to a comprehensive non-competition obligation. (§IV.3.1)</p> <p>Members of the Management Board are bound by the enterprise's interests. No member of the Management Board may pursue personal interests in his decisions or use business opportunities intended for the enterprise for himself. (§IV.3.3)</p> <p>All members of the Management Board shall disclose conflicts of interest to the Chairman of the Supervisory Board without delay and inform the other members of the Management Board thereof. All transactions between the enterprise and the members of the Management Board as well as persons they are close to or companies they have a personal association with must comply with standards customary in the sector. Important transactions shall require the approval of the Supervisory Board. (§IV.3.4)</p> <p><i>See generally §IV.3 (Management Board conflicts of interest).</i></p> | |

| Mertzanis Report (Greece) | Federation of Greek Industries Principles (Greece) | IAIM Guidelines (Ireland) | Preda Report (Italy) |
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| 12. Conflicts of Interest | | | |
| <p><i>Not covered directly, but see Recommendation 5.12 (All members of the Board of Directors should exercise their duties in an independent manner, taking into account exclusively the interest of the corporation and its shareholders.).</i></p> <p><i>See also Recommendation 6.2 (Certain non-executive members of the Board should ... have no business relation with the corporation or other commercial involvement that may affect their independent judgement.).</i></p> <p><i>See Topic Headings 10 and 11, above.</i></p> | <p>Board members may not pursue interests that are contrary to those of the company or its affiliates. They must disclose to the board any potential conflicts of interest that may result from major transactions of the company, as well as any other conflicts between their own interests and those of the company. (§2.5)</p> <p>[The internal controller] reports to the company's board of directors any cases of conflicts between the board members' or the directors' private interests and those of the company that he may come across in the exercise of his duties. (§4.5(b))</p> <p><i>See §2.6 (Board members must communicate to the board of directors their intentions regarding any important transactions and financial activities relating to the company, as well as to any of the company's important clients or suppliers.).</i></p> <p><i>See also §3.2(c) (The Internal Operation Regulation must cover ... procedures for the monitoring of transactions by the members of the board of directors, executives and persons who, by virtue of their relationship with the company, possess inside information on the movable assets of the company or its affiliates in the sense described in ... para. 5 of Law 2190/20 as amended, if such assets are traded on an organized stock exchange, as well as through other activities linked to the company.).</i></p> | <p><i>Not covered directly, but the IAIM Guidelines adopt the Combined Code. See the Combined Code § 1, A.3.2 (The majority of non-executive directors should be independent of management and free from any business or other relationship which could materially interfere with the exercise of their independent judgement.).</i></p> | <p>The Committee notes that the most delicate aspect in companies with a broad shareholder base consist in aligning the interests of the managing directors with those of the shareholders. In such companies, therefore, the predominant aspect is their independence from the managing directors.</p> <p>By contrast, where ownership is concentrated, or a controlling group of shareholders can be identified, the problem of aligning the interests of the managing directors with those of the shareholders continues to exist, but there emerges the need for some directors to be independent from the controlling shareholders too, so as to allow the board to verify that potential conflicts of interests between the interests of the company and those of the controlling shareholders are assessed with adequate independence of judgement. (Code, 3)</p> <p>[A] proposal for remuneration is usually delegated to directors who are non-executive or in any case able to formulate proposals without incurring conflicts of interest.</p> <p>The committee therefore recommends the establishment of a remuneration committee consisting prevalently of non-executive directors.... (Code, 8.1)</p> <p>The committee is convinced that the interests of the majority and those of the minority must confront each other in the election of the governing bodies; subsequently, the governing bodies, and hence also the members of the board of auditors must work exclusively in the interest of the company and to create value for the generality of shareholders. (Code, 13.3)</p> |

| Peters Report (The Netherlands) | VEB Recommendations (The Netherlands) | SCGOP Handbook and Guidelines (The Netherlands) | Securities Market Comm'n Recommendations (Portugal) |
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| <p>A Supervisory Board member's premature resignation can be expedient in cases of ... conflicts of interest, or if his integrity is at issue....The chairman of the Supervisory Board in particular should, where necessary, play an active and decisive role in situations of this nature. (Recommendation 2.8)</p> <p>A Supervisory Board member with a conflict of interests will report this to the Chairman immediately. If it concerns a random incident, non-participation in the deliberations and the decision-making in that area will be sufficient. (Recommendation 2.9)</p> <p>A member of the Supervisory Board permanently delegated to the [Management Board] gives rise to a conflict in the form of a mixture of supervisory and management functions of the company. (Recommendation 3.7)</p> | <p><i>Not covered.</i></p> | <p><i>Not covered directly, but see Topic Heading 11, above.</i></p> | <p>It is recommended that, within the internal organisation of the Company, specific regulations be established aimed at regulating situations of conflict of interest between members of the board and the company, as well as the main obligations resulting from duties of diligence, loyalty and confidentiality of members of the board, particularly regarding the prevention of improper use of business opportunities and company assets. (Recommendation 12)</p> <p>The board is encouraged to create internal control committees with powers conferred for matters in which there are potential situations of conflicts of interest, such as the nomination of directors and managers, the analysis of the remuneration policy and assessment of the corporate structure and governance. (Recommendation 17)</p> <p><i>See Recommendation 15 (The inclusion of one or more members who are independent in relation to the dominate shareholders in the board is encouraged, so as to maximise the pursuit of corporate interests.</i></p> <p>The composition of the board of directors should be planned so that during the management of the company not only the interests of the group of shareholders with a majority of shares are considered.</p> <p>Independent members should exercise a significant influence on collective decision taking and contribute to the development of the company strategy, thereby favoring the interests of the company.).</p> |

| Olivencia Report (Spain) | Swedish Shareholders Ass'n Policy (Sweden) | ICSA Code (United Kingdom) | ISC Statement of Best Practice (United Kingdom) |
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| 12. Conflicts of Interest | | | |
| <p>Internal regulations of the company must lay out the obligations arising from the general duties of diligence and loyalty, especially covering situations of conflicting interests, the obligation of confidentiality, and the use of business opportunities and corporate assets. (Recommendation 16)</p> <p>One of the most neglected features of our corporate practice ... is the definition of clear rules to face situations of conflicting interests, namely situations where the interests of the company and the direct or indirect personal interest of a director clash.... [T]o properly deal with this matter, at least two essential rules must be clearly established: [1] directors should refrain from attending and taking part in deliberations affecting issues concerning them, particularly any deliberations in connection with their reelection or dismissal; [2] the need [to be] extremely cautious in the execution of professional or commercial transactions – whether by direct or indirect means – between the director and the company, because such operations may be dangerous for corporate interests.... [T]he Company's internal regulations should formally include the director's duty of reporting in advance situations and conflicting interests and establish a control system, which – according to best practice – could consist of foreseeing that any such transactions should be approved by the Board of Directors once they have been submitted to its consideration via a report prepared by the corresponding delegated Committee. These transactions should be consistently published. (Report, 8.2)</p> <p>[A] rule of abstention ... would oblige significant shareholders not to vote in board decisions regarding which they have a direct or indirect interest (for instance, defensive measures against hostile takeover bids). (Report, 8.6)</p> | <p><i>Not covered directly, but see Topic Headings 10 and 11, above.</i></p> | <p><i>Not covered.</i></p> | <p>[T]he importance of non-executive directors has become evident, particularly ... in circumstances where there is potential for conflict of interest such as management buy-outs. (pp. 2-3)</p> <p>The advent of a takeover or a management buy-out imposes obligations on management to make all relevant information available and the Takeover Code imposes quite stringent obligations in bid situations. Given the potential for conflicts of interest, however, where the buy-out consortium comprises or includes management, the need for full disclosure and independent advice becomes more acute.</p> <p>It is suggested that, as a matter of good practice ... [t]he consortium should not have access to the company's usual professional advisers, since that would aggravate the conflict of interest. (p. 6)</p> <p><i>See p. 3 (Non-executive directors should hold other directorships in the same industry only with the approval of the board.)</i></p> <p><i>See also p. 4 (Service contracts should not permit the executive directors to engage in, or have an interest in, any business similar to that carried on by any group company except with the approval of the Board (though the ability to hold shares in listed companies carrying on such business is accepted).)</i></p> |

| Cadbury Report (United Kingdom) | Greenbury Report (United Kingdom) | Hampel Report (United Kingdom) | The Combined Code/Turnbull Report (United Kingdom) |
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| 12. Conflicts of Interest | | | |
| <p><i>Not covered directly, but see Code, 2.2.</i> (The majority [of non-executive directors] should be independent of management and free from any business or other relationship which could materially interfere with the exercise of their independent judgement, apart from their fees and shareholding.).</p> <p><i>See also</i> Report, 4.13 (In order to safeguard [non-executive directors'] independent position, we regard it as good practice for non-executive directors not to participate in share option schemes and for their service as non-executive directors not to be pensionable by the company.).</p> <p><i>See also</i> Report 5.3.c (Audit firms are in competition with each other for business.... To the extent however that audit firms compete on price and on meeting the needs of their clients (the companies they audit), this may be at the expense of meeting the needs of shareholders.).</p> <p><i>See also</i> Topic Headings 10 and 11, above.</p> | <p>To avoid potential conflicts of interest, Boards of Directors should set up remuneration committees of Non-Executive Directors to determine on their behalf, and on the behalf of the Shareholders, within agreed terms of reference, the company's policy on executive remuneration and specific remuneration packages for each of the Executive Directors including pension rights and any compensation payments. (Code, A1)</p> <p>Remuneration committees should consist exclusively of Non-Executive Directors with no personal financial interest other than as shareholders in the matters to be decided, no potential conflicts of interest arising from cross-directorships and no day-to-day involvement in running the business. (Code, A4)</p> <p><i>See</i> Topic Headings 10 and 11, above.</p> | <p><i>Not covered directly, but see</i> Guideline 3.2 (The basic legal duties of directors are to act in good faith in the interests of the company and for a proper purpose; and to exercise care and skill. These are derived from common law and are common to all directors. The duties are owed to the company, meaning generally the shareholders collectively, both present and future, not the shareholders at a given point in time.).</p> <p><i>See also</i> Guideline 6.8 ([A]udit firms have very strong commercial reasons for preserving an unblemished reputation for independence. But there may be a temptation to compromise on independence where an audit firm depends for a significant proportion of its income on a single audit client. We suggest that the bodies concerned should examine whether, in the existing professional guidance, the 10% limit of total income from one listed or other public interest client should be reduced.).</p> <p><i>See also</i> Guideline 3.9 (The Cadbury committee recommended that a majority of non-executive directors should be independent, and defined this as 'independent of management and free from any business or other relationship which could materially interfere with the exercise of their independent judgement.' (Cadbury Report 4.12) ... [W]e agree with Cadbury that it should be for the board to take a view on whether an individual director is independent in the above sense. The corollary is that the boards should disclose in the annual report which of the directors are considered to be independent and be prepared to justify their view if challenged.).</p> <p><i>See also</i> Topic Headings 10 and 11, above.</p> | <p>The majority of non-executive directors should be independent of management and free from any business or other relationship which could materially interfere with the exercise of their independent judgement. (Code § 1, A.3.2)</p> <p>To avoid potential conflicts of interest, boards of directors should set up remuneration committees of independent non-executive directors to make recommendations to the board, within agreed terms of reference, on the company's framework of executive remuneration and its cost; and to determine on their behalf specific remuneration packages for each of the executive directors, including pension rights and any compensation payments. (Code § 1, B.2.1)</p> <p>Remuneration committees should consist exclusively of non-executive directors who are independent of management and free from any business or other relationship which could materially interfere with the exercise of their independent judgement. (Code § 1, B.2.2)</p> |

| NAPF Corporate Governance Code (United Kingdom) | AUTIF Code (United Kingdom) | Hermes Statement (United Kingdom) | PIRC Shareholder Voting Guidelines (United Kingdom) |
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| 12. Conflicts of Interest | | | |
| <i>Not covered.</i> | <i>Not covered directly, but see Topic Headings 10 and 11, above.</i> | <p><i>Not covered directly, but see Recommendation 2.3 ([A] NED must not ... represent significant shareholders or other single interest groups (eg supplier, creditor); receive a income from the company other than NED fees; participate in the company's share option or performance-related remuneration schemes; have conflicting or cross directorships; have any other significant financial or personal tie to the company or its management which could interfere with the director's loyalty to shareholders.</i></p> <p><i>Hermes accepts that not all NEDs need to be independent in accordance with this definition.).</i></p> | <p>Board committees of independent non-executives should be established to deal with matters where executive directors face a conflict of interest....</p> <p>Non-executive directors ... bring an independent perspective to bear on issues where the executive directors face a conflict of interest. (Part 2: Directors, p. 5)</p> <p>Directors face a clear conflict of interest when setting their own remuneration in terms of their duty to the company, their accountability to shareholders and their own self-interest. The perceived failure to balance these interests is responsible for the recurrent controversies over director remuneration.</p> <p>Owing to the inherent conflict of interest for directors, shareholders have a legitimate interest in remuneration and should have the final say in approving overall policy ... [T]he widespread use of remuneration committees has not reduced concerns over conflicts of interest ... [R]emuneration committees are often not able to act with sufficient independence. (Part 3: Directors' remuneration, p. 8)</p> <p>The independence of the auditor is of paramount importance to the shareholders. In general, we are not persuaded that audit firms can be employed simultaneously to provide substantial consultancy services to a company and to undertake an audit on behalf of the shareholders without compromising their objectivity... In terms of translating these general concerns into practical guidance, the level of non-audit fees should not be such that it may cause a conflict of interest for the auditors... [A]s a general principle, we consider that non-audit work should be limited to work which requires detailed knowledge derived from the statutory audit. (Part 4: Audit and reporting pp.12-13)</p> <p><i>See Topic Headings 10 and 11, above.</i></p> |

| OECD Principles/Millstein Report (International) | ICGN Statement/Global Voting Principles (International) | Euroshareholders Guidelines (Pan-European) | EASD Principles and Recommendations (Pan-European) |
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| 13. Commitment / Changes in Job Responsibility | | | |
| <p>Board members should devote sufficient time to their responsibilities. (OECD Principle V.E.2)</p> <p>It is widely held that service on too many boards can interfere with the performance of board members. Companies may wish to consider whether excessive board service interferes with board performance. Some countries have limited the number of board positions that can be held. Specific limitations may be less important than ensuring that members of the board enjoy legitimacy and confidence in the eyes of shareholders. (OECD Principle V.E.2 Annotation at 42)</p> | <p><i>The ICGN Statement adopts</i> OECD Principle V.E.2 (Board members should devote sufficient time to their responsibilities.).</p> <p><i>See also</i> OECD Annotation to Principle V.E.2 at 42 (It is widely held that service on too many boards can interfere with the performance of board members. Companies may wish to consider whether excessive board service interferes with board performance. Some countries have limited the number of board positions that can be held. Specific limitations may be less important than ensuring that members of the board enjoy legitimacy and confidence in the eyes of shareholders.).</p> <p><i>See also</i> Topic Heading 14, below.</p> | <p>[T]he number of executive board members who can serve later as non-executive should be limited to one [and] the number of his board memberships as a non-executive should be limited. (Commentary on Recommendations 10(a) and 10(b))</p> | <p>Board members should be able to devote sufficient time to the proper exercise of their responsibilities. (Recommendation V.1.d)</p> |

| Recommendations of Federation of Companies (Belgium) | Dual Code of the BXS/CBF (Belgium) | The Director's Charter (FDA) (Belgium) | (Reserved) |
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| 13. Commitment / Changes in Job Responsibility | | | |
| <i>Not covered.</i> | <i>Not covered.</i> | <p>The Director undertakes to regularly attend the Board meetings. (p. 4)</p> <p><i>See p. 3</i> (In the event of resignation, the Director will inform the other Directors, the auditor, the controlling public authority if there is one, and the Shareholders General Assembly of the reasons for his or her resignation, while avoiding rendering public any confidential information.).</p> | |

| Danish Shareholders Ass'n Guidelines (Denmark) | Nørby Report & Recommendations (Denmark) | Chamber of Commerce/Confederation Code (Finland) | Ministry of Trade & Industry Guidelines (Finland) |
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| 13. Commitment / Changes in Job Responsibility | | | |
| <p>No one should become a board member in more than six listed companies, and a CEO or a chairman should not hold more than two seats. (I. The Annual General Meeting)</p> | <p>It is important that the individual director understands what time requirements the board work places on him in advance and that he allocates sufficient time for his tasks on the board. It is recommended that a director who is also a member of the management team of an active company does not fill more than three ordinary directorships or one chairmanship and one ordinary directorship in companies which are not part of the group, except in exceptional circumstances. (V.6)</p> <p>If a director's conditions of employment change during an election period he should inform the other directors of this and be prepared to make his mandate available at the next AGM. (V.8)</p> | <p><i>Not covered directly, but see Topic Heading 14, below.</i></p> | <p><i>Not covered.</i></p> |

| Viénot I Report (France) | Hellebuyck Commission Recommendations (France) | Viénot II Report (France) | (Reserved) |
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| 13. Commitment / Changes in Job Responsibility | | | |
| <p>[B]oards should consider ... how many directors with seats on other boards it is prepared to accept. (p. 10)</p> <p>[T]he existence of cross-shareholdings may be viewed as a transitional phenomenon in French capitalism, and one whose elimination as quickly as possible would appear highly desirable.</p> <p>Cross-shareholdings frequently, but not inevitably, result in reciprocal board membership, with one company holding a seat on the board of another company, which in turn has a seat on the board of the first company. This situation naturally raises some questions on the market.</p> <p>The Committee thus believes that when a board is considering how best to structure its membership, it should take care to avoid including an excessive number of such reciprocal directorships. (p. 14)</p> <p>Directors must devote the necessary time and attention to their duties. If they are chairman or <u>directeur général</u> (executive director) of a company, they should in principle not accept more than five directorships with French or foreign listed companies outside their group. (p. 20)</p> <p>Directors must be assiduous and attend all meetings of the board and any of its advisory committees of which they are members. (p. 21)</p> | <p><i>Not covered directly, but see § II.D.2 (The Commission recommends ... that board memberships be limited to three, including representation of legal entities as well as the director personally, except for directorships held within one's own group. The recommended directorship limit for outside directors is five.)</i></p> | <p><i>Not covered directly, but see pp. 14, 24 ([T]he Committee considers it essential to issue a reminder of the rule laid down by the 1995 report: a Director holding an executive position in a listed corporation should restrict the number of directorships held in French or foreign listed corporations not affiliated to the group, and in any event abstain from holding more than five.)</i></p> | |

| Berlin Initiative Code (Germany) | German Panel Rules (Germany) | Cromme Commission Code (Germany) | (Reserved) |
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| 13. Commitment / Changes in Job Responsibility | | | |
| <p><u>Supervisory Board</u> Members of the Supervisory Board may not exercise any mandates in other undertakings which are competitors of the company. Further, they must not sit on the Management Board of a company or be employed by it where a Management Board member of the company belongs to its Supervisory Board. The move to the Supervisory Board of the company by retiring Management Board members is normally restricted to one member. (Code, IV.4.4)</p> <p><u>Management Board</u> Participation by members of the Management Board in other companies must be revealed to the chairman of the Supervisory Board and has to be examined for any possible conflicts of interest. (Code, III.5.3)</p> <p>The Chairman of the Supervisory Board must approve acceptance of a seat on the Supervisory Board of another company, as well as engaging in significant ancillary activities. (Code, III.5.4)</p> | <p><u>Supervisory Board</u> Board members must make sufficient time available to exercise their activity in a diligent manner. (Code, III.1.a)</p> <p><u>Management Board</u> [O]ther activities of Management Board members, in particular the acceptance of Supervisory Board appointments, require the approval of the Supervisory Board. Any other activities of senior Group executives require the approval of the Management Board. (Code, II.4.g)</p> <p>[The Personnel] Committee is responsible for the approval of pay for outside company work by members of the Management Board. (Code, III.3)</p> | <p><u>Supervisory Board</u> Every member of the Supervisory Board must take care that he has sufficient time to perform his mandate. (§V.4.3)</p> <p>If a member of the Supervisory Board did not personally take part in more than half of the meetings of the Supervisory Board in a financial year, this shall be noted in the Report of the Supervisory Board. (§V.4.6)</p> <p><u>Management Board</u> Members of the Management Board shall take on sideline activities, especially Supervisory Board mandates outside the enterprise, only with the approval of the Supervisory Board. Sideline activities of executive employees require the approval of the Management Board. (§IV.3.5)</p> <p>Whoever is a member of the Management Board of a listed company shall perform no more than a total of five Supervisory Board mandates in group-external exchange-listed companies. (§V.4.3)</p> | |

| Mertzanis Report (Greece) | Federation of Greek Industries Principles (Greece) | IAIM Guidelines (Ireland) | Preda Report (Italy) |
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| 13. Commitment / Changes in Job Responsibility | | | |
| <p>The members of the Board of directors should devote adequate time to their duties. (Recommendation 5.14)</p> <p>See Recommendation 5.7 (The Board of directors should operate on the basis of collective responsibility, and no class of members should be any different with respect to authority or responsibility.).</p> | <p><i>Not covered.</i></p> | <p><i>Not covered directly, but the IAIM Guidelines adopt the Combined Code. See the Combined Code § 1, B.1.9 (Remuneration committees should consider what compensation commitments (including pension contributions) their directors' contracts of service, if any, would entail in the event of early termination. They should in particular consider the advantages of providing explicitly in the initial contract for such compensation commitments except in the case of removal for misconduct.).</i></p> <p><i>See also the Combined Code § 1, B.1.10 (Where the initial contract does not explicitly provide for compensation commitments, remuneration committees should, within legal constraints, tailor their approach in individual early termination cases to the wide variety of circumstances. The broad aim should be to avoid rewarding poor performance while dealing fairly with cases where departure is not due to poor performance and to take a robust line on reducing compensation to reflect departing directors' obligations to mitigate loss.).</i></p> | <p>Directors shall accept their appointment to the board when they deem they can devote the necessary time to the diligent performance of their duties. (Code, 1.3)</p> <p>The reference to the time to be devoted to the diligent performance of the duties of directors confirms the principle that all directors are individually required to make an appropriate commitment to the position, so that companies can benefit from their expertise. Each director is therefore responsible for assessing in advance his or her ability to play the role diligently and effectively. (Commentary on Code, 1.3)</p> <p>The Committee did not deem it desirable to lay down quantitative guidelines in terms of number of directorships [held simultaneously by a director]. (Report, 5.1)</p> |

| Peters Report (The Netherlands) | VEB Recommendations (The Netherlands) | SCGOP Handbook and Guidelines (The Netherlands) | Securities Market Comm'n Recommendations (Portugal) |
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| 13. Commitment / Changes in Job Responsibility | | | |
| <p><u>Supervisory Board</u> The number of Supervisory Board memberships should be determined by the time available for a proper performance of duties. (Recommendation 2.10)</p> <p>Individual [Supervisory Board] members are asked to explain frequent non-attendance. (Recommendation 3.3)</p> <p><u>Management Board</u> <i>Not covered.</i></p> | <i>Not covered.</i> | <i>Not covered.</i> | <i>Not covered.</i> |

| Olivencia Report (Spain) | Swedish Shareholders Ass'n Policy (Sweden) | ICSA Code (United Kingdom) | ISC Statement of Best Practice (United Kingdom) |
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| 13. Commitment / Changes in Job Responsibility | | | |
| <p>[T]he general duty of loyalty by which directors are bound obliges them to resign whenever their presence on the Board might jeopardize the interests of the company or when the reasons behind his/her appointment disappear (for instance, when a proprietary director sells his/her share in the company or an independent director joins the management team). (Report, 5.5)</p> | <p>A managing director who is leaving that position should not be appointed as chairman nor remain on the board. (Guideline 2.1)</p> <p>Board members should devote sufficient time to their board assignment. This means, among other things, that members should not sit on more than 5-6 boards. The managing director of a stock market company should not have more than two board positions in other companies. (Guideline 2.2)</p> | <p><i>Not covered.</i></p> | <p>The Articles should provide that a director may be dismissed from office by his or her fellow directors for failure to attend a specified number of meetings of the Board “or Board Meetings held in a specific period.” (p. 2)</p> |

| Cadbury Report (United Kingdom) | Greenbury Report (United Kingdom) | Hampel Report (United Kingdom) | The Combined Code/Turnbull Report (United Kingdom) |
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| 13. Commitment / Changes in Job Responsibility | | | |
| <p><i>Not covered.</i></p> | <p>Within legal constraints, remuneration committees should tailor their approach in individual early termination cases to the wide variety of circumstances. The broad aim should be to avoid rewarding poor performance while dealing fairly with cases where departure is not due to poor performance. (Code, D4)</p> <p>Remuneration committees should take a robust line on payment of compensation where performance has been unsatisfactory and on reducing compensation to reflect a departing Directors' obligations to mitigate damages by earning money elsewhere. (Code, D5)</p> <p>Where appropriate, and in particular where notice or contract periods exceed one year, companies should consider paying all or part of compensation in installments rather than one lump sum, and reducing or stopping payment when a former Director takes on new employment. (Code, D6)</p> <p><i>See</i> Code, C11 (Remuneration committees should consider the pension consequences and associated costs to the company of basic salary increases, especially for Directors close to retirement.).</p> <p><i>See also</i> Code, D1 (Remuneration committees should consider what compensation commitments their Directors' contracts of service, if any, would entail in the event of early termination, particularly for unsatisfactory performance.).</p> | <p>[O]nce a director has been elected to serve, he owes it to the shareholders to complete his term, or to give an explanation if he is unable to do so. There are many reasons for a director's resignation which need not concern shareholders – health, family commitments, increased work commitments elsewhere; in these cases, the privacy of the individual should be respected. (Guideline 3.23)</p> | <p><i>Not covered directly, but see</i> Code § 1, B.1.9, B.1.10 (<i>remuneration in the event of early termination</i>).</p> |

| NAPF Corporate Governance Code (United Kingdom) | AUTIF Code (United Kingdom) | Hermes Statement (United Kingdom) | PIRC Shareholder Voting Guidelines (United Kingdom) |
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| 13. Commitment / Changes in Job Responsibility | | | |
| <i>Not covered.</i> | <i>Not covered.</i> | The number of NED positions held by any individual should reflect the need to ensure that adequate attention can be given to every office, particularly at times of corporate turbulence. (2.2) | It is important that directors have sufficient time to devote to the company's affairs. Full disclosure of directors' other commitments should be provided.... The full record of each director's attendance at board meetings and committee meetings should be provided in the annual report. To assist smaller companies to improve their quotient of experienced directors, we consider more companies should make their senior executives available for non-executive appointments, though executive directors should not have more than one other outside appointment. (Part 2: Directors, p. 5) |

| OECD Principles/Millstein Report (International) | ICGN Statement/Global Voting Principles (International) | Euroshareholders Guidelines (Pan-European) | EASD Principles and Recommendations (Pan-European) |
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| 14. Election Term / Term Limits / Mandatory Retirement | | | |
| <i>Not covered.</i> | Each elected member [of the unitary board of directors or of the supervisory board in a two-tier system] should stand for election on a regular basis. (ICGN Amplified OECD Principle V at 9) | <p>The membership of non-executives on the board, whether in a one-tier or a two-tier system, should be limited to a maximum period of twelve years. (Recommendation 10(a))</p> <p>In order for the non-executive board members to be effective, the period they should serve on the board without being (re-)elected by the AGM should be limited to twelve years. (Commentary on Recommendations 10(a) and 10(b))</p> | Board members should stand for individual re-election on a regular basis. (Recommendation VI.2.c) |

| Recommendations of Federation of Companies (Belgium) | Dual Code of the BXS/CBF (Belgium) | The Director's Charter (FDA) (Belgium) | (Reserved) |
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| 14. Election Term / Term Limits / Mandatory Retirement | | | |
| <p>The mandate of the directors is for a limited period and is not automatically extended. (1.6)</p> <p>The law stipulates, on the one hand, that the duration of the directors' mandate must not exceed six years and, on the other hand, that they may be re-elected, unless stipulated to the contrary in the Articles of Association.</p> <p>The obligations, the duration of the mandate and the means of remuneration of directors must be announced at the time of their appointment. (Note to 1.6)</p> | <p>In accordance with the law on commercial companies, directors must be appointed for specified terms, which must not exceed six years, and reappointment is not automatic. (Part I: B.2.3)</p> <p>Information on the composition of the board of directors [that should be disclosed includes] dates on which the mandates of the directors expire [and] age limit, if any, to serve on the Board of Directors. (Part II: B.1)</p> | <p><i>Not covered directly, but see Topic Heading 13, above.</i></p> | |

| Danish Shareholders Ass'n Guidelines (Denmark) | Nørby Report & Recommendations (Denmark) | Chamber of Commerce/Confederation Code (Finland) | Ministry of Trade & Industry Guidelines (Finland) |
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| 14. Election Term / Term Limits / Mandatory Retirement | | | |
| <p>[E]lections should ... [be] for a period of one year only. (I. The Annual General Meeting)</p> <p>[N]o board member should be re-elected for a total period of more than twelve years. (II. Governance)</p> | <p>It is recommended that directors retire from the board in the year they turn 70 at the latest. (V.7)</p> <p>It is recommended that directors are elected to the board for a period of no more than three years at a time and that the board organises the election periods for the individual directors elected by general meeting in such a way that continuity is maintained through the replacement of the board.... Reelection of the chairman and the other directors for a period of more than nine years cannot be recommended. (V.8)</p> | <p><i>Not covered directly, but see</i> English Summary, 4 (The Annual Report shall contain a mention of the dates when the members of the Board of Directors and the Supervisory Board are due to resign. Requests to resign as well as refusals for new candidacy known to the company shall be [disclosed], at the latest, at the General Meeting of the Shareholders.).</p> | <p><i>Not covered.</i></p> |

| Viénot I Report (France) | Hellebuyck Commission Recommendations (France) | Viénot II Report (France) | (Reserved) |
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| 14. Election Term / Term Limits / Mandatory Retirement | | | |
| <p><i>Not covered directly, but note that French law imposes certain restrictions. See Hellebuyck Commission Recommendations, right.</i></p> | <p>In accordance with French law, a director's mandate may not exceed six years unless the General Meeting decides to renew this mandate, and directors older than seventy years may not exceed one-third of board membership.</p> <p>The Commission recommends that directors' mandates not exceed four years and the number of directors over 65 years not exceed one-third of the board membership. (§ II.D.4)</p> | <p>Under French law, the duration of Directors' terms of office is set by the by-laws, but may not exceed six years. While it is possible, therefore, for the by-laws to provide for a term of office of less than six years, this seems in practice to remain the most common.</p> <p>Determination of the duration of a Director's term of office must combine two different requirements: to allow the shareholders to rule upon appointment of their agents on the Board of Directors with sufficient frequency, and to take account of the need for reasonable continuity in a corporation's administration. In this respect, a term of four years seems most appropriate.</p> <p>Combining these two objectives also leads to favoring a staggering of terms of office so as to avoid replacement of all the Directors together and to organize regular replacement of the Board, for instance by classes of approximately equal numbers of Directors. (p. 14)</p> <p>The Committee considers that without affecting the duration of current terms of office, the duration of the Directors' term of office, set by the by-laws, should not exceed a maximum of 4 years, in order to enable to shareholders to rule upon their appointment with sufficient frequency.</p> <p>The terms of office should be staggered so as to avoid renewal as a whole and to make the replacement of Directors smoother. (p. 23)</p> | |

| Berlin Initiative Code (Germany) | German Panel Rules (Germany) | Cromme Commission Code (Germany) | (Reserved) |
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| 14. Election Term / Term Limits / Mandatory Retirement | | | |
| <p><u>Supervisory Board</u> Members of the Supervisory Board should be in a position in the long run, both in terms of time and personal health, to fulfil with proper diligence the requirements made by supervisory tasks. They should normally not exhaust the legally permissible maximum number of their Supervisory Board mandates, and not exceed the retirement age of 70 years. (Code, IV.4.5)</p> <p><u>Management Board</u> [T]he initial appointment [of Management Board members] should at first normally be limited in duration to three years at most. An appropriate statutory regulation is to be recommended in order to ease the practical application of this limitation. (Code, II.1.9)</p> | <p><u>Supervisory Board</u> <i>Not covered directly, but see Code, III.1.c) (To enable regular adjustments to material developments, the election or re-election of Supervisory Board members can take place at different dates).</i></p> <p><u>Management Board</u> <i>Not covered.</i></p> | <p><u>Supervisory Board</u> The election or re-election of members of the Supervisory Board at different dates and for different periods of office enables changing requirements to be taken into account. (§V.4.4)</p> <p>Material conflicts of interest and those which are not merely temporary in respect of the person of a Supervisory Board member shall result in the termination of his mandate. (§V.5.3)</p> <p><u>Management Board</u> For first time appointments [to the Management Board] the maximum possible appointment period of five years should not be the rule. A re-appointment earlier than one year before the end of the appointment period [shall] only take place under special circumstances. An age limit for members of the Management Board shall be specified. (§V.1.2)</p> | |

| Mertzanis Report (Greece) | Federation of Greek Industries Principles (Greece) | IAIM Guidelines (Ireland) | Preda Report (Italy) |
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| 14. Election Term / Term Limits / Mandatory Retirement | | | |
| <p>It is good practice that the non-executive members of the Board are not elected for many terms. (Recommendation 6.4)</p> | <p><i>Not covered.</i></p> | <p><i>Not covered directly, but the IAIM Guidelines adopt the Combined Code. See the Combined Code, Principle A.6 (All directors should be required to submit themselves for re-election at regular intervals and at least every three years.).</i></p> <p><i>See also the Combined Code § 1, A.6.1 (Non-executive directors should be appointed for specified terms subject to reelection and to Companies Act provisions relating to the removal of a director, and reappointment should not be automatic.).</i></p> <p><i>See also the Combined Code § 1, A.6.2 (All directors should be subject to election by shareholders at the first opportunity after their appointment, and to re-election thereafter at intervals of no more than three years.).</i></p> <p><i>See also the Combined Code § 1, B.1.7 (There is a strong case for setting notice or contract periods at, or reducing them to, one year or less. Boards should set this as an objective; but they should recognize that it may not be possible to achieve it immediately.).</i></p> <p><i>See also the Combined Code § 1, B.1.8 (If it is necessary to offer longer notice or contract periods to new directors recruited from outside, such periods should reduce after the initial period.).</i></p> | <p>The Committee did not deem it desirable to lay down quantitative guidelines in terms of ... the duration of appointments. (Report, 5.1)</p> <p>[There is a] legal requirement for appointments to the board of directors not to last more than three years. (Report, 5.4.1)</p> |

| Peters Report (The Netherlands) | VEB Recommendations (The Netherlands) | SCGOP Handbook and Guidelines (The Netherlands) | Securities Market Comm'n Recommendations (Portugal) |
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| 14. Election Term / Term Limits / Mandatory Retirement | | | |
| <p><u>Supervisory Board</u> Members of the Supervisory Board in companies not subject to the 'structure regime' should be appointed for a certain period of time. (Recommendation 2.7)</p> <p>The Supervisory Board should draw up a rota for resignation to prevent an unnecessarily high number of re-appointments having to be discussed at once. A four-year term of office could serve as a basis. (Recommendation 2.7)</p> <p><u>Management Board</u> <i>Not covered.</i></p> | <p><u>Supervisory Board</u> The membership of a supervisory board should be limited to a maximum period of 12 years, taking into account that reappointment after 8 years requires approval by 75% of the votes. (Recommendation 8)</p> <p>Limitation of the period persons serve on the supervisory board stimulates circulation. Approval for a second reappointment by shareholders prevents automatic reappointments or appointments of underperforming members. (Commentary on Recommendation 8)</p> <p><i>See also</i> Commentary on Recommendation 7 (The possibility of dismissal will be used rarely but does offer sanctions when members of the supervisory board fail to replace dysfunctional management. This situation already exists in companies where the structure regime does not apply.).</p> <p><u>Management Board</u> <i>Not covered directly, but see</i> Recommendation 7 (Shareholders should be able to file a resolution for dismissal of a member of the executive board. Adoption of this resolution requires at least two-thirds support and a quorum of fifty percent.).</p> | <p><u>Supervisory Board</u> The tenure of supervisory board members should generally be limited to two terms of four years. (Guideline 13(c))</p> <p><u>Management Board</u> <i>Not covered.</i></p> | <p><i>Not covered.</i></p> |

| Olivencia Report (Spain) | Swedish Shareholders Ass'n Policy (Sweden) | ICSA Code (United Kingdom) | ISC Statement of Best Practice (United Kingdom) |
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| 14. Election Term / Term Limits / Mandatory Retirement | | | |
| <p>Company regulations must include directors' obligation to resign whenever they may harm the operation of the Board or the credit and reputation of the Company. (Code, Recommendation 12)</p> <p>An age limit must be set for the performance of director duties, which could be between 65 and 70 years for executive directors and the Chairman of the Board, and a more flexible bracket for the rest of the directors. (Code, Recommendation 13)</p> <p>The re-election of executive and proprietary directors should have no restrictions other than those arising from the evaluation and lasting confidence of support groups. (Report, 5.4)</p> <p>[T]here are proposals to restrict the possibility of re-election [of independent directors] to just one term. Nevertheless, this Committee does not consider that such a dramatic recommendation is appropriate. The scarce empirical data available show that the possible costs associated with less independence do not justify renouncing the benefits of accumulated experience. Moreover, the presence of a time limit for directors may reduce the incentives for them to dedicate efforts to their Board-related tasks and, in general terms, to be involved in and committed to the company's future. (Report, 5.4)</p> <p>[T]he establishment of an age limit for the performance of director functions must be considered. Our criterion here is that some measures must be passed in order to make it easier to replace the eldest Board members, though granting companies some leeway so that they may take advantage of the wide experience of certain directors. (Report, 5.5)</p> | <i>Not covered.</i> | <i>Not covered.</i> | <p>One-third of the directors should be subject to retirement by rotation each year. They can stand for re-election if they so chose. (p. 2)</p> <p>The Articles should provide that a director may be dismissed from his or her office by written resolution of all co-directors (or at the very least a majority of 75% of co-directors) who should obtain shareholder approval at the next general meeting for their course of action. (p. 2)</p> <p>The Articles should provide that a director may be dismissed from office by his or her fellow directors for failure to attend a specified number of meetings of the Board "or Board Meetings held in a specific period." (p. 2)</p> <p><i>See p. 2</i> ([T]he Annual Report should disclose the ages of all directors and in the cases of those aged over 70, on occasion when they stand for election or re-election, an explanation of why it is felt appropriate that such directors be retained.).</p> |

| Cadbury Report (United Kingdom) | Greenbury Report (United Kingdom) | Hampel Report (United Kingdom) | The Combined Code/Turnbull Report (United Kingdom) |
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| 14. Election Term / Term Limits / Mandatory Retirement | | | |
| <p>Non-executive directors should be appointed for specified terms and reappointment should not be automatic. (Code, 2.3)</p> <p>[Executive] directors' service contracts should not exceed three years without shareholders' approval. (Code, 3.1)</p> <p>Companies have to be able to bring about changes in the composition of their boards to maintain their vitality. Non-executive directors may lose something of their independent edge if they remain on a board too long. Furthermore, the make-up of a board needs to change in line with new challenges. We recommend, therefore, that non-executive directors should be appointed for specified terms. Their Letter of Appointment should set out their duties, term of office, remuneration and its review. Reappointment should not be automatic, but a conscious decision by the board and the director concerned. (Report, 4.16)</p> | <p>There is a strong case for setting [Directors'] notice or contract periods at, or reducing them to, one year or less. Remuneration committees should, however, be sensitive and flexible, especially over timing. In some cases notice or contract periods of up to two years may be acceptable. Longer periods should be avoided wherever possible. (Code, D2)</p> <p>If it is necessary to offer longer notice or contract periods, such as three years, to new Directors recruited from outside, such periods should reduce after the initial period. (Code, D3)</p> <p><i>See</i> Commentary on Remuneration Committees, Membership and Qualifications, 4.12 (Since knowledge and experience are important, remuneration committee members should preferably serve for a period of at least three years, subject to the normal periodic re-election of Directors. Where Directors stand for re-election, the proxy cards should indicate their specific duties, including membership on the remuneration or other committee.).</p> | <p>All directors should be required to submit themselves for re-election at regular intervals and at least every three years. (Principle A.VI; <i>see</i> Guideline 3.21)</p> <p>[A retirement requirement based on age and length of service] assumes that the effectiveness and objectivity of the director will decline with increasing age and length of service. There is a risk that this could happen, and boards, and the individuals themselves, should be vigilant against it. But a reasonably long period on the board can give directors a deeper understanding of the company's business and enable them to make a more effective contribution. Individuals' capacities, and their enthusiasm for the task, vary widely, and a recommendation would be inappropriate. (Guideline 3.22)</p> <p>[I]t has been suggested to us that shareholders are entitled to know if a resignation results from a policy disagreement or a personality clash. This may be helpful in appropriate cases; there are likely to be rumours, and open disclosure may be in shareholders' interests. (Guideline 3.23)</p> <p>We endorse the view that it is the board's responsibility to appoint new directors and the shareholders' responsibility to re-elect them. (Guideline 2.8)</p> | <p>All directors should be required to submit themselves for re-election at regular intervals and at least every three years. (Principle A.6)</p> <p>Non-executive directors should be appointed for specified terms subject to reelection and to Companies Act provisions relating to the removal of a director, and reappointment should not be automatic. (Code § 1, A.6.1)</p> <p>All directors should be subject to election by shareholders at the first opportunity after their appointment, and to re-election thereafter at intervals of no more than three years. (Code § 1, A.6.2)</p> <p>There is a strong case for setting notice or contract periods at, or reducing them to, one year or less. Boards should set this as an objective; but they should recognize that it may not be possible to achieve it immediately. (Code § 1, B.1.7)</p> <p>If it is necessary to offer longer notice or contract periods to new directors recruited from outside, such periods should reduce after the initial period. (Code § 1, B.1.8)</p> |

| NAPF Corporate Governance Code (United Kingdom) | AUTIF Code (United Kingdom) | Hermes Statement (United Kingdom) | PIRC Shareholder Voting Guidelines (United Kingdom) |
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| 14. Election Term / Term Limits / Mandatory Retirement | | | |
| <p>All directors should be subject to re-election at intervals of no more than three years....</p> <p>The Annual Report should disclose the ages of all directors and, in the cases of those aged over 70 on the occasion when they stand for election or re-election, provide an explanation of why it is felt appropriate that such directors be retained. (§8)</p> <p>See §9(iii) (There should be no advance agreement for special compensation arrangements (including enhanced pension arrangements, deferred options etc) for those cases where executive directors' contracts are terminated early. If a director's contract has to be terminated and an element of compensation is agreed, staged payments should be made to mitigate loss. These should cease on a subsequent new appointment.).</p> | <p>Principle A.6 [of the Combined Code] recommends that all directors should be required to submit themselves for re-election at regular intervals and at least every three years. (Guidance Note on Key Principle 6))</p> | <p>[T]o be considered independent, a NED must not ... serve as a director for more than ten years or be over seventy years of age. (2.3; see 2.6)</p> | <p>PRINCIPLE: All directors should be accountable to shareholders by facing regular re-election.</p> <p>G. <u>Non-executives are appointed for specified terms.</u> There should be a formal opportunity to assess the contribution made by non-executives. They should therefore have a fixed period of appointment rather than an open-ended appointment....</p> <p>H. <u>All directors are required to seek election in the articles.</u> It is fundamental to good corporate governance that all directors are required to seek regular re-election by shareholders. If exemption from election provisions exist in company articles, ... they should be removed.</p> <p>I. <u>All directors face election every year.</u> Under the current system, it is merely coincidental if directors retire in a year when shareholders may wish to vote on an issue of concern which has emerged during the period.... In the absence of opportunities for shareholders to vote on policy issues ..., and given the difficulties involved in putting forward a shareholder resolution on specific issues of concern, in order to strengthen accountability, we consider that all directors should retire for re-election each year.</p> <p>J. <u>Directors over 70 face annual re-election.</u> Whilst recognizing that such directors may still have much to contribute to a company, in the absence of annual election for all directors, PIRC considers that companies ensure that directors over the age of seventy stand down for election each year. (Part 2: Directors, p. 6)</p> <p>[In the case of two-tiered boards,] [s]hareholders ... should have the power to remove [any supervisory board directors] exercising the powers of the company or charged with overseeing executive management. This applies to stakeholder representatives and also to alternate directors who are not elected. (Part 2: Directors, p. 4)</p> |

| OECD Principles/Millstein Report (International) | ICGN Statement/Global Voting Principles (International) | Euroshareholders Guidelines (Pan-European) | EASD Principles and Recommendations (Pan-European) |
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| 15. Evaluating Board Performance | | | |
| <p>Boards should consider assigning a sufficient number of non-executive board members capable of exercising independent judgement to tasks where there is a potential for conflict of interest. Examples of such key responsibilities are: financial reporting, nomination and executive and board remuneration. (OECD Principle V.E.1)</p> <p>[Independent board members] can bring an objective view to the evaluation of the performance of the board.... (OECD Principle V.E Annotation at 41)</p> <p>In order to improve board practices and the performance of its members, some companies have found it useful to engage in training and voluntary self-evaluation that meet the needs of the individual company. (OECD Principle V.E.2 Annotation at 42)</p> | <p><i>The ICGN Statement adopts</i> OECD Principle V.E.1 (Boards should consider assigning a sufficient number of non-executive board members capable of exercising independent judgement to tasks where there is a potential for conflict of interest. Examples of such key responsibilities are: financial reporting, nomination and executive and board remuneration.).</p> <p><i>See</i> OECD Principle V.E Annotation at 41 (Independent board members ... can bring an objective view to the evaluation of the performance of the board.).</p> <p><i>See also</i> OECD Principle V.E.2 Annotation at 42 (In order to improve board practices and the performance of its members, some companies have found it useful to engage in training and voluntary self-evaluation that meets the needs of the individual company.).</p> | <p><i>Not covered.</i></p> | <p>Evaluation and review procedures on the effectiveness of the board and its members should be established, and their existence disclosed. (Recommendation V.6)</p> |

| Recommendations of Federation of Companies (Belgium) | Dual Code of the BXS/CBF (Belgium) | The Director's Charter (FDA) (Belgium) | (Reserved) |
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| 15. Evaluating Board Performance | | | |
| <i>Not covered.</i> | <i>Not covered.</i> | <p><i>Not covered directly, but see p. 4 (The Director undertakes to verify that the powers and responsibilities of the Board of Directors ... are clearly established.</i></p> <p>The Director undertakes to verify that the Board effectively controls the company and the activity of the Management.).</p> <p><i>See generally p. 4 (ensuring the effective functioning of the Board of Directors).</i></p> <p><i>See also p. 5 (The Director undertakes to encourage the Board to adopt a code of good practice.).</i></p> | |

| Danish Shareholders Ass'n Guidelines (Denmark) | Nørby Report & Recommendations (Denmark) | Chamber of Commerce/Confederation Code (Finland) | Ministry of Trade & Industry Guidelines (Finland) |
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| 15. Evaluating Board Performance | | | |
| <p><i>Not covered directly, but see Topic Heading 25, below.</i></p> | <p>We recommend that the board establishes an assessment process which continuously and systematically evaluates the work, results and composition of the board and the individual directors, including the chairman, in order to improve the board's work. In this connection, the criteria of the evaluation should be clearly specified.</p> <p>When assessing the board as a whole, there is a clear need to evaluate to what extent previously established strategic goals and plans have been realised. It will be appropriate to carry out the assessment once a year and the chairman will be responsible for this, and if necessary, with external help. The result will be discussed by the entire board. (V.10)</p> <p><i>See also V.12</i> (It is recommended that the management and the board establish a procedure by which the collaboration between the board and the management is assessed in an annual meeting between the managing director and the chairman of the board. The result of the assessment should be presented to the entire board.).</p> | <p><i>Not covered.</i></p> | <p><i>Not covered directly, but see Topic Heading 16, below.</i></p> |

| Viénot I Report (France) | Hellebuyck Commission Recommendations (France) | Viénot II Report (France) | (Reserved) |
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| 15. Evaluating Board Performance | | | |
| <p>The Committee considers ... that each board should periodically review its membership, organization and operations and keep shareholders informed of conclusions and action taken. (p. 3)</p> <p>The Committee suggests that the board should collectively consider the status of its members and their capacity to fulfill their duties, notably in that they have the necessary information, and should not hesitate to impose requirements ... if it believes the company's circumstances make this necessary. These tasks could be carried out by the board's selection committee. (p. 21)</p> <p>[A]bsenteeism is rare among directors. Where it does arise, it is the board's duty to take the necessary measures to ensure members' attendance at its meetings and those of its advisory committees. Such measures may include, for example, making fees proportional to attendance, publication of attendance lists or adoption of rules requiring directors to resign or face dismissal by the shareholders' meeting once they have been absent a certain number of times. (p. 22)</p> <p><i>See p. 3: (The board's prime responsibility is to ensure that its organization and operation enable it to fulfill its duties as efficiently as possible.).</i></p> | <p>The Commission recommends that the board regularly evaluate its own degree of openness in terms of its membership, its organisation, and its mode of functioning. It should inform shareholders of any measures taken as a result.</p> <p>It also recommends that the board examine the status and situation of its members with regard to their functions and obligations.</p> <p>The Commission further recommends that each year, in the annual report, the board publish the number of its meetings during the year, plus an attendance record, an evaluation of board organisation and functioning, and a detailed resumé and list of directorships of each board member and of candidates to director posts. (§ II.D.3)</p> <p>It is recommended that a charter consisting of a kind of director's code of professional conduct be established. At a minimum, it should include certain principles: the obligation to own company shares in one's personal capacity, to attend board meetings and shareholders' meetings, to respect the confidentiality of matters relating to company business, to abide by ethical standards applying to company employees regarding transactions in company shares, and to declare all transactions in company shares. (§ II.D.5)</p> | <p>Among the measures recommended by the 1995 report, the Committee wishes to stress the duty for each Board to consider "the desirable equilibrium in its membership or those of its committees" and "to review periodically the adequacy of its organization and operation to its tasks."</p> <p>It is ... fundamental for the proper practice of corporate governance that the Board should evaluate its ability to meet the expectations of the shareholders having appointed it to manage the corporation, by reviewing periodically its membership, its organization, and its operation (implying an identical review of the Board committees).</p> <p>The Committee considers that this review should be reported to the shareholders in the annual report. (pp. 14-15)</p> | |

| Berlin Initiative Code (Germany) | German Panel Rules (Germany) | Cromme Commission Code (Germany) | (Reserved) |
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| 15. Evaluating Board Performance | | | |
| <p>Regular evaluation promotes continuous improvement in the corporate governance of a company. (Thesis 10)</p> <p><u>Supervisory Board</u> The Supervisory Board subjects its activities to systematic evaluation at regular intervals in order to continually improve them. (Code, IV.2.6)</p> <p>If the work of a member of the Supervisory Board displays serious flaws, it is the Supervisory Board that causes him to be removed. (Code, IV.4.3)</p> <p><u>Management Board</u> The individual performance of each Management Board member ... is ... to be systematically evaluated annually by the personnel committee. In this, the target-orientated development of the company and individual contributions made by Management Board members provide the scale for making the assessment. (Code, II.1.10)</p> <p>Appointments of Management Board members whose performance falls short of the level of performance which may reasonably be expected are not renewed. Serious deficiencies in performance and mistakes lead as compelling grounds to premature dismissal. (Code, II.1.11)</p> <p>The Management Board systematically supervises the success of its own decisions (preparatory to, and in addition to, the Supervisory Board). (Code, III.2.6)</p> <p>[T]he Supervisory Board ... checks in particular whether the dealings of the Management Board increase the value of the company on a sustained basis and correspond with generally accepted principles of proper company management. (Code, IV.2.3)</p> | <p><u>Supervisory Board</u> The Supervisory Board shall subject its activity to a regular (<i>i.e.</i>, annual) evaluation to check opportunities for improvements on a continuous basis. (Code, III.2.h)</p> <p><u>Management Board</u> <i>Not covered directly, but see</i> Code, III.3 ([C]ompensation elements shall be determined by systematic performance evaluation of the individual Management Board members [by the Personnel Committee of the Supervisory Board].).</p> | <p><u>Supervisory Board</u> The Supervisory Board shall examine the efficiency of its activities on a regular basis. (§V.6)</p> <p><u>Management Board</u> <i>Not covered directly, but see</i> §IV.2.2 (Compensation of the members of the Management Board is determined by the Supervisory Board ... on the basis of a performance assessment.).</p> <p><i>See also</i> §V.1.1 (The task of the Supervisory Board is to ... supervise the Management Board....)</p> <p>The Supervisory Board appoints and dismisses the members of the Management Board.).</p> <p><i>See also</i> §V.1.3 (The Supervisory Board shall issue Terms of Reference.).</p> <p><i>See also</i> Topic Heading 16, <i>below</i>.</p> | |

| Mertzanis Report (Greece) | Federation of Greek Industries Principles (Greece) | IAIM Guidelines (Ireland) | Preda Report (Italy) |
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| 15. Evaluating Board Performance | | | |
| <p>The Board of Directors has the responsibility ... for ... monitoring the efficacy of the governance practices that characterize the operation of the Board of Directors and the decision-making procedures. (Recommendation 5.4)</p> <p>See Recommendation 5.13 (The structure and operational procedures of the Board of Directors should ensure the establishment of best performance conditions for the corporation.).</p> | <p><i>Not covered directly, but see §5.2 (The internal control committee ... evaluates and exploits the findings of the control carried out by the supervisory authorities, and of the internal and external control, by Report to the full board of directors of the company.).</i></p> | <p><i>Not covered directly, but the IAIM Guidelines adopt the Combined Code. See the Combined Code, Schedule A: Provisions on the Design of Performance-Related Remuneration, 1-7.</i></p> | <p>The importance of the responsibilities and tasks of directors led the Committee to call on them to make a conscientious self-assessment of their ability to devote sufficient care and attention to the duties of the office. (Report, 5.1)</p> <p>See Topic Heading 16, below.</p> |

| Peters Report (The Netherlands) | VEB Recommendations (The Netherlands) | SCGOP Handbook and Guidelines (The Netherlands) | Securities Market Comm'n Recommendations (Portugal) |
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| 15. Evaluating Board Performance | | | |
| <p><u>Supervisory Board</u> Deliberation regarding [reappointment of a Supervisory Board member] should be conducted in the absence of the person concerned and should be held on the basis of a report drawn up by the chairman on the interview with the resigning Supervisory Board member. The proposal for reappointment should state the motives for reappointment and should explicitly mention why it is felt that the performance of the member in question was satisfactory. (Recommendation 2.7) A Supervisory Board member's premature resignation can be expedient in cases of unsatisfactory performance, fundamental differences of opinion, conflicts of interest, or if his integrity is at issue. (Recommendation 2.8)</p> <p><u>Management Board</u> <i>Not covered.</i></p> | <p><u>Supervisory Board</u> <i>Not covered directly, but see</i> Commentary on Recommendation 7 (A significant objection to the 'structure regime' (members of the supervisory board elect their own colleagues or successors) is uncontrolled co-optation which enables the board of a company not to draw obvious conclusions from a lack of trust from shareholders. The possibility of dismissal will be used rarely but does offer sanctions when members of the supervisory board fail to replace dysfunctional management. This situation already exists in companies where the structure regime does not apply.).</p> <p><u>Management Board</u> <i>Not covered directly, but see</i> Recommendation 7 (Shareholders should be able to file a resolution for dismissal of a member of the executive board. Adoption of this resolution requires at least two-thirds support and a quorum of fifty percent.).</p> | <p><u>Supervisory Board</u> The supervisory board director's performance should be evaluated at the end of the term of appointment. This evaluation should be taken into account in deciding whether the supervisory board member should be considered for a second consecutive term. (Guideline 13(e))</p> <p><u>Management Board</u> <i>Not covered directly, but see</i> Topic Heading 16, below.</p> | <p><i>Not covered directly, but see</i> Introduction (Corporate governance has ... an internal aspect and an external aspect.... [E]xternal control ... relates to the assessment of the performance of the company, which is conducted through the normal function of market mechanisms.... It is, indeed, the market itself that constitutes the main assessor of the excellence of the leadership and control options adopted by listed companies.).</p> |

| Olivencia Report (Spain) | Swedish Shareholders Ass'n Policy (Sweden) | ICSA Code (United Kingdom) | ISC Statement of Best Practice (United Kingdom) |
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| 15. Evaluating Board Performance | | | |
| <p>In order to ensure the proper operation of the Board of Directors, its meetings should be held with the necessary frequency to fulfill its mission. The Chairman of the Board should encourage all the directors to participate and freely state their views. The wording of the Minutes should be especially watched and the quality and efficiency of directors' work should be evaluated at least once a year. (Code, Recommendation 10)</p> <p>[I]t is advisable that the Board of Directors reflect at least once a year on its own performance, if possible, in a meeting devoted to this subject alone. It is a matter of evaluating the quality of its work, the efficiency of its rules and, as the case may be, of correcting whatever has proven to be non-functional. In this task, which has the final purpose of ensuring the efficiency of the Board and its ability to supervise business management, it will have to pay special attention to the reports of the Compliance Committee. (Report, 4.5)</p> <p>[The Committee] recommends that companies, as a major part of the re-election process, provide for the Nomination Committee to evaluate the candidate's work and effective dedication during the last term, issuing a report to that effect. We expect this could reduce the risk of Boards deciding automatically to re-elect directors regardless of their performance. (Report, 5.4)</p> | <p>The owners should ensure that the board takes responsibility for ... ensuring that an annual evaluation is carried out of the board and the individual board members' contributions to the board. (Guideline 2.2)</p> <p>The board should evaluate its work on an annual basis and check that the program of work, managing director directives and reporting directives are being followed. Also, the nomination committee should be given an opportunity prior to the annual general meeting to check that the board's work has proceeded in accordance with previously determined guidelines. The nomination committee should evaluate both the work of the entire board as well as the contribution of the individual board members. This gives the nomination committee basic material from which to work out a proposal for a well-composed and competent board. The nomination committee can then, prior to the general meeting, explain why they feel the board members should either remain in their positions or be changed for another person. (Guideline 2.3)</p> | <p><i>Not covered directly, but see</i> Code, §1 (The board should establish written procedures for the conduct of its business which should include the matters covered in this Code. A copy of these written procedures should be given to each director. Compliance should be monitored, preferably by an audit committee of the board, and breaches of the procedures should be reported to the board.).</p> | <p>While all directors have a duty to monitor the performance of a company, the non-executive directors should acknowledge a particular duty to monitor the performance of the Board as a whole, and to report to the shareholders if they are not satisfied after reasonable efforts have been made by them to remedy the causes of their dissatisfaction. (p. 3)</p> <p><i>See</i> p. 2 (The Articles should provide that a director may be dismissed from office by his or her fellow directors for failure to attend a specified number of meetings of the Board "or Board Meetings held in a specific period.").</p> |

| Cadbury Report (United Kingdom) | Greenbury Report (United Kingdom) | Hampel Report (United Kingdom) | The Combined Code/Turnbull Report (United Kingdom) |
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| 15. Evaluating Board Performance | | | |
| <i>Not covered.</i> | <i>Not covered directly, but see</i> Commentary on Remuneration Committees, 4.14 ([T]he company's Chairman and/or Chief Executive should normally be invited to attend meetings [of the remuneration committee] to discuss the performance of the other Executive Directors....). <i>See also</i> Topic Heading 16, <i>below</i> . | A recent report of the US National Association of Corporate Directors recommended the introduction of formal procedures by which boards would assess both their own collective performance and that of individual directors. Some UK boards already operate such procedures. We believe that this is an interesting development which boards might usefully consider in the interest of continuous improvement, though we do not feel able at this stage to make a firm recommendation on the subject. (Guideline 3.13) | <i>Not covered directly, but see</i> Principle E.3 (When evaluating companies' governance arrangements, particularly those relating to board structure and composition, institutional investors should give due weight to all relevant factors drawn to their attention.) |

| NAPF Corporate Governance Code (United Kingdom) | AUTIF Code (United Kingdom) | Hermes Statement (United Kingdom) | PIRC Shareholder Voting Guidelines (United Kingdom) |
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| 15. Evaluating Board Performance | | | |
| <p>[B]oards would be well advised to determine the most appropriate and challenging performance criteria for themselves. (§9(ii))</p> <p><i>See</i> §3 (Independent directors play an essential role by using their unfettered judgement on the issues of ... performance, resources, key appointments and standards of conduct. Such independent assessment of strategic direction is probably the greatest value to be derived from an independent non-executive director.</p> <p><i>See also</i> §9(ii) (Executive directors' remuneration should be related to the performance of the company.</p> <p>....</p> <p>An executive director's remuneration should be structured so that a proportion links reward to corporate and individual performance.).</p> | <p><i>Not covered directly, but see</i> Key Principle 1 (AUTIF recommends that member firms should take steps to satisfy themselves about the extent to which the firms in which they invest comply with the recommendations of the Combined Code issued by the Committee on Corporate Governance.).</p> <p><i>See also</i> Key Principle 6 (AUTIF welcomes Principle E.3 of the Combined Code which states that, when evaluating companies' governance arrangements, particularly those relating to board structure and composition, shareholders should give due weight to all relevant factors drawn to their attention.).</p> <p><i>See also</i> Key Principle 7 (AUTIF recommends that member firms should include in their annual reports to investors, as a minimum, a statement as to whether the firm is following the AUTIF code of good practice or another similar code.).</p> <p><i>See also</i> Key Principle 10 (AUTIF encourages all member firms to provide training for relevant staff on ... communicating the firm's policy on corporate governance to its investors.).</p> | <p>It is good practice for all boards to conduct an annual review of the performance of NEDs and the chairman and to consider the effectiveness of the board as a whole. (2.8)</p> <p>Where the company chairman combines the role of chairman and chief executive, or has at any time been an executive director of the company, then the senior NED should take a major part in the performance appraisal of the board as a whole and of individual directors. (APPENDIX 2.5)</p> | <p>There should be an annual appraisal of the functioning of the board as a whole and the contribution made by all directors individually, including non-executives. The directors should disclose the process used, the timescale, the criteria applied and the overall outcome. It may be helpful to use an independent agency to perform this appraisal. (Part 2: Directors, p. 7)</p> <p>PIRC considers that a notice period [regarding a director's contract] of no longer than one year is a reasonable period which balances the interests of shareholders and the company with those of the director. (7.16)</p> <p><i>See</i> Topic Heading 16, <i>below</i>.</p> |

| OECD Principles/Millstein Report (International) | ICGN Statement/Global Voting Principles (International) | Euroshareholders Guidelines (Pan-European) | EASD Principles and Recommendations (Pan-European) |
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| 16. Board Compensation Review | | | |
| <p>The board should fulfil certain key functions, including [review of] board remuneration. (OECD Principle V.D.3)</p> | <p><i>The ICGN Statement adopts OECD Principle V.D.3 (The board should fulfil certain key functions, including [review of] board remuneration.).</i></p> <p><i>See also ICGN Statement 5 at 4 (Remuneration of corporate directors or supervisory board members and key executives should be aligned with the interests of shareholders.).</i></p> | <p><i>Not covered.</i></p> | <p>Board remuneration</p> <ul style="list-style-type: none"> a) Board remuneration should be sufficient to attract and retain members of the quality needed for the successful accomplishment of their tasks. b) Non-executive board members' remuneration should be determined according to principles and policies of the board and its relevant committee, which should be disclosed. c) Material elements of non-executive board members' remuneration, including their participation in pension arrangements, stock-option plans or incentive schemes of whatever nature, should be meaningfully disclosed at least in the aggregate. d) It is not improper for independent board members to own some shares of the company, but they should not participate in stock option or pension plans. Nevertheless, stock options may be acceptable in early-stage companies, before they are listed. <p>(Recommendation VI.3.a-d)</p> |

| Recommendations of Federation of Companies (Belgium) | Dual Code of the BXS/CBF (Belgium) | The Director's Charter (FDA) (Belgium) | (Reserved) |
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| 16. Board Compensation Review | | | |
| <p><i>Not covered directly, but see Note to 2.2 (It is desirable that non-executive directors should not take part in plans in relation to the granting of share options and should not receive pensions by virtue of their mandate. The reason for this is to ensure their independence.).</i></p> | <p>The remuneration received by non-executive directors should reflect the amount of time which they commit to the company. Their remuneration should not be performance-related, but may be related to the evolution of the value of the company. Therefore, remuneration can take the form of company shares. However, it is recommended that the remuneration of non-executive directors should not take the form of stock options, nor of a participation in the pension scheme of the company. (Part 1: B.2.1)</p> | <p><i>Not covered.</i></p> | |

| Danish Shareholders Ass'n Guidelines (Denmark) | Nørby Report & Recommendations (Denmark) | Chamber of Commerce/Confederation Code (Finland) | Ministry of Trade & Industry Guidelines (Finland) |
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| 16. Board Compensation Review | | | |
| <p>The remuneration of ... board members should, to a reasonable extent, depend on the company's profitability and shareprice development. (II. Governance)</p> | <p>A competitive remuneration is a prerequisite for attracting and keeping competent directors. ... The remuneration to the directors ... should be reasonable in connection with the assigned tasks and the responsibilities which are connected with solving these tasks. (VI)</p> <p>The board establishes the principles and the guidelines for the preparation of any incentive schemes for the company's ... directors, and ... their acceptance at the AGM. It is recommended that the total remuneration is competitive and reasonable and that it reflects how ... the directors have performed independently, as well as how much value they have created for the company. Likewise, incentive schemes should reflect the interests of the shareholders and the company, be adjusted to the company's specific circumstances and be reasonable in relation to the tasks and the responsibilities of the managers and the directors.</p> <p>The remuneration for the directors may consist of incentive schemes, including bonus schemes and shares at market price, but we cannot recommend that it consists of share option schemes. (VI.1)</p> | <p><i>Not covered directly, but see Topic Heading 30, below.</i></p> | <p><i>Not covered directly, but see 2.2.2. (In order to make known ... the bonuses whereby the Board of Directors works for increasing value-added, the annual report should ... separately mention to what extent the members of the Board of Directors are remunerated based on criteria other than Board membership; if no such remuneration is paid, this shall also be stated.)</i></p> |

| Viénot I Report (France) | Hellebuyck Commission Recommendations (France) | Viénot II Report (France) | (Reserved) |
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| 16. Board Compensation Review | | | |
| <p>Considering the responsibilities borne by directors and the time they must devote to their duties, fees should be more than token, and it thus appears natural to encourage directors to participate in advisory committees by increasing fees. (p. 22)</p> <p>[A]bsenteeism is rare among directors. Where it does arise, it is the board's duty to take the necessary measures to ensure members' attendance at its meetings and those of its advisory committees. Such measures may include, for example, making fees proportional to attendance, publication of attendance lists or adoption of rules requiring directors to resign or face dismissal by the shareholders' meeting once they have been absent a certain number of times. (p. 22)</p> <p><i>See p. 20 (Directors should personally own a fairly significant number of their company's shares, whether or not this is required by company by-laws. Should this not be the case on their appointment, they should use their directors' fees for this purpose.).</i></p> | <p>[D]irectors' fees [should be tied to the performance of the company and the value of the company's share, and] should also take into account their attendance. (§ II.C.2)</p> <p>AFG-ASFFI considers that the number, exercise price and duration of stock options held by board members ... shall be the subject of particular individual information....</p> <p>AFG-ASFFI is in favor of stock options without discount. (§ II.C.3)</p> | <p>[T]he Committee recommends that a statutory amendment favor the personal holding by Directors of shares of their corporation's stock, and for this purpose, allow the Board of Directors to resolve upon payment of all or part of the attendance fees in shares of the corporation's stock, valued at the market price on the date of payment. (p. 12)</p> | |

| Berlin Initiative Code (Germany) | German Panel Rules (Germany) | Cromme Commission Code (Germany) | (Reserved) |
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| 16. Board Compensation Review | | | |
| <p><u>Supervisory Board</u> The remuneration of members of the Supervisory Board is made at a reasonable level and is related to performance.... (Code, IV.7.1)</p> <p>The basis for assessing the performance of the individual members of the Supervisory Board is the extent of their duties. (Code, IV.7.2)</p> <p>Supervisory Board members do not receive stock options.... (Code, VI.7.3)</p> <p><u>Management Board</u> [R]emuneration of the Management Board ... shall include sufficient motivation to ensure long-term corporate value creation. This includes share option programs and performance-related incentives related to the share price development and the continuing success of the Company.... To document the incentive character as well as to balance the surrender of the subscription right by the shareholders, the exercise shall depend on achieving or exceeding relevant and transparent benchmarks.... (Code, II.3.a)</p> <p>Recommendations for the recurring compensation elements shall be determined by systematic performance evaluation of the individual Management Board members. (Code, III.3)</p> <p>[R]emuneration of the members of the Management Board embraces fixed and variable components. The basis for determining the variable components of remuneration is systematic evaluation of the individual members of the Management Board carried out periodically by the personnel committee of the Supervisory Board. (Code, III.6.2)</p> <p>[V]ariable remuneration can also be paid in part according to stock option schemes or comparable schemes.... (Code, III.6.3)</p> <p><i>See also Code, II.3.a) – b) (Management Board remuneration).</i></p> | <p><u>Supervisory Board</u> The remuneration of the Supervisory Board shall appropriately reflect the responsibility, the work performed, and the increase in the corporate value. (Code, III.1.e)</p> <p>Contracts, in particular consulting contracts of the company with members of the Supervisory Board, require the approval of the Supervisory Board (except everyday transactions). (Code, III.2.f)</p> <p><u>Management Board</u> The Personnel Committee ... shall make recommendations with regard to the content of the employment contracts of the Management Board including their emoluments. Recommendations for the recurring compensation elements shall be determined by systematic performance evaluation of the individual Management Board members. In addition, the Committee is responsible for the approval of pay for outside company work by members of the Management Board. (Code, III.3)</p> | <p><u>Supervisory Board</u> Compensation of the members of the Supervisory Board is specified by resolution of the General Meeting or in the Articles of Association. It takes into account the responsibilities and scope of tasks of the members of the Supervisory Board as well as the economic situation and performance of the enterprise.... Members of the Supervisory Board shall receive a fixed salary as well as performance-related compensation. Performance-related compensation should also contain components based on long-term performance of the enterprise. (§V.4.5)</p> <p><u>Management Board</u> Compensation of the members of the Management Board is determined by the Supervisory Board under consideration of group payments, if any, at an appropriate sum and on the basis of a performance assessment. Criteria for determining the appropriateness of compensation are, in particular, the tasks of the member of the Management Board, ... performance, the economic situation, [and] the performance and outlook of the enterprise.... (§IV.2.2)</p> <p>[C]ompensation of the members of the Management Board shall be comprised of a fixed salary and variable components. Variable compensation should include one-time and annually-payable components linked to the performance of the enterprise as well as long-term incentives. In particular, stock options or comparable instruments (e.g. phantom stocks) serve as variable compensation components with long-term incentive effect. (§IV.2.3)</p> | |

| Mertzanis Report (Greece) | Federation of Greek Industries Principles (Greece) | IAIM Guidelines (Ireland) | Preda Report (Italy) |
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| 16. Board Compensation Review | | | |
| <p>Shareholders should have the right to participate equitably and efficiently in the general shareholder meetings and be sufficiently, timely and properly informed on the decisions that need to be made regarding fundamental changes in the corporation. These changes include ... the approval of the appointment and/or dismissal of the members of the Board of Directors ... and [their] compensation. (Recommendation 1.2.5)</p> <p>The compensation of non-executive members of the Board should be comparable to the time they devote to Board meetings and decision-making. Compensation should not be tied to the corporation's performance. Compensation may take the form of stock options but should not take the form of participation in the corporation's insurance or pension programmes. (Recommendation 6.1)</p> | <p><i>Not covered.</i></p> | <p><i>Not covered directly, but see</i> Guideline 11 (Non-executive directors should not participate in any form of share option or other long-term incentive scheme ("LTIS") in order to avoid compromising their independent status.</p> <p>Shares may be made available to non-executive directors in lieu of all or part of their normal fees, and disclosed accordingly.).</p> | <p>[W]here the shareholders' meeting has not already done so, [the board of directors shall] allocate the total amount to which the members of the board ... are entitled. (Code, 1.2.c)</p> <p>Directors' pay is a field where decisions must be taken in such a way that no director can influence the determination of his or her remuneration It is also important that remuneration packages should be able to attract and motivate persons with adequate experience and ability. (Report, 5.4.2)</p> |

| Peters Report (The Netherlands) | VEB Recommendations (The Netherlands) | SCGOP Handbook and Guidelines (The Netherlands) | Securities Market Comm'n Recommendations (Portugal) |
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| 16. Board Compensation Review | | | |
| <p><u>Supervisory Board</u></p> <p>The remuneration of Supervisory Board members should not be dependent on the results of the company. Stock options should not be granted to a person by virtue of his capacity as a Supervisory Board member. Nor is it desirable to remunerate a Supervisory Board member separately for his advice. (Recommendation 2.13)</p> <p>[T]o prevent every semblance of misuse, Supervisory Board members should accept limitations on their freedom of action with regard to their private property, in terms of both shares in the company and other assets.... (Recommendation 2.14)</p> <p><u>Management Board</u></p> <p>Dutch company law prescribes that the General Meeting of Shareholders determines the remuneration of the members of the [Management Board], unless the company's articles of association stipulate otherwise. Generally, this remuneration is fixed by the Supervisory Board. (Recommendation 4.4)</p> <p>Members of the [Management Board] should not in any way derive personal gain from the company's activities other than via the agreed remuneration or through capital growth and dividends resulting from their holding of securities and related instruments. This means that, to prevent every semblance of misuse, they should accept limitations on their freedom of action with regard to their private property, in the form of both shares in the company and related instruments, as well as limitations on the acceptance of additional posts. (Recommendation 4.7)</p> <p>See Recommendation 4.6 (options).</p> | <p>Stock option plans should be described in a separate document and should be approved by shareholders. (Recommendation 9)</p> <p>Unrestricted stock option plans leave room for excessive rewards and dilution of earnings per share. (Commentary on Recommendation 9)</p> | <p><u>Supervisory Board</u></p> <p>The remuneration of supervisory board members should not be linked to the company's profits. Supervisory board members must therefore not receive options. (Guideline 13(b))</p> <p><u>Management Board</u></p> <p>Shareholders at the general meeting must approve option scheme plans in advance. This is to create a clear relationship between achieving strategic goals and rewards in the form of options. (Guideline 14)</p> <p>See Guideline 15 (Dilution of earnings per share must be avoided as much as possible in the design of options plans. If this cannot be avoided, the company should strive to be as transparent as possible in explaining dilution aspects.).</p> | <p>The board is encouraged to create internal control committees with powers conferred for matters in which there are potential situations of conflicts of interest, such as ... analysis of the remuneration policy.... (Recommendation 17)</p> |

| Olivencia Report (Spain) | Swedish Shareholders Ass'n Policy (Sweden) | ICSA Code (United Kingdom) | ISC Statement of Best Practice (United Kingdom) |
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| 16. Board Compensation Review | | | |
| <p>The director remuneration policy, which is to be proposed, evaluated and reviewed by the Remuneration Committee, should meet the criteria of moderation, connection with the company's performance and include detailed and individualized information. (Code, Recommendation 15)</p> <p>It is advisable that the [Remuneration] Committee be formally granted at least the following powers:</p> <ul style="list-style-type: none"> (a) proposing the system and amount of directors' annual remunerations to the Board; (b) reviewing remuneration programmes from time to time, gauging their adequacy and results; and (c) watching over the transparency of remunerations. <p>(Report, 7.1)</p> <p>[T]he Committee thinks it [appropriate] to favour schemes linking a significant part of directors' remunerations, particularly those of executive directors, to the company's performance, because director incentives are thereby better aligned with shareholder interests (which are to be maximised). (Report, 7.3)</p> | <p>The nomination committee should also deal with the question of remuneration of board members. The nomination committee should prepare and put forward proposals for directors' fees. The general meeting must be given a clear account of all remuneration from the company to the board of directors. The nomination committee should be obliged to explain the reasoning behind their proposals at the general meeting, if asked to do so. (Guideline 1.2.1)</p> <p>Incentive programmes should only include people actively working in the companies concerned, <i>i.e.</i>, not external board members. Board members are elected representatives and it is formally the board that works out and puts forward proposals for incentive programmes. This supports the view that it is unsuitable to let the board participate in such programmes. (Guideline 3.3.2)</p> | <p><i>Not covered.</i></p> | <p>All [directors'] service contracts should be approved by a Compensation Committee.</p> <p>Despite the legislative provisions, contracts should not run for a period of more than three years and there may be circumstances where a rolling contract should be limited to a period of no more than one year. (p. 4)</p> <p><i>See p. 3</i> (In order not to impair their impartiality, non-executive directors should not, under normal circumstances, be offered participation in share option schemes, nor in performance related or other incentivized remuneration schemes, nor in any company pension schemes. They should not be entitled to any compensation for loss of office.).</p> |

| Cadbury Report (United Kingdom) | Greenbury Report (United Kingdom) | Hampel Report (United Kingdom) | The Combined Code/Turnbull Report (United Kingdom) |
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| 16. Board Compensation Review | | | |
| <p>There should be full and clear disclosure of directors' total emoluments and those of the chairman and highest-paid UK director, including pension contributions and stock options. Separate figures should be given for salary and performance-related elements, and the basis on which performance is measured should be explained. (Code, 3.2)</p> <p>Executive directors' pay should be subject to the recommendations of a remuneration committee made up wholly or mainly of non-executive directors. (Code, 3.3)</p> | <p>The key to encouraging enhanced performance by Directors lies in remuneration packages which:</p> <ul style="list-style-type: none"> § link rewards to performance, by both company and individual; and § align the interests of Directors and shareholders in promoting the company's progress. (Introduction, 1.15) <p>The Board itself should determine the remuneration of the Non-Executive Directors, including members of the remuneration committee, within the limits set in the Articles of Association. (Code, A6)</p> <p>Remuneration committees must provide the packages needed to attract, retain and motivate Directors of the quality required, but should avoid paying more than is necessary for this purpose. (Code, C1)</p> <p>The performance-related elements of remuneration should be designed to align the interests of Directors and shareholders and to give Directors keen incentives to perform at the highest levels. (Code, C4)</p> <p><i>See Code, D1 – D6 and 7.1 – 7.20 (Directors' service contracts and compensation).</i></p> <p><i>See also Commentary on Remuneration Committees, 4.3 ([Boards] cannot decide the remuneration of their own members without potential conflict of interest. The solution ... is to set up remuneration committees of Non-Executive Directors.).</i></p> <p><i>See also Commentary on Remuneration Policy, 6.1 – 6.45 (market forces and discretion, levels of remuneration, international perspective, positioning vis-à-vis other companies, sensitivity to the wider scene, components of remuneration and performance criteria).</i></p> <p><i>See also Commentary on Privatized Utilities, 8.1 – 8.12. (director remuneration before, during and after privatization).</i></p> | <p>Levels of remuneration should be sufficient to attract and retain the directors needed to run the company successfully. The component parts of remuneration should be structured so as to link rewards to corporate and individual performance. (Principle B.I)</p> <p>Companies should establish a formal and transparent procedure for developing policy on executive remuneration and for fixing the remuneration packages of individual executive directors. (Principle B.II)</p> <p>Cadbury and Greenbury both recommended that the boards of listed companies should establish a remuneration committee to develop a policy on the remuneration of executive directors and, as appropriate, other senior executives; and to set remuneration packages for the individuals concerned. We agree. We also agree with Greenbury that the membership of this committee should be made up wholly of independent non-executive directors. (Guideline 4.11)</p> <p><i>See generally Guidelines 4.1 – 4.21.</i></p> | <p>Levels of remuneration should be sufficient to attract and retain the directors needed to run the company successfully, but companies should avoid paying more than necessary for this purpose. A proportion of executive directors' remuneration should be structured so as to link rewards to corporate and individual performance. (Principle B.1)</p> <p>Companies should establish a formal and transparent procedure for developing policy on executive remuneration and for fixing the remuneration packages of individual executive directors. No director should be involved in deciding his or her own remuneration. (Principle B.2)</p> <p>Executive share options should not be offered at a discount save as permitted by paragraphs 13.30 and 13.31 of the Listing Rules. (Code § 1, B.1.5)</p> <p>In designing schemes of performance-related remuneration, remuneration committees should follow the provisions in Schedule A to this code. (Code § 1, B.1.6)</p> <p>There is a strong case for setting notice or contract periods at, or reducing them to, one year or less. Boards should set this as an objective; but they should recognize that it may not be possible to achieve it immediately. (Code § 1, B.1.7)</p> <p>The board itself or, where required by the Articles of Association, the shareholders should determine the remuneration of the non-executive directors, including members of the remuneration committee, within the limits set in the Articles of Association. Where permitted by the Articles, the board may, however, delegate this responsibility to a small sub-committee, which might include the chief executive officer. (Code § 1, B.2.4)</p> <p><i>See SCHEDULE A: PROVISION ON THE DESIGN OF PERFORMANCE-RELATED REMUNERATION.</i></p> |

| NAPF Corporate Governance Code (United Kingdom) | AUTIF Code (United Kingdom) | Hermes Statement (United Kingdom) | PIRC Shareholder Voting Guidelines (United Kingdom) |
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| 16. Board Compensation Review | | | |
| <p>Non-executive directors should be rewarded commensurate with their responsibilities. A proportion of non-executive pay can be made in the form of shares, provided these are not leveraged options. (§9(i))</p> <p>Executive directors' remuneration should be related to the performance of the company.</p> <p>Levels of remuneration should be sufficient to attract and retain the directors needed to run the company successfully, but companies should avoid paying more than is necessary....</p> <p>An executive director's remuneration should be structured so that a proportion links reward to corporate and individual performance....</p> <p>Performance-related elements of remuneration should form a significant proportion of the total remuneration package of executive directors and should be designed to align their interests with those of shareholders and to give those directors keen incentives to perform at the highest levels....</p> <p>The important factor is the need for a balance that is relevant to the company's business development. The structure adopted can also give a clear message to the market. A high level of incentive-related pay with challenging performance hurdles indicates that a company believes it can significantly improve shareholder value. In the present climate of shareholder opinion, boards would be well advised to determine the most appropriate and challenging performance criteria for themselves. Boards must, therefore, explain and justify the proposed scheme to their shareholders.</p> <p>Directors' and shareholders' interests should be aligned and the NAPF therefore supports grants of options to directors as part of their overall package. However, the NAPF will not agree to the re-pricing of share options due to the underperformance of the company share price. (§9(ii))</p> | <p>AUTIF encourages member firms, as part of their dialogue with the companies in which they invest and when scrutinizing the annual reports and accounts, to pay particular attention to the companies' compliance with the Combined Code in the area [of] ... directors' remuneration. (Guidance Note on Principle 5)</p> <p>Principle B.1 of the Combined Code recommends that levels of remuneration should be sufficient to attract and retain the directors needed to run the company successfully, but that companies should avoid paying more than is necessary for this purpose. Code Provision B.1.7 recommends that directors' contracts should, for the most part, be for one year. (Guidance Note on Key Principle 6)</p> <p>Member firms should consider the remuneration policy of companies in which they invest. They may wish to pay particular attention to those elements of remuneration packages for directors and senior executives which are performance related, including share options, and compensation arrangements. (Guidance Note on Key Principle 6)</p> | <p>Companies should require all directors to build, over a period of time, a substantial shareholding, say, to the value of at least one year's emoluments. For NEDs, one way of achieving this is to pay them partly in shares which must be retained whilst they hold office. NEDs who are executives elsewhere, and whose fees are paid to their primary employer, should receive the share component of their fee. NEDs should not participate in performance-related pay or incentive schemes. (APPENDIX 1.1.4)</p> | <p>PRINCIPLE: Contracts policy should balance potential costs to shareholders with directors' interests. (Part 3: Directors' Compensation, p. 9)</p> <p>PRINCIPLE: Shareholders should have the opportunity to vote on remuneration issues. (Part 3: Directors' Compensation, p. 10)</p> <p>PRINCIPLE: Remuneration structure should align shareholders' and directors' interests, and payments should not be excessive. (Part 3: Directors' Compensation, p. 10)</p> <p>PRINCIPLE: Directors' remuneration should take account of pay conditions within the company. (Part 3: Directors' Compensation, p. 11)</p> <p>The performance basis of all ... incentive schemes under which benefits are potentially payable should be clearly set out each year, together with the actual performance achieved against the same targets. (Part 3: Directors' Remuneration, p. 8)</p> <p>The statement of remuneration policy should clearly explain the rationale behind the remuneration structure and should refer to all the elements. (Part 3: Directors' Remuneration, p 8)</p> <p>See Part 3: Directors' Remuneration, pp. 8-11.</p> |

| OECD Principles/Millstein Report (International) | ICGN Statement/Global Voting Principles (International) | Euroshareholders Guidelines (Pan-European) | EASD Principles and Recommendations (Pan-European) |
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| 17. Executive Sessions of Outside Directors | | | |
| <i>Not covered.</i> | <i>Not covered.</i> | <i>Not covered.</i> | <i>Not covered.</i> |

| Recommendations of Federation of Companies (Belgium) | Dual Code of the BXS/CBF (Belgium) | The Director's Charter (FDA) (Belgium) | (Reserved) |
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| 17. Executive Sessions of Outside Directors | | | |
| <p><i>Not covered directly, but see 3.1 (If there is no remuneration committee, the remuneration of executive directors should be submitted to the non-executive directors.).</i></p> <p><i>See also Note 4.3.d (The [audit] committee should hear the company auditors at least once each year, on an occasion when the executive directors are not present.).</i></p> | <p><i>Not covered directly, but see Part I: B.4.3.c (The audit committee should have a discussion with the internal and external auditors (including statutory auditors) at least once a year, from which the executive directors may be excluded, to ensure that there are no unresolved issues of concern.).</i></p> <p><i>See also Part I: B.3.2 (In case no remuneration committee is created, the board of directors should decide on the principles of the remuneration of the executive management, in the absence of the executive directors).</i></p> | <p><i>Not covered.</i></p> | |

| Danish Shareholders Ass'n Guidelines (Denmark) | Nørby Report & Recommendations (Denmark) | Chamber of Commerce/Confederation Code (Finland) | Ministry of Trade & Industry Guidelines (Finland) |
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| 17. Executive Sessions of Outside Directors | | | |
| <i>Not covered.</i> | <i>Not covered directly, but see V.4 (We cannot recommend that managers of a company are also directors of the company.).</i> | <i>Not covered.</i> | <p>[In smaller companies ... the independence of the Board's decision-making] can be arranged by handling certain issues without the presence of the members of the Board of Directors that belong to the hired top management of the company. Such issues [include] preparation of the recruitment of persons belonging to the executive group of the company and determining their salaries and other bonuses. In addition, the auditors and internal auditors should be provided annually with the opportunity to discuss the auditing of the company without the presence of the members of the Board of Directors belonging to the hired management of the company.</p> <p>The larger the company is, the more important is the role of the external members of the Board of Directors.... [T]he forming of working groups ("Committees") from external members should be discussed.... [executive sessions of outside directors] can only be preparatory to the actual decision-making of the Board of Directors.... it cannot substitute the actual decision-making. (2.2.1)</p> |

| Viénot I Report (France) | Hellebuyck Commission Recommendations (France) | Viénot II Report (France) | (Reserved) |
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| 17. Executive Sessions of Outside Directors | | | |
| <i>Not covered.</i> | <i>Not covered.</i> | <i>Not covered.</i> | |

| Berlin Initiative Code (Germany) | German Panel Rules (Germany) | Cromme Commission Code (Germany) | (Reserved) |
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| 17. Executive Sessions of Outside Directors | | | |
| <p>In order to promote openness of discussion, the Supervisory Board meets at times for one sitting per year without the Management Board. (Code, IV.5.3)</p> <p><i>See Code, IV.5.2 ([Among Supervisory Board members,] [s]eparate preliminary discussions by the representatives of the stockholders and by those of the employees, if they take place, should ease the process of shaping opinion, but not lead to actual prearrangements.).</i></p> | <p><i>Not covered directly, but see Code, II.2.f)</i> (Should the business trend or risk exposure of the Group change significantly against plan, the Management Board must immediately inform the Supervisory Board through its Chairman, who will call an extraordinary Supervisory Board meeting if so indicated.).</p> | <p>If necessary, the Supervisory Board should meet without the Management Board. (§III.6)</p> <p>The Chairman of the Supervisory Board will be informed by the Chairman or Spokesman of the Management Board without delay of unusual events.... The Chairman of the Supervisory Board shall then inform the Supervisory Board and, if required, convene an extraordinary meeting of the Supervisory Board. (§V.2)</p> | |

| Mertzanis Report (Greece) | Federation of Greek Industries Principles (Greece) | IAIM Guidelines (Ireland) | Preda Report (Italy) |
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| 17. Executive Sessions of Outside Directors | | | |
| <i>Not covered directly, but see Footnote 6 to Recommendation 5.7 (Certain members – executive or non-executive – may undertake special duties regarding certain corporate tasks for which they are accountable to the Board of Directors that meets in full membership.).</i> | <i>Not covered.</i> | <i>Not covered.</i> | <i>Not covered.</i> |

| Peters Report (The Netherlands) | VEB Recommendations (The Netherlands) | SCGOP Handbook and Guidelines (The Netherlands) | Securities Market Comm'n Recommendations (Portugal) |
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| 17. Executive Sessions of Outside Directors | | | |
| At least once a year the Supervisory Board should meet without the [Management Board] and discuss its own performance, its relationship with the [Management Board] and the composition and performance of the [Management Board], including issues regarding succession and remuneration. (Recommendation 3.5) | <i>Not covered.</i> | <i>Not covered.</i> | <i>Not covered.</i> |

| Olivencia Report (Spain) | Swedish Shareholders Ass'n Policy (Sweden) | ICSA Code (United Kingdom) | ISC Statement of Best Practice (United Kingdom) |
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| 17. Executive Sessions of Outside Directors | | | |
| <i>Not covered directly, but see Report, 3.2 (suggesting that an independent Vice President of the board be appointed and empowered to call meetings, add agenda items and submit information to directors).</i> | <i>Not covered.</i> | <i>Not covered.</i> | <i>Not covered.</i> |

| Cadbury Report (United Kingdom) | Greenbury Report (United Kingdom) | Hampel Report (United Kingdom) | The Combined Code/Turnbull Report (United Kingdom) |
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| 17. Executive Sessions of Outside Directors | | | |
| <i>Not covered.</i> | <i>Not covered directly, but see</i> Commentary on Remuneration Committees, 4.14 (The [remuneration] committee may wish to consult the other Non-Executive Directors in its evaluation of the Chief Executive.). | <i>Not covered.</i> | <i>Not covered.</i> |

| NAPF Corporate Governance Code (United Kingdom) | AUTIF Code (United Kingdom) | Hermes Statement (United Kingdom) | PIRC Shareholder Voting Guidelines (United Kingdom) |
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| 17. Executive Sessions of Outside Directors | | | |
| <p><i>Not covered directly, but see §2 (Non-executive directors have the capacity to look at the interests of the company as a whole over the longer term and should be capable, therefore, of exercising independent judgement with an ability to influence board decision-making.).</i></p> <p><i>See also §3 (Independent directors play an essential role by using their unfettered judgement on the issues of strategy, performance, resources, key appointments and standards of conduct. Such independent assessment of strategic direction is probably the greatest value to be derived from an independent non-executive director.).</i></p> | <p><i>Not covered.</i></p> | <p>The senior NED should have the authority to call a meeting of the NEDs if, in his opinion, it is necessary. (APPENDIX 2.3)</p> <p><i>See APPENDIX 2.2 (The senior NED should make himself available for confidential discussions with other NEDs who may have concerns which they believe have not been properly considered by the board as a whole.).</i></p> | <p><i>Not covered directly, but see Part 2, Directors, p. 5 ([C]ommittees should meet without executives present at least once a year.).</i></p> |

| OECD Principles/Millstein Report (International) | ICGN Statement/Global Voting Principles (International) | Euroshareholders Guidelines (Pan-European) | EASD Principles and Recommendations (Pan-European) |
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| 18. Board's Interaction with Institutional Investors, Press, Customers, etc. | | | |
| <p><i>Not covered directly, but see</i> OECD Principle IV.D (Channels for disseminating information should provide for fair, timely and cost-efficient access to relevant information by users.).</p> <p><i>See also</i> OECD Principle V.D.7 (The board should fulfil certain key functions, including ... [o]verseeing the process of disclosure and communications.).</p> <p><i>See also</i> Millstein Report, Perspective 17 (Governments should avoid regulations that unduly inhibit the ability of institutional investors to compete with one another. However, sound, prudent management of these funds should remain the overriding objective of public policy in this area.).</p> | <p><i>Not covered directly, but see</i> OECD Principle IV.D (Channels for disseminating information should provide for fair, timely and cost-efficient access to relevant information by users.).</p> <p><i>See also</i> OECD Principle V.D.7 (The board should fulfil certain key functions, including ... [o]verseeing the process of disclosure and communications.).</p> <p><i>See also</i> ICGN Statement 10 at 5 (Corporate governance issues between shareholders, the board and management should be pursued by dialogue and, where appropriate, with government and regulatory representatives as well as other concerned bodies, so as to resolve disputes, if possible, through negotiation, mediation or arbitration.).</p> | <p>As a consequence of the increased importance of international investment, and in order to improve communication with and amongst shareholders, a company should make every effort to enhance their participation through means which make use of modern technology, such as the internet. In addition to the regular channels, electronic means should be used by a company to provide shareholders with price-sensitive information, which should include, but not be limited to:</p> <ul style="list-style-type: none"> § the annual report; § press releases; § the articles of association; § the agenda and the minutes of the AGM; § other information concerning the AGM. <p>(Commentary on Recommendation 8)</p> | <p>The board should adopt a “statement of practice” for ... communicating with persons or institutions inside or outside the company. (Recommendation V.5.f)</p> |

| Recommendations of Federation of Companies (Belgium) | Dual Code of the BXS/CBF (Belgium) | The Director's Charter (FDA) (Belgium) | (Reserved) |
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| 18. Board's Interaction with Institutional Investors, Press, Customers, etc. | | | |
| <i>Not covered.</i> | <p>To operate in a [larger] market, Belgian companies will need to improve transparency with respect to the shareholders and, more specifically, to local and international institutional investors.... Belgian companies will have to broaden their shareholder base and comply as closely as possible with international standards of corporate governance. (Part I: A.1)</p> <p><i>See Part I: B.4.1 (The report and accounts ... should contain the information needed to enable investors and their investment advisors to form a view of the company's financial position and performance.).</i></p> | <i>Not covered directly, but see p. 6 (The Director undertakes, if the company is listed on the Stock Exchange, to see to it that the Board strictly observes the regulations concerning the distribution of occasional or periodic information.).</i> | |

| Danish Shareholders Ass'n Guidelines (Denmark) | Nørby Report & Recommendations (Denmark) | Chamber of Commerce/Confederation Code (Finland) | Ministry of Trade & Industry Guidelines (Finland) |
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| 18. Board's Interaction with Institutional Investors, Press, Customers, etc. | | | |
| <p>All listed companies should have an investor relations (IR) function.</p> <p>Internet and e-mail should be applied more frequently for communication with the shareholders.</p> <p>All shareholders – not having expressly declined so – should receive information regarding the company.</p> <p>Representatives from the press and from DAF [the Danish Shareholders Association] should be invited to participate in investor meetings. (V. Information To The Market)</p> | <p><i>Not covered directly, but see III.1 (It is recommended that the board adopts an information and communication policy.).</i></p> <p><i>See also III.2 (It is recommended that the board ensures that the continuous dialogue between the company and the company's shareholders and potential shareholders is made flexible. This can be done in the following ways:</i></p> <ul style="list-style-type: none"> § by holding investor meetings. § by continuously evaluating if information technology can be used to improve investor relations, including using part of the company's homepage to deal with corporate governance related issues. § by making all investor presentations accessible on the Internet at the same time as they are made.). <p><i>See Topic Heading 31, below.</i></p> | <p><i>Not covered.</i></p> | <p><i>Not covered directly, but see 2.1.2 ([To get the investors assured] of the fact that the operations of the company are economically efficient, information shall be given in the annual report on the accrual of economic value-added and its measurement method in the company.).</i></p> |

| Viénot I Report (France) | Hellebuyck Commission Recommendations (France) | Viénot II Report (France) | (Reserved) |
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| 18. Board's Interaction with Institutional Investors, Press, Customers, etc. | | | |
| <p><i>Not covered directly, but see Topic Heading 29, below.</i></p> | <p><i>Not covered directly, but see § I.A.1 (The Commission believes that shareholders should be informed as quickly as possible of their company's situation and, through their vote on resolutions, be in a position to react quickly to that situation.).</i></p> <p><i>See also § II (The portfolio manager's advisory role requires that his activity, and that of his employees, be governed by the principles of independence. He may therefore not serve as a member of the Board of Directors of any company whose shares are held in the portfolios he manages.).</i></p> | <p><i>Not covered.</i></p> | |

| Berlin Initiative Code (Germany) | German Panel Rules (Germany) | Cromme Commission Code (Germany) | (Reserved) |
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| 18. Board's Interaction with Institutional Investors, Press, Customers, etc. | | | |
| <p>The communication system extends in particular to the supply of information for actual and potential investors (investor relations), the workforce (employee relations), the consumers (customer relations) and the public-at-large (public relations). (Code, VI.1.2)</p> <p>All stockholders receive access to the same information without regard to the extent of their particular shares. The precept of equal treatment with information also applies particularly to institutional investors on the one side and private small investors on the other. (Code, VI.1.3)</p> <p>See Code, VI.1.5 (The company also uses modern means of telecommunication such as the Internet for current and consistent information to the various stakeholders of the company. Provided that it is commercially justified, it opens up the possibility of being able to follow press and analyst conferences directly over the new medium.).</p> | <p><i>Not covered directly, but see</i> Code, I ([T]he Management Board shall regularly and with due regard to equal treatment of all shareholders ('Fair Disclosure') report on all Company matters through Annual and Interim Reports, 'ad hoc' communications, analyst and press conferences. The OECD information requirements are covered by these publicity undertakings.).</p> <p><i>See also</i> Code, II.2.a) (The Management Board will publish without delay any new facts arising in the sphere of the Company's activities which are not yet publicly known and, due to their impact on the financial position of the Company or its general course of business, are likely to impact significantly on the price of the Company's listed securities (§ 15 German Securities Act).).</p> | <p>The company shall inform all domestic and foreign financial services providers, shareholders and shareholders' associations, who, in the preceding 12 months, have requested such notification, of the convening of the General Meeting together with the convention documents, upon request, also using electronic channels. (§II.3.2)</p> | |

| Mertzanis Report (Greece) | Federation of Greek Industries Principles (Greece) | IAIM Guidelines (Ireland) | Preda Report (Italy) |
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| 18. Board's Interaction with Institutional Investors, Press, Customers, etc. | | | |
| <p>Shareholders, and particularly institutional investors and pension funds, should be encouraged to use their voting rights in a manner that promotes the efficiency of the corporation and the market. The encouragement to make use of voting rights should take into account the increasing internationalization of the corporation's shareholder base and not be confined within the national limits. The use of voting rights by institutional investors should not be opposed to the interests of small private investors. (Recommendation 1.5)</p> <p><i>See</i> Recommendation 1.1.3 (Basic shareholder rights include the right to ... obtain sufficient and relevant information on the corporation on a timely and regular basis.).</p> <p><i>See also</i> Recommendation 4.3 (Channels for dissemination of information should provide fair, timely and cost-efficient access to relevant information.).</p> | <p><i>Not covered directly, but see</i> Topic Headings 29 & 31, <i>below</i>.</p> | <p><i>Not covered directly, but the IAIM Guidelines adopt the Combined Code. See</i> the Combined Code:</p> <p>Principle C.1 (Companies should be ready, where practicable, to enter into a dialogue with institutional shareholders based on the mutual understanding of objectives.);</p> <p>Principle C.2 (Boards should use the AGM to communicate with private investors and encourage their participation.);</p> <p>Code § 1, B.2.3 (The chairman of the board should ensure that the company maintains contact as required with its principal shareholders about remuneration in the same way as for other matters.).</p> | <p>The chairman of the board of directors and the managing directors shall ... actively endeavour to develop a dialogue with ... institutional investors based on recognition of their reciprocal roles. They designate a person or, where appropriate, create a corporate structure to be responsible for this function. (Code, 11; <i>see</i> Commentary on Code, 11 <i>and</i> Report, 5.5, 6)</p> <p>[M]anaging directors ... shall propose to the board of directors the adoption of an internal procedure for the disclosure of information to third parties.... (Code, 6.1; <i>see</i> Report, 5.3)</p> <p>[I]t is in the interest of the generality of shareholders to know the personal traits and professional qualifications of candidates ... sufficiently in advance for them to be able to cast their votes in an informed manner, especially in the case of institutional investors, which are often represented in shareholders' meetings by proxies. (Commentary on Code, 7)</p> <p>[D]ialogue [with institutional investors] can be fostered by ... an <i>ad hoc</i> ... structure for this function.... The Committee ... hopes that recognition by [institutional investors] of the importance of the rules of Corporate Governance contained in this Code may help to promote a more whole-hearted and widespread application of its principles by listed companies. (Report, 5.5)</p> <p><i>See</i> Report, 6 (The task of verifying the suitability of the choices made [in the Code], and the extent of the Code's application, is ... reserved to shareholders' meetings and encounters with institutional investors.).</p> |

| Peters Report (The Netherlands) | VEB Recommendations (The Netherlands) | SCGOP Handbook and Guidelines (The Netherlands) | Securities Market Comm'n Recommendations (Portugal) |
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| 18. Board's Interaction with Institutional Investors, Press, Customers, etc. | | | |
| <p>The providers of risk capital should be able to demand from the management a clear and transparent account of the policy that has been pursued.... The influence of the investors can be enhanced if there is active accountability towards the shareholders or holders of certificates of shares. [T]he [Management Board] and the Supervisory Board will have to take [investor] reactions into serious account in the conduct of their future policy.... The Committee is confident that if the shareholders, especially the institutional investors and other major shareholders, are ... present at the General Meeting of Shareholders and make their views heard, this will lead to higher attendance rates and to a considerable improvement in the quality of the General Meeting of Shareholders. (Recommendation 5.1)</p> <p>The Committee believes that investors should be able to exert real influence within the company.... The company's management must not be allowed over a long period of time to ignore the opinions of investors on subjects that concern them. (Recommendation 5.4.1)</p> | <p><i>Not covered directly, but see</i> Commentary on Recommendation 2 (Clear objectives and strategies give investors a hold to investment decisions and holding managers accountable for their actions and management.).</p> | <p><i>Not covered directly, but see</i> Guideline 2 (To improve ... discussion between the board and capital providers, the right to submit agenda topics [at annual shareholders' meetings] should be enjoyed by shareholders and certificateholders and not just management.).</p> <p><i>See also</i> Handbook, p. 12 (Pension funds ... want to have their own opinion on the companies they invest in as well as on the key decisions taken by the directors. This does not mean that pension funds want to sit in the director's chair. It is the task of the company director to take decisions carefully. Pension funds play no role in the decision making process. But they can and will judge the decisions taken by the director, to evaluate whether they fit in with their investment policy criteria.).</p> <p><i>See also</i> Handbook, p. 21 (SCGOP has asked an independent bureau to follow developments at the largest Dutch companies and to report to the SCGOP on any developments that affect shareholder interests....</p> <p>[M]embers of SCGOP have urged Dutch companies at shareholders meetings to implement the recommendations of the Peters Commission and the [Guidelines] drawn up by the SCGOP.).</p> | <p>The company should ensure the existence of permanent contact with the market, respecting the principle of equality for shareholders and taking precautions against asymmetries in access to information among investors. For this purpose, the creation of an investor information department is recommended. (Recommendation 7)</p> <p>The creation of an investor information department ... should be encouraged, since it is one of the measures that allows centralization of all questions raised by investors and the necessary explanations that may be provided with the disclosure of this information to the market, when this is judged appropriate. (Commentary on Recommendation 7)</p> <p><i>See</i> Introduction (Corporate governance has ... an internal aspect and an external aspect... [E]xternal control ... relates to the assessment of the performance of the company which is conducted through the normal function of market mechanisms, a domain in which the proceedings of institutional investors are of capital importance.).</p> <p><i>See also</i> Commentary on Recommendation 11 (It is important to allow the market to easily assess the attitude of institutional investors to the governance of listed companies.).</p> |

| Olivencia Report (Spain) | Swedish Shareholders Ass'n Policy (Sweden) | ICSA Code (United Kingdom) | ISC Statement of Best Practice (United Kingdom) |
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| 18. Board's Interaction with Institutional Investors, Press, Customers, etc. | | | |
| <p>The Board of Directors should promote the implementation of proper measures to extend loyalty duties to significant shareholders, especially establishing cautionary measures in respect to transactions between those shareholders and the company. (Code, Recommendation 17)</p> <p>Measures aimed at ... emphasising communication between the company and its shareholders, especially institutional investors, should be passed. (Code, Recommendation 18)</p> <p>[The] Committee trusts in the increasing commitment of institutional investors with the promotion of best governance rules. In this respect, it invites them to state their preferences on Board of Director organisation patterns and to make good use of their influence to promote or favour their acceptance by companies targeted for their investments. (Report, 9.4)</p> | <p><i>Not covered directly, but see</i> Guideline 4.1 (The Shareholders' Association recommends that each stock market company institute an investor relations function. This will give the Company's shareholders the opportunity to quickly obtain information and particulars concerning the company.).</p> <p><i>See also</i> Guideline 4.3 ([A]nalyt meetings organized by the company ... should be directly broadcast via the Internet with the aim of achieving a fast and uniform dissemination of information.).</p> <p><i>See also</i> Guideline 4.5 (Companies should not relay information within closed circles that has not been made public and that can affect share prices. Representatives of the media should always be invited to what are known as analyst meetings. Alternatively, the company must be prepared to issue press releases to the market in connection with the analyst meetings. Experience shows that the publication of earnings forecasts reduces the risk of corporate management relaying selective information.).</p> | <p><i>Not covered.</i></p> | <p>Institutional investors are increasingly being approached by companies and their advisers with requests to indicate what in their view would be the reasonable expectation of shareholders in such matters as the provisions governing the appointment and removal of directors, the duties of non-executive directors, directors' service contracts and emoluments, their borrowing powers, etc....</p> <p>The [ISC] feels that a Statement of Best Practice such as this which summarizes the views of institutional shareholders will enable these shareholders to give a more coherent and consistent response when their views and votes are solicited by companies. The ISC feels also that its publication will be helpful to companies and other interested bodies when considering structure and practice in these areas. (p. 1)</p> |

| Cadbury Report (United Kingdom) | Greenbury Report (United Kingdom) | Hampel Report (United Kingdom) | The Combined Code/Turnbull Report (United Kingdom) |
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| 18. Board's Interaction with Institutional Investors, Press, Customers, etc. | | | |
| <p><i>Not covered directly, but see Report, 6.11.1 (Institutional investors should encourage regular, systematic contact at senior executive level to exchange views and information on strategy, performance, board membership and quality of management).</i></p> <p><i>See also Report 6.1 – 6.16 (accountability of boards to shareholders).</i></p> | <p><i>Not covered.</i></p> | <p>Companies and institutional shareholders should each be ready, where practicable, to enter into a dialogue based on the mutual understanding of objectives. (Principle C. II) <u>See</u> Guideline 5.3 ([Institutional investors] now take a more active interest in corporate governance. They can do this by voting on resolutions in General Meetings, and informally through contact with the company.).</p> <p>See also Guidelines 5.10-5.11 (The idea of contact between companies and institutions was developed in 1995 in the report of a joint City/ Industry working group chaired by Mr. Paul Myners and titled <u>Developing a Winning Partnership</u>. The main recommendations of this report included:</p> <ul style="list-style-type: none"> § investors to articulate their investment objectives to management; § investors to be more open with management in giving feedback on companies' strategies and performance; § improved training for fund managers on industrial and commercial awareness; § improved training for company managers involved in investor relations; § meetings between companies and institutional investors to be properly prepared, with a clear and agreed agenda. <p>These recommendations have been broadly welcomed by companies and investors, and [the Committee] very much hope[s] that they will be widely adopted and acted on....)</p> <p><i>See generally</i> Guidelines 5.1-5.25 (The Role of Shareholders).</p> | <p>Companies should be ready, where practicable, to enter into a dialogue with institutional shareholders based on the mutual understanding of objectives. (Principle C.1)</p> <p>The chairman of the board should ensure that the company maintains contact as required with its principal shareholders about remuneration in the same way as for other matters. (Code § 1, B.2.6)</p> <p><i>See</i> Principle E.2 (Institutional shareholders should be ready, where practicable, to enter into a dialogue with companies based on the mutual understanding of objectives).</p> <p><i>See also</i> Principle E.3 (When evaluating companies' governance arrangements, particularly those relating to board structure and composition, institutional investors should give due weight to all relevant factors drawn to their attention.).</p> <p><i>See also</i> Code § 2, E.1.1 (Institutional shareholders should endeavour to eliminate unnecessary variations in the criteria which each applies to the corporate governance arrangements and performance of the companies in which they invest.).</p> |

| NAPF Corporate Governance Code (United Kingdom) | AUTIF Code (United Kingdom) | Hermes Statement (United Kingdom) | PIRC Shareholder Voting Guidelines (United Kingdom) |
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| 18. Board's Interaction with Institutional Investors, Press, Customers, etc. | | | |
| <p>Boards should maintain a dialogue with institutional shareholders based on a mutual understanding of objectives. (§6)</p> <p>It is unrealistic to expect institutional shareholders to have sufficient knowledge of the business to set specific performance hurdles for incentive reward. This is clearly a matter for the board itself. (§9(ii))</p> <p><i>See</i> Introduction (Good corporate governance is not just for boards of directors. It is essential to ensure a close relationship between companies and investors.</p> <p>Shareholders have a vital role to play in encouraging a higher level of corporate performance. Pension funds in particular are long-term investors, with significant exposure to and interest in the well being of many of the companies which drive the UK economy forward.</p> <p>Boards of directors are subject both to statutory obligations under the Companies Act and to the Combined Code appended to the Listing Rules. These require them to get approval for certain decisions. Following the recommendations of a number of committees of inquiry into corporate governance, the range of issues on which boards must seek shareholder approval has expanded. The NAPF, for its part, considers that there are further areas where companies have a responsibility to put matters before shareholders and these are also included in this document.)</p> <p><i>See</i> §16 (Institutional investors should engage in regular dialogue with investee companies.).</p> | <p><i>Not covered directly, but see</i> Key Principle 5 (Regular dialogue will provide opportunities for member firms to explore with companies any concerns they may have....).</p> | <p>If requested by major shareholders, the senior NED should ensure that he is available for consultation and direct communication. At present, such communication is rare. When it does occur, it is invariably because of a “crisis” situation. Establishing direct channels of communication as a matter of routine should enable difficult issues to be aired before a crisis develops. (APPENDIX 2.6)</p> <p><i>See</i> Code of Conduct 8 (Formal communication channels [between Hermes and] NEDs are encouraged.).</p> | <p><i>Not covered directly, but see</i> Part 1: Introduction, p. 2 (PIRC seeks to promote dialogue and engagement with the companies we research through:</p> <ul style="list-style-type: none"> § hosting regular conferences and seminars on governance and responsibility issues; § circulating these Guidelines widely to companies, investors and other market participants; § giving companies opportunities to comment on our analyses both prior to publication and after publication; § engaging in dialogue with companies, investors, regulators and professional bodies.). |

| OECD Principles/Millstein Report (International) | ICGN Statement/Global Voting Principles (International) | Euroshareholders Guidelines (Pan-European) | EASD Principles and Recommendations (Pan-European) |
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| 19. Attendance of Non-Directors at Board Meetings / Board Access to Senior Management | | | |
| The contributions of non-executive board members to the company can be enhanced by providing access to certain key managers within the company.... (OECD Principle V.F Annotation at 43) | <i>See</i> OECD Principle V.F Annotation at 43 (The contributions of non-executive board members to the company can be enhanced by providing access to certain key managers within the company.). | <i>Not covered.</i> | <i>Not covered.</i> |

| Recommendations of Federation of Companies (Belgium) | Dual Code of the BXS/CBF (Belgium) | The Director's Charter (FDA) (Belgium) | (Reserved) |
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| 19. Attendance of Non-Directors at Board Meetings / Board Access to Senior Management | | | |
| <p><i>Not covered directly, but see</i> Note to 4.3.c (The company auditors and, if such exist, the person responsible for the internal audit and the financial director, should attend the meetings of the [audit] committee.</p> <p><i>See also</i> Note 4.3.d (The [audit] committee should hear the company auditors at least once each year, on an occasion when the executive directors are not present.).</p> <p><i>See also</i> Note 4.3.e (The [audit] committee has the widest investigative powers within its domain and may, by a majority decision, call upon professionals from outside the company and allow them to attend its meetings.).</p> | <p><i>Not covered directly, but see</i> Topic Heading 28, <i>below</i>.</p> | <p><i>Not covered.</i></p> | |

| Danish Shareholders Ass'n Guidelines (Denmark) | Nørby Report & Recommendations (Denmark) | Chamber of Commerce/Confederation Code (Finland) | Ministry of Trade & Industry Guidelines (Finland) |
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| 19. Attendance of Non-Directors at Board Meetings / Board Access to Senior Management | | | |
| <i>Not covered.</i> | <p>It is recommended that the board establish procedures for ... communication between the board and the management. This will ensure that the board is provided with the information about the company's business which the board requires on a continuous basis. (IV.4)</p> <p><i>See V.2 ([T]he directors are solely responsible for actively obtaining knowledge and continuously keeping themselves posted about the conditions of the company and the industry in question.).</i></p> | <i>Not covered.</i> | <i>Not covered.</i> |

| Viénot I Report (France) | Hellebuyck Commission Recommendations (France) | Viénot II Report (France) | (Reserved) |
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| 19. Attendance of Non-Directors at Board Meetings / Board Access to Senior Management | | | |
| <i>Not covered.</i> | The members of [the compensation and performance committee, and the audit committee] should be free to call on and hear from company personnel. (§ II.B.2) | The Committee considers it legitimate for Board committees to be allowed the opportunity to approach the corporation's main executives, other than corporate officers, or to call for outside technical reviews at the corporation's expense. It goes without saying that this option should be exercised by committees only in performance of their respective duties, and after informing the Chairman of the Board of Directors. In all cases, the committees should report to the Board of Directors on the information and opinions obtained on such occasions. (p. 17) | |

| Berlin Initiative Code (Germany) | German Panel Rules (Germany) | Cromme Commission Code (Germany) | (Reserved) |
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| 19. Attendance of Non-Directors at Board Meetings / Board Access to Senior Management | | | |
| <p>In order to allow the members of the Supervisory Board the opportunity of systematically becoming acquainted with potential candidates for membership of the Management Board, the Management Board regularly suggests persons from the inner circle of junior management for presentations in the Supervisory Board and its committees. (Code, II.1.6)</p> <p><i>See Code, II.2.5</i> (The Supervisory Board, particularly its Chairman and its committees, require for their part all information from the Management Board which they ... require in order to carry out efficiently the duties of supervision. The positive definition of the additional requirement of information is an important part of the duties of the Supervisory Board.).</p> <p><i>See also Code, IV.5.2</i> (The exercise of supervision – apart from contacts of the Chairman of the Supervisory Board with the Management Board – is primarily made in the meetings of the Supervisory Board and its committees.).</p> | <p><i>Not covered.</i></p> | <p>The Management Board coordinates the enterprise's strategic approach with the Supervisory Board and discusses the current state of the strategy implementation with the Supervisory Board in regular intervals. (§III.2)</p> <p>Good Corporate Governance requires an open discussion between the Management Board and Supervisory Board as well as among the members within the Management Board and the Supervisory Board. (§III.5)</p> <p>The Chairman of the Supervisory Board shall maintain regular contact with the Management Board, in particular, with the Chairman or Spokesman of the Management Board and consult on strategy, business development and risk management of the enterprise. The Chairman of the Supervisory Board will be informed by the Chairman or Spokesman of the Management Board without delay of unusual events which are of essential importance for the assessment of the situation and development as well as for the management of the enterprise. The Chairman of the Supervisory Board shall then inform the Supervisory Board.... (§V.2)</p> | |

| Mertzanis Report (Greece) | Federation of Greek Industries Principles (Greece) | IAIM Guidelines (Ireland) | Preda Report (Italy) |
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| 19. Attendance of Non-Directors at Board Meetings / Board Access to Senior Management | | | |
| <p><i>Not covered directly, but see Recommendation 5.9 (Procedures should be established that allow the Board of Directors to obtain advice by external advisors which would assist the exercise of their duties.).</i></p> <p><i>See also Recommendation 4.7.4 (The Internal Audit Committee should be able to obtain external advice and, if necessary, to invite external specialists to attend the workings of the committee.).</i></p> <p><i>See also Footnote 7 to Recommendation 5.10 (It is essential that the members of the Board have full access to all information required, under the responsibility of the chief executive officer and the secretary of the Board.).</i></p> | <i>Not covered.</i> | <i>Not covered.</i> | <i>Not covered.</i> |

| Peters Report (The Netherlands) | VEB Recommendations (The Netherlands) | SCGOP Handbook and Guidelines (The Netherlands) | Securities Market Comm'n Recommendations (Portugal) |
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| 19. Attendance of Non-Directors at Board Meetings / Board Access to Senior Management | | | |
| <i>Not covered.</i> | <i>Not covered.</i> | <i>Not covered.</i> | <i>Not covered.</i> |

| Olivencia Report (Spain) | Swedish Shareholders Ass'n Policy (Sweden) | ICSA Code (United Kingdom) | ISC Statement of Best Practice (United Kingdom) |
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| 19. Attendance of Non-Directors at Board Meetings / Board Access to Senior Management | | | |
| Within this [new directors' induction] program, it would be very useful to offer new directors the chance of knowing the organisation directly and dealing personally with its main managers. (Report, 5.3) | <i>Not covered.</i> | <i>Not covered.</i> | <i>Not covered.</i> |

| Cadbury Report (United Kingdom) | Greenbury Report (United Kingdom) | Hampel Report (United Kingdom) | The Combined Code/Turnbull Report (United Kingdom) |
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| 19. Attendance of Non-Directors at Board Meetings / Board Access to Senior Management | | | |
| <i>Not covered.</i> | <p>Remuneration committees should consult the Company Chairman and/or Chief Executive about their proposals and have access to professional advice inside and outside the company. (Code, A7)</p> <p><i>See</i> Commentary on Remuneration Committees, 4.15 (The [remuneration] committee should be supported by a senior executive of the company with suitable expertise and independent access to the committee Chairman.).</p> | <i>Not covered.</i> | <i>Not covered.</i> |

| NAPF Corporate Governance Code (United Kingdom) | AUTIF Code (United Kingdom) | Hermes Statement (United Kingdom) | PIRC Shareholder Voting Guidelines (United Kingdom) |
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| 19. Attendance of Non-Directors at Board Meetings / Board Access to Senior Management | | | |
| <i>Not covered.</i> | <i>Not covered.</i> | <i>Not covered.</i> | <i>Not covered.</i> |

| OECD Principles/Millstein Report (International) | ICGN Statement/Global Voting Principles (International) | Euroshareholders Guidelines (Pan-European) | EASD Principles and Recommendations (Pan-European) |
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| 20. Board Meetings and Agenda | | | |
| <p><i>Not covered directly, but see Topic Headings 2 and 4, above.</i></p> | <p><i>Not covered directly, but see Topic Headings 2 and 4, above.</i></p> | <p><i>Not covered directly, but see Topic Headings 2 and 4, above.</i></p> | <p>The chairman should set the agenda of board meetings, taking into account items raised by members and management. (Recommendation V.3.ii)</p> <p>The board should meet sufficiently frequently to discharge its duties responsibly; it must meet at least once every six months and should meet at least once every three months. (Recommendation V.5.a.i)</p> <p>The board should define the subjects that it must consider, as well as the decisions that require its approval, and set levels of materiality for them, subject to legal and statutory constraints. (Recommendation V.5.b)</p> <p>Agenda</p> <ul style="list-style-type: none"> i. Every director should have the right to propose items for the agenda of the meeting. ii. It should be up to the board to accept items suggested by its members. <p>(Recommendation V.5.e)</p> <p><i>See Recommendation V..3.a.i (The chairman should ensure that the board operates efficiently and that its duties are effectively carried out.).</i></p> |

| Recommendations of Federation of Companies (Belgium) | Dual Code of the BXS/CBF (Belgium) | The Director's Charter (FDA) (Belgium) | (Reserved) |
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| 20. Board Meetings and Agenda | | | |
| <p>The Board of Directors, which is a collegiate body, must meet at regular intervals.... (1.1)</p> <p>The Secretary of the Board must ensure that the procedures in relation to the functioning of the Board and the regulations which apply to it are complied with.</p> <p>If there is no Secretary of the Board of Directors, the Board shall take the necessary action so that a person is given the task of monitoring compliance with the procedures in connection with the functioning of the Board and the applicable regulations. (1.5)</p> <p><i>See Topic Headings 2 and 4, above.</i></p> | <p><i>Not covered directly, but see Part II: B.2 (Information [to be disclosed] on the functioning of the board of directors [includes] the number of meetings per year [and] the most significant types of subjects discussed....).</i></p> <p><i>See also Topic Headings 2 and 4, above.</i></p> | <p>The Director undertakes to see to it that the Board meets at regular intervals and receives sufficient and timely information enabling the Directors to hold useful discussions. (p. 4)</p> <p><i>See p. 3 ([When voicing opposition,] the Director will ... consider:</i></p> <p>....</p> <p>§ Requesting that the decision be postponed, if possible, to an ulterior Board meeting so that the Director's position may be examined;</p> <p>§ Requesting that the Director's written position be annexed to the minutes of the Board meeting;</p> <p>§ Requesting a special meeting of the Board to discuss this point.).</p> <p><i>See also p. 6 (The Director undertakes to completely inform the Board of any conflict of interest in which the Director could directly or indirectly be implicated, and this prior to any such potential conflict. The Director undertakes to abstain from participating in any discussions or decision-making on the matters involved.).</i></p> | |

| Danish Shareholders Ass'n Guidelines (Denmark) | Nørby Report & Recommendations (Denmark) | Chamber of Commerce/Confederation Code (Finland) | Ministry of Trade & Industry Guidelines (Finland) |
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| 20. Board Meetings and Agenda | | | |
| <p><i>Not covered directly, but see II. Governance.</i></p> | <p>The chairman is especially responsible for ensuring that the board functions satisfactorily and that the tasks of the board are handled in the best possible way. In this connection, it is recommended that the chairman ensures that the individual director's particular knowledge and competence are used as best as possible in the board work for the benefit of the company. The board's frequency of meeting is planned in such a way that the board acts as an active sparring partner to the management and is able to react quickly and efficiently at all times.</p> <p>.... The chairman should try to ensure that the board's negotiations take place when all the directors are present and that all essential decisions are made when all the directors are present. (IV.2)</p> <p>It is essential that the procedures of the board are an efficient and functional tool for solving the board's tasks. It is recommended that the procedures are always adjusted to the requirements of the individual company, and that all the directors review the procedures with regard to ensuring this at least once a year. (IV.3)</p> <p>It is recommended that the board meets regularly according to a pre-prepared meeting and work schedule and when a meeting seems necessary or appropriate in the light of the company's requirements. However, it is recommended that the board holds at least five ordinary meetings a year. (V.5)</p> | <p><i>Not covered.</i></p> | <p>The Board of Directors shall annually discuss the ways in which it aims to tend to its tasks. (2.1.1)</p> <p>The Board of Directors shall discuss the ways of measuring the profitability of the company's actions. It is essential to make sure that the activities produce economic value-added measured by the <u>economic profit</u> meter or by other corresponding methods. (2.1.2)</p> <p>Committee work or other preparation of issues without the presence of the members of the Board of Directors belonging to the hired top management does not affect the statutory decision-making and responsibilities of the Board of Directors. Subject to the Finnish Companies Act, all members of the Board of Directors shall answer for the decisions made by the Board of Directors. Therefore the handling referred to above can only be preparatory to the actual decision-making of the Board of Directors, but it cannot substitute the actual decision-making. (2.2.1)</p> |

| Viénot I Report (France) | Hellebuyck Commission Recommendations (France) | Viénot II Report (France) | (Reserved) |
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| 20. Board Meetings and Agenda | | | |
| <p>The Committee believes that while it is the Chairman’s role to draw up and propose a strategy, this must be adopted by the board. By virtue of the same principle, it must consider and decide on all strategically important decisions.... (p. 8)</p> <p>In general, the boards of listed companies meet 3 or 4 times a year, and in practice meetings last around 2 hours.</p> <p>The frequency and duration of meetings are not amenable to the definition of general rules, and should be left up to each board to decide. Clearly, boards should meet whenever circumstances make this desirable, but where no special circumstances arise, 4 to 6 meetings should be sufficient to review business developments and take necessary decisions, especially if preparatory work has been carried out by specialized committees. The meetings should last long enough to allow proper consideration of the items on the agenda. (p. 16)</p> <p>The minutes of the meeting summarize discussion and report decisions taken. (p. 17)</p> <p><i>See Topic Headings 2 and 4, above.</i></p> | <p><i>Not covered directly, but see § II.D.5 (It is recommended that a charter consisting of a kind of director’s code of professional conduct be established. At a minimum, it should include ... the obligation ... to attend board meetings [and] to respect the confidentiality of matters relating to company business....).</i></p> | <p>With respect to the meetings of the Board of Directors and of the Board committees, the Committee notes that their number seems to have increased substantially in recent years, though without reaching the level of [frequency observed] in UK and US listed corporations. Naturally, the frequency and duration of such meetings cannot be subjected to any standards, as the situations and needs vary extensively in this area.</p> <p>It remains that it is up to the Directors to ensure that [the number of board meetings is] such as to allow in-depth review and discussion of matters within the purview of the Board or Board committees. (p. 16)</p> | |

| Berlin Initiative Code (Germany) | German Panel Rules (Germany) | Cromme Commission Code (Germany) | (Reserved) |
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| 20. Board Meetings and Agenda | | | |
| <p><u>Supervisory Board</u> The Supervisory Board normally meets on six occasions annually. Extraordinary events may require a higher number of meetings. The frequency of committee meetings is taken into account when determining the number of meetings of the entire Supervisory Board. The duration of the meetings should allow proper exercise of supervisory tasks. (Code, IV.5.1)</p> <p>The exercise of supervision – apart from contacts of the Chairman of the Supervisory Board with the Management Board – is primarily made in the meetings of the Supervisory Board and its committees. (Code, IV.5.2)</p> <p>The chairman of the Supervisory Board prepares a systematic schedule of supervision which stipulates the sequence and main focus of the topics more precisely to be discussed in the individual meetings of the Supervisory Board.... (Code, IV.5.4)</p> <p>The chairpersons stipulate the agenda for the individual meetings of the Supervisory Board and its committees on the basis of the schedule of supervision as well as current developments. (Code, IV.5.7)</p> <p><u>Management Board</u> The chairman or speaker of the Management Board sets the agenda for the meetings of the Management Board. Each member of the Management Board may include on the agenda points for discussion and decision by way of the chairman or speaker. (Code, III.4.1)</p> | <p><u>Supervisory Board</u> <i>Not covered.</i></p> <p><u>Management Board</u> <i>Not covered.</i></p> | <p><u>Supervisory Board</u> The chairman of the Supervisory Board coordinates the work of the Supervisory Board. (§I)</p> <p>In Supervisory Boards with co-determination, representatives of the shareholders and employees should prepare the Supervisory Board meetings, each separately, possibly with members of the Management Board. (§III.6)</p> <p>The Chairman of the Supervisory Board coordinates work within the Supervisory Board and chairs its meetings. The Chairman of the Supervisory Board shall ... prepare the Supervisory Board meetings. (§V.2)</p> <p><u>Management Board</u> The Chairman of the Management Board coordinates the work of the Management Board's members. (§I)</p> | |

| Mertzanis Report (Greece) | Federation of Greek Industries Principles (Greece) | IAIM Guidelines (Ireland) | Preda Report (Italy) |
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| 20. Board Meetings and Agenda | | | |
| <p>[T]he Board should meet at least once a month (according to the size of the corporation and the sector to which it belongs). (Recommendation 5.1)</p> | <p><i>Not covered directly, but see</i> Topic Headings 21 & 23, <i>below</i>.</p> | <p><i>Not covered directly, but the</i> IAIM Guidelines <i>adopt the</i> Combined Code. <i>See</i> the Combined Code: § 1, A.1.1 (The board should meet regularly.); § 1, A.1.2 (The board should have a formal schedule of matters specifically reserved to it for decision.).</p> | <p>The chairman shall call the meetings of the board.... (Code, 4.1; <i>see</i> Commentary on Code, 4 <i>and</i> Report, 5.2)</p> <p>The chairman shall coordinate the activities of the board of directors and moderate its meetings. (Code, 4.2; <i>see</i> Report, 5.2)</p> <p>The Code ... notes that the guidance function [of the board of directors] requires regular and sufficiently frequent meetings. (Report, 5.1)</p> |

| Peters Report (The Netherlands) | VEB Recommendations (The Netherlands) | SCGOP Handbook and Guidelines (The Netherlands) | Securities Market Comm'n Recommendations (Portugal) |
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| 20. Board Meetings and Agenda | | | |
| <u>Supervisory Board</u> The [Supervisory] Board should meet according to a predetermined timetable. (Recommendation 3.3) <u>Management Board</u> <i>Not covered.</i> | <i>Not covered.</i> | <i>Not covered.</i> | [The board] should meet at regular intervals. (Commentary on Recommendation 14) |

| Olivencia Report (Spain) | Swedish Shareholders Ass'n Policy (Sweden) | ICSA Code (United Kingdom) | ISC Statement of Best Practice (United Kingdom) |
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| 20. Board Meetings and Agenda | | | |
| <p>[T]he Chairman of the Board is not only supposed to call, prepare the agenda and lead the meetings, but must also ensure that members of the Board receive the necessary information, participate actively and be committed to their tasks. (Report, 3.2)</p> <p><i>See also Report, 3.2 (suggesting that an independent Vice President of the board be appointed and empowered to call meetings, add agenda items and submit information to directors).</i></p> | <p><i>Not covered.</i></p> | <p>The board should identify matters which require the prior approval of the board and lay down procedures to be followed when, exceptionally, a decision is required before its next meeting on any matter not required by law, to be considered at board level. (Code, §4, <i>foot-note omitted</i>)</p> <p>Decisions regarding the content of the agenda for individual meetings of the board and concerning the presentation of agenda items should be taken by the chairman in consultation with the company secretary. (Code, §8)</p> <p>The company secretary should be responsible to the chairman for the proper administration of the meetings of the company, the board and any committees thereof. To carry out this responsibility the company secretary should be entitled to be present at (or represented at) and prepare (or arrange for the preparation of) minutes of the proceedings of all such meetings. (Code, §9)</p> <p>The minutes of meetings should record the decisions taken and provide sufficient background to those decisions. All papers presented at the meeting should be clearly identified in the minutes and retained for reference. Procedures for the approval and circulation of minutes should be established. (Code, §10)</p> <p>Notwithstanding the absence of a formal agenda item, the chairman should permit any director or the company secretary to raise at any board meeting any matter concerning the company's compliance with this Code of Practice, with the company's memorandum and articles of association and with any other legal or regulatory requirement. (Code, §13)</p> | <p><i>Not covered.</i></p> |

| Cadbury Report (United Kingdom) | Greenbury Report (United Kingdom) | Hampel Report (United Kingdom) | The Combined Code/Turnbull Report (United Kingdom) |
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| 20. Board Meetings and Agenda | | | |
| <p>The board should meet regularly. (Code, 1.1)</p> <p><i>See Code, 1.4 (The board should have a formal schedule of matters specifically reserved to it for decision to ensure that the direction and control of the company is firmly in its hands.).</i></p> | <p><i>Not covered.</i></p> | <p>The board can only fulfil its responsibilities if it meets regularly and reasonably often. (Guideline 3.11)</p> <p><i>See Topic Headings 2 and 4, above.</i></p> | <p>The board should meet regularly. (Code § 1, A.1.1)</p> <p><i>See Code § 1, A.1.2 (The board should have a formal schedule of matters specifically reserved to it for decision.).</i></p> |

| NAPF Corporate Governance Code (United Kingdom) | AUTIF Code (United Kingdom) | Hermes Statement (United Kingdom) | PIRC Shareholder Voting Guidelines (United Kingdom) |
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| 20. Board Meetings and Agenda | | | |
| <p>[T]he frequency of board meetings must be sufficient to ensure that the directors, including the non-executive directors, can direct that corporate strategy, as well as monitoring performance and risk.</p> <p>Whilst boards should meet regularly, each must decide its frequency.</p> <p>Where an “executive committee”, comprising both directors and senior management, meets regularly to implement board strategy, the board may be content to meet at relatively infrequent intervals provided that the board as a whole is satisfied that agreed strategy is being followed.</p> <p>The board should adopt a formal schedule of matters specifically reserved for board decisions. This should include major strategic concerns likely to impact on the direction of the company, setting strategic benchmarks and the assessment of management achievement against them. This would normally include, for example, decisions on acquisitions and mergers.</p> <p>(§1)</p> | <i>Not covered.</i> | <i>Not covered.</i> | <i>Not covered.</i> |

| OECD Principles/Millstein Report (International) | ICGN Statement/Global Voting Principles (International) | Euroshareholders Guidelines (Pan-European) | EASD Principles and Recommendations (Pan-European) |
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| 21. Board Information Flow, Materials and Presentations | | | |
| <p>In order to fulfil their responsibilities, board members should have access to accurate, relevant and timely information. (OECD Principle V.F)</p> <p>Board members require relevant information on a timely basis in order to support their decision-making. Non-executive board members do not typically have the same access to information as key managers within the company.... In order to fulfil their responsibilities, board members should ensure that they obtain accurate, relevant and timely information. (OECD Principle V.F Annotation at 43)</p> | <p><i>The ICGN Statement adopts</i> OECD Principle V.F (In order to fulfil their responsibilities, board members should have access to accurate, relevant and timely information.).</p> <p><i>See also</i> OECD Principle V.F Annotation at 43 (Board members require relevant information on a timely basis in order to support their decision-making. Non-executive board members do not typically have the same access to information as key managers within the company.... In order to fulfil their responsibilities, board members should ensure that they obtain accurate, relevant and timely information.).</p> | <p><i>Not covered.</i></p> | <p>It should be the Chairman’s responsibility that adequate and timely information is provided to board members ahead of meetings and, where necessary, in between. (Recommendation V.3.a.iv)</p> <p>Background information should be given [in advance of board meetings]. The material should be clear, sufficient, relevant and timely. (Recommendation V.5.e.iii)</p> |

| Recommendations of Federation of Companies (Belgium) | Dual Code of the BXS/CBF (Belgium) | The Director's Charter (FDA) (Belgium) | (Reserved) |
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| 21. Board Information Flow, Materials and Presentations | | | |
| <p><i>Not covered.</i></p> | <p>An internal procedure should be established to ensure that all directors, and in particular the non-executive directors, are provided with and have access to adequate information to enable them to perform their duties. The availability of information should be guaranteed to all directors equally.</p> <p>It is essential that the directors are provided with, and have access to, the information they require in good time. This is in particular the responsibility of the chairman, who may be assisted by the secretary to the board.</p> <p>Directors cannot use the information obtained for other purposes than for the exercise of their mandate. They have an obligation of discretion relating to the confidential information received in their capacity as director. (Part I: B.1.7)</p> | <p>The Director undertakes to see to it that the Board ... receives sufficient and timely information enabling the Directors to hold useful discussions. (p. 4)</p> <p><i>See p. 7</i> (The Director undertakes not to distribute, directly or indirectly, and without the authorization of the Board, any information that he or she has been privy to in his/her function within the company.).</p> | |

| Danish Shareholders Ass'n Guidelines (Denmark) | Nørby Report & Recommendations (Denmark) | Chamber of Commerce/Confederation Code (Finland) | Ministry of Trade & Industry Guidelines (Finland) |
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| 21. Board Information Flow, Materials and Presentations | | | |
| <i>Not covered.</i> | <p>It is recommended that the board establish procedures for how the management reports to the board and for any other communication between the board and the management. This will ensure that the board is provided with the information about the company's business which the board requires on a continuous basis. In all circumstances the management must ensure that the board is provided with essential information, whether the board has requested it or not. (IV.4)</p> <p><i>See V.2 ([T]he directors are solely responsible for actively obtaining knowledge and continuously keeping themselves posted about the conditions of the company and the industry in question.).</i></p> | <i>Not covered.</i> | <i>Not covered.</i> |

| Viénot I Report (France) | Hellebuyck Commission Recommendations (France) | Viénot II Report (France) | (Reserved) |
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| 21. Board Information Flow, Materials and Presentations | | | |
| <p>[T]he chairman is obliged to provide directors, in due time, with all significant information necessary to the fulfillment of their supervisory duties. Directors should receive, in due time, documentation concerning items on the agenda requiring particular analysis and prior consideration (whenever this is not prevented by the need to respect confidentiality).</p> <p>The Committee considers that when directors believe they have not been put in a position to make an informed judgment, it is their duty to say so at the board meeting and to demand the information they need. (p. 17)</p> <p>Directors must ensure that they are properly informed and to this end make timely requests to the chairman for any information necessary for proper consideration of items on the board's agenda. (p. 21)</p> | <p><i>Not covered.</i></p> | <p>Prior and continuing information to the Directors is an essential requirement for proper performance of their duties.</p> <p>As the case-law has outlined it for the past fifteen years, the Committee considers it desirable to affirm the following positions:</p> <p>Corporations are bound to provide their Directors with the information required to take part effectively in the Board's proceedings, prior to Board meetings if appropriate, in order to enable them to perform their duties appropriately. This is true at all times in corporate life, between meetings of the Board, if the importance or urgency of the information so require.</p> <p>This duty to provide prior and continuing information to the Directors, which must be sufficient, relevant and first-rate, lies with the chairman of the Board of Directors.</p> <p>Conversely, the Directors are bound to call for the appropriate information that they consider necessary to perform their duties. (p. 16)</p> | |

| Berlin Initiative Code (Germany) | German Panel Rules (Germany) | Cromme Commission Code (Germany) | (Reserved) |
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| 21. Board Information Flow, Materials and Presentations | | | |
| <p>To ensure the necessary basis of information for supervisory duties is the task of both the Management Board (“obligation lying in render”) and of the Supervisory Board (“obligation lying in collection”). The main responsibility for this lies with the Management Board as a result of the asymmetry of knowledge of both organs. (Code, II.2.1)</p> <p>The Management Board’s general duty to provide information arises from the information system specified by the Supervisory Board. The Supervisory Board information system takes up the statutory duties to report and puts the content, frequency and technical provisions of the information to be supplied in concrete terms.... (Code, II.2.2)</p> <p>The Supervisory Board information system also stipulates that the Management Board reports once a year on the strategic development of the company.... (Code, II.2.3)</p> <p>All members of the Supervisory Board receive the schedule of supervision before each supervisory period. (Code, IV.5.6)</p> <p>All documentation which is necessary for proper discussion of the items of the agenda pending, is delivered to the members of the Supervisory Board or the committees in good time before each meeting. (Code, IV.5.8)</p> <p>All members of the Management Board receive information and supporting documentation relevant to the decision in good time before the Management Board meetings. (Code, III.4.4)</p> <p><i>See generally</i> Code, II.2 (Provision of Information to the Supervisory Board).</p> | <p>The Management Board shall inform the Supervisory Board on a regular basis, in good time and comprehensively, about all relevant matters regarding business development, risk exposure and risk management of the company and major group subsidiaries. (Code, II.2.e)</p> <p>All members of the Supervisory Board shall receive the Audit Reports in good time before the pertinent Supervisory Board meetings (§ 170 German Stock Corporation Act). Audit-related meetings shall be held in the presence of the Auditors. (Code, III.2.e)</p> <p><i>See</i> Code, III.2.g) (The Supervisory Board shall receive regularly (at least annually) a report by the Management Board with regard to donations exceeding an amount determined by the Supervisory Board.).</p> | <p>Providing adequate information to the Supervisory Board is the joint responsibility of the Management Board and Supervisory Board.</p> <p>The Management Board informs the Supervisory Board regularly, without delay and comprehensively, of all issues important to the enterprise with regard to planning, business development, risk situation and risk management. The Management Board brings up deviations in planning from previously formulated objectives and indicates the reasons.</p> <p>The Supervisory Board shall specify the Management Board’s information and reporting duties. The Management Board’s reports to the Supervisory Board are, as a rule, to be submitted in written form. Documents required for decisions, in particular, the Annual Financial Statements, the Consolidated Financial Statements and the Auditors’ Report are to be sent to the members of the Supervisory Board, if possible, in due time before the meeting. (§III.4)</p> <p>Good Corporate Governance requires an open discussion between the Management Board and Supervisory Board as well as among the members within the Management Board and the Supervisory Board. The comprehensive observance of confidentiality is of decisive importance for this.</p> <p>All board members ensure that the staff members they employ observe the confidentiality obligation in the same manner. (§III.5)</p> | |

| Mertzanis Report (Greece) | Federation of Greek Industries Principles (Greece) | IAIM Guidelines (Ireland) | Preda Report (Italy) |
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| 21. Board Information Flow, Materials and Presentations | | | |
| <p>The members of the Board of Directors should have all relevant information, act in good faith and with all required diligence and care in the interest of the corporation and its shareholders. (Recommendation 5.1)</p> <p>Internal audit procedures should be established ensuring that all members of the Board have timely, full and equitable access to all information required for the exercise of their duties. (Recommendation 5.10)</p> <p>It is essential that the members of the Board have full access to all information required, under the responsibility of the chief executive officer and the secretary of the Board. (Footnote 7 to Recommendation 5.10)</p> <p><i>See</i> Introduction (All functions of the Board of Directors ... should aim at the enhancement of the entire performance of the corporation within an adequately supervised and informed environment.).</p> | <p>[T]he internal controller may obtain knowledge of any book, document, bank account information or portfolio of the company, and access any service of the company. The members of the board and the company's employees must cooperate with the internal controller and provide him with information, and generally facilitate his work as may be appropriate. The company's management must provide the internal controller with all the means necessary to facilitate the exercise of an appropriate and effective control. (§4.4)</p> <p>[The internal controller] provides updates in writing, at least once every three months, to the board of directors on the results of his control.... (§4.45(c))</p> | <p><i>Not covered directly, but the</i> IAIM Guidelines <i>adopt the</i> Combined Code. <i>See</i> the Combined Code:</p> <p>Principle A.4 (The board should be supplied in a timely manner with information in a form and of a quality appropriate to enable it to discharge its duties.);</p> <p>Code § 1, A.4.1 (Management has an obligation to provide the board with appropriate and timely information, but information volunteered by management is unlikely to be enough in all circumstances and directors should make further inquiries where necessary. The chairman should ensure that all directors are properly briefed on issues arising at board meetings.).</p> | <p>The chairman ... shall endeavour to ensure that the members of the board are provided reasonably in advance of the date of the meeting (except in cases of necessity and as a matter of urgency) with the documentation and information needed for the board to express an informed view on the matters it is required to examine and approve. (Code, 4.1; <i>see</i> Report, 5.2)</p> <p><i>See</i> Commentary on Code, 5 ([T]he Committee believes that, since the board of directors is required by law to inform the board of auditors, all the directors must possess at least as much information as is provided to the board of auditors.).</p> <p><i>See also</i> Report, 5.1 (The Code ... notes that the guidance function [of the board of directors] requires ... knowledge of the facts.).</p> <p><i>See also</i> Code, 6.2 and Report, 5.3 (All the directors are required to treat the documents and information they acquire in the performance of their duties as confidential and to comply with the procedure for the disclosure to third parties of such documents and information.)</p> |

| Peters Report (The Netherlands) | VEB Recommendations (The Netherlands) | SCGOP Handbook and Guidelines (The Netherlands) | Securities Market Comm'n Recommendations (Portugal) |
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| 21. Board Information Flow, Materials and Presentations | | | |
| <p><i>Not covered directly, but see Recommendation 4.2 (The [Management Board] should report in writing to the Supervisory Board on the company's objectives, strategy and the associated risks and the mechanisms needed to control risks of a financial nature.).</i></p> <p><i>See also Recommendation 4.3 (The [Management Board] will report in writing to the Supervisory Board on the risks entailed in the policy and strategy.).</i></p> <p><i>See also Recommendation 4.3 (As a minimum requirement, the [Management Board] should report to the Supervisory Board on the results of its assessment of the structure and functioning of the internal control systems which are intended to provide reasonable certainty that the financial information is reliable.).</i></p> | <p><i>Not covered.</i></p> | <p><i>Not covered.</i></p> | <p><i>Not covered directly, but see Commentary on Recommendation 14 ([The board should] be duly informed at all times.).</i></p> |

| Olivencia Report (Spain) | Swedish Shareholders Ass'n Policy (Sweden) | ICSA Code (United Kingdom) | ISC Statement of Best Practice (United Kingdom) |
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| 21. Board Information Flow, Materials and Presentations | | | |
| <p>The necessary measures must be adopted to ensure that Directors are duly provided with sufficient information, specifically put together for the purpose of preparing Board meetings. The significance or confidential nature of this information will not render this measure inapplicable, unless exceptional circumstances concur. (Code, Recommendation 9)</p> <p>The right of all directors to collect and obtain the information and advice needed to fulfill their supervision functions must be formally recognized. Appropriate channels should be created to exercise this right, even resorting to outside experts in special circumstances. (Code, Recommendation 14)</p> <p>[T]he Chairman of the Board ... must also ensure that members of the Board receive the necessary information. (Report, 3.2)</p> <p>[A]mong the independent Directors, a Vice-President with coordination functions ... could be empowered to ... submit information to directors. (Report, 3.2)</p> <p>The Secretary should see to the proper development of board meetings, taking special care to provide directors with proper advice and information. (Report, 3.3)</p> <p>We must underscore the authority and duty that each director individually has of seeking and obtaining all the information required for the fulfillment of his/her supervision functions. (Report, 6.1)</p> | <p>In order to be able to fulfil their responsibilities, the members of the board should have access to correct, relevant and current information. (Guideline 2.2)</p> | <p>The board should ensure that each director is given on appointment sufficient information to enable him/her to perform his/her duties. In particular, guidance for non-executive directors should cover the procedures:</p> <ul style="list-style-type: none"> § for obtaining information concerning the company; and § for requisitioning a meeting of the board. <p>(Code, §2)</p> <p>In the conduct of board business, two fundamental concepts should, be observed:</p> <ul style="list-style-type: none"> § each director should receive the same information at the same time, and § each director should be given sufficient time in which to consider any such information. <p>(Code, §3)</p> <p>The board should approve definitions of the terms “material”[*] and “not in the ordinary course of business” and these definitions should be brought to the attention of all relevant persons. (Code, §6)</p> <p>Where there is any uncertainty regarding the materiality or nature of a contract, it should normally be assumed that the contract should be brought before the board. (Code, §7)</p> <p>The minutes of any meetings of committees of the board (or a written summary thereof) should be circulated to the board prior to its next meeting and the opportunity should be given at that meeting for any member of the board to ask questions thereon. (Code, §12)</p> <p>[*] Different definitions of the term “material” should be established for “contracts not in the ordinary course of business” and “contracts in the ordinary course of business.” Financial limits should be set where appropriate. (Code, fn. 2)</p> | <p><i>Not covered.</i></p> |

| Cadbury Report (United Kingdom) | Greenbury Report (United Kingdom) | Hampel Report (United Kingdom) | The Combined Code/Turnbull Report (United Kingdom) |
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| 21. Board Information Flow, Materials and Presentations | | | |
| <p>It is for chairmen to make certain that their non-executive directors receive timely, relevant information tailored to their needs, [and] that they are properly briefed on the issues arising at board meetings.... (Report, 4.8)</p> <p>Non-executive directors lack the inside knowledge of the company of the executive directors, but have the same right of access to information as they do. Their effectiveness turns to a considerable extent on the quality of the information which they receive and on the use which they make of it. Boards should regularly review the form and the extent of the information which is provided to all directors. (Report, 4.14)</p> <p>[T]he board should meet regularly, with due notice of the issues to be discussed supported by the necessary paperwork.... (Report, 4.23)</p> | <p><i>Not covered directly, but see</i> Commentary on Remuneration Committees, 4.16 (The [remuneration] committee should have access to reliable, up-to-date information about remuneration in other companies and should judge the implications carefully. The full disclosure we advocate in this report will itself provide more accessible data.).</p> | <p>The board should be supplied in a timely fashion with information in a form and of a quality appropriate to enable it to discharge its duties. (Principle A.IV)</p> <p>We endorse the view of the Cadbury committee (Cadbury Report, 4.14) that the effectiveness of non-executive directors (indeed, of all directors) turns, to a considerable extent, on the quality of the information they receive. (Guideline 2.6)</p> | <p>The board should be supplied in a timely manner with information in a form and of a quality appropriate to enable it to discharge its duties. (Principle A.4)</p> <p>Management has an obligation to provide the board with appropriate and timely information, but information volunteered by management is unlikely to be enough in all circumstances and directors should make further enquiries where necessary. The chairman should ensure that all directors are properly briefed on issues arising at board meetings. (Code § 1, A.4.1)</p> |

| NAPF Corporate Governance Code (United Kingdom) | AUTIF Code (United Kingdom) | Hermes Statement (United Kingdom) | PIRC Shareholder Voting Guidelines (United Kingdom) |
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| 21. Board Information Flow, Materials and Presentations | | | |
| The board requires appropriate and timely information sufficient to enable it to discharge its duties. It is the responsibility of company management to ensure that all directors are supplied with the information necessary to make informed judgements on matters affecting the company. (§5) | <i>Not covered.</i> | <i>Not covered.</i> | <i>Not covered.</i> |

| OECD Principles/Millstein Report (International) | ICGN Statement/Global Voting Principles (International) | Euroshareholders Guidelines (Pan-European) | EASD Principles and Recommendations (Pan-European) |
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| 22. Number, Structure and Independence of Committees | | | |
| <p>Boards should consider assigning a sufficient number of non-executive board members capable of exercising independent judgement to tasks where there is a potential for conflict of interest. Examples of such key responsibilities are financial reporting, nomination and executive and board remuneration.</p> <p>While the responsibility for financial reporting, remuneration and nomination are those of the board as a whole, independent non-executive board members can provide additional assurance to market participants that their interests are defended. Boards may also consider establishing specific committees to consider questions where there is a potential for conflict of interest. These committees may require a minimum number, or be composed entirely of, non-executive members. (OECD Principle V.E.1 and Annotation at 42)</p> <p>Stock exchange listing requirements that address a minimal threshold for ... audit committee independence have proved useful, while not unduly restrictive or burdensome. (Millstein Report, Perspective 15)</p> | <p>The ICGN backs active, independent board audit committees. (ICGN Amplified OECD Principle IV at 8)</p> <p><i>The ICGN Statement adopts</i> OECD Principle V.E.1 (Boards should consider assigning a sufficient number of non-executive board members capable of exercising independent judgement to tasks where there is a potential for conflict of interest. Examples of such key responsibilities are financial reporting, nomination and executive and board remuneration.).</p> <p>To further strengthen the professionalism of boards, the ICGN endorses earlier language considered by the OECD. “Certain key responsibilities of the board such as audit, nomination and executive remuneration, require the attention of independent, non-executive members of the board. Boards should consider establishing committees containing a sufficient number of independent non-executive board members in these areas where there is a potential for conflict of interest or where independent business judgment is advisable.” The ICGN considers that to meet this challenge, audit, remuneration and nomination board committees should be composed wholly or predominantly of independent non-executives. (ICGN Amplified OECD Principle V at 9; cf. ICGN Statement 4)</p> | <p>A special committee should be established to set the remuneration of the directors. (Commentary on Recommendations 10(a) and 10(b))</p> | <p>There should be a majority of independent board members on all board committees where there is a potential for conflicts of interest. (Recommendation VI.4.a)</p> <p>The chairman should be a non-executive board member for all committees; in addition, for the audit and the remuneration committee, he or she should be independent. (Recommendation VI.4.b)</p> |

| Recommendations of Federation of Companies (Belgium) | Dual Code of the BXS/CBF (Belgium) | The Director's Charter (FDA) (Belgium) | (Reserved) |
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| 22. Number, Structure and Independence of Committees | | | |
| <p>If there is an appointments committee, it should be composed mostly of non-executive directors and chaired by the Chairman of the Board of Directors or by a non-executive director. The appointments committee should make proposals to the Board of Directors, on the one hand for the appointment of non-executive directors, and on the other hand for appointments to certain key posts. (Note to 2.3)</p> <p>If there is a remuneration committee, it should be exclusively composed of non-executive directors, and the remuneration of executive directors should be submitted to that committee for an opinion.</p> <p>If there is no remuneration committee, the remuneration of executive directors should be submitted to the non-executive directors. (3.1)</p> <p>The Board of Directors must exercise an audit function. To that end, it may set up an audit committee and determine its composition and mandate. (4.3)</p> | <p>Certain directors – whether executive or non-executive – may be given special responsibility for certain areas, on which they report to the full board. (Part I: B.1.5)</p> <p>The nomination committee should include a majority of non-executive directors and should be chaired by the chairman of the board or a non-executive director. (Part I: B.2.4)</p> <p>The executive management's pay should be subject to the recommendations of a remuneration committee ... made up of a majority of non-executive directors. (Part I: B.3.2)</p> <p>[A]n audit committee should be established consisting of at least three non-executive directors whose authority and duties are clearly stated at the time of their appointment. (Part I: B.4.3)</p> <p><i>See</i> Part I: B.1.5 (The board should lay down rules to determine materiality for different categories of transactions, establishing clearly which transactions require multiple board signatures. The board should also establish the procedures to be followed when, exceptionally, decisions are required between board meetings.).</p> <p><i>See also</i> Part II: B.6 (If the company ... is controlled or significantly influenced by one or more dominant shareholders, ... [disclosure should be made] of any agreements between these shareholders and of the contents of such agreements and of any committees established [and] the role played by these committees.).</p> | <p>[T]he Director will be attentive:</p> <p>§ That the Board, if it creates an internal auditing committee, ensures that it be composed of a majority of non-executive Directors, in direct and permanent contact with the company's auditors, and periodically referring to the Board;</p> <p>§ That the company's internal controlling body functions efficiently and that it be regularly controlled by the auditors.</p> <p>(p. 4)</p> | |

| Danish Shareholders Ass'n Guidelines (Denmark) | Nørby Report & Recommendations (Denmark) | Chamber of Commerce/Confederation Code (Finland) | Ministry of Trade & Industry Guidelines (Finland) |
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| 22. Number, Structure and Independence of Committees | | | |
| <p>Committees responsible for the proposal of candidates for the board and the auditing companies should be established. (I. The Annual General Meeting)</p> <p>The board or a special committee should decide upon the remuneration of company [executives]. (II. Governance)</p> | <p>Most company boards are not so large that they require the establishment of board committees in order to be able to manage their tasks, and therefore appointments of board committees cannot be recommended in general. However, if the board is very large, or in the event of other specific circumstances, the board must consider if it is necessary to establish board committees. As a rule, if the board appoints a committee, this should only be done in order to prepare decisions that must be reached by all of the directors. It is important that the board ensures that the appointment of a board committee does not result in important information directed at all directors only reaching the board committee. (V.9)</p> | <p>If the company has a special Audit Committee, it shall be governed by the following principles:</p> <ul style="list-style-type: none"> § The Committee shall, where possible, be elected from among members of the Board of Directors not employed by the company. § The Board of Directors of the company shall determine the central duties and operating principles of the Committee by instructions of guidelines confirmed for the committee. § The composition of the Committee shall be explained in the annual Report and in the Listing Particulars of the company. <p>(English Summary, 7)</p> | <p>The larger the company is, the more important is the role of the external members of the Board of Directors. Thus, the forming of working groups ("committees") from the external members should be discussed at least by the Boards of Directors of listed companies. Such working groups would be, <u>e.g.</u>, the Auditing Committee and the Nomination and Remuneration Committee of the top management. (2.2.1)</p> |

| Viénot I Report (France) | Hellebuyck Commission Recommendations (France) | Viénot II Report (France) | (Reserved) |
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| <p>[B]oards may appoint some of their members to form committees to consider specific aspects of company operations. Quite a number have set up such committees with responsibilities in such areas as remuneration, auditing and strategy, and these have been functioning satisfactorily for several years within the current legal framework. (p. 2)</p> <p>[I]t is up to each board to determine the most suitable structure for its own membership and that of the committees it sets up, and to ensure that markets and shareholders have no reason to doubt their independence and impartiality. (p. 10)</p> <p>The Committee recommends that all boards should set up special committees for the selection of directors, for remuneration and for accounting....</p> <p>[T]he Committee recommends that boards should avoid appointing directors to their remuneration committees when these directors represent another company whose own representatives are members of the equivalent committee. (p. 18)</p> <p><i>See pp. 18-19 (remuneration and audit committees).</i></p> <p><i>See also Topic Heading 6, above (“selection committee”).</i></p> | <p>The existence of standing committees is a central element to corporate governance and hence to board functioning.</p> <p>The Commission recommends the creation of at least three standing committees: a nominating or appointments committee, a compensation and performance committee, and an audit committee.</p> <p>It is recommended that they shall comprise independent directors up to one-third of their members and in the majority in the compensation and performance committee.</p> <p>Company executives or employees should not be members of the compensation and performance committee or of the audit committee. (§ II.B.2)</p> <p>The Commission favors each Board having a nominating committee responsible for proposing candidates to Board membership. This committee should be composed of from three to five directors and include the chairman and one-third independent directors. This committee should draw up a report, with supporting information, on the recommendations it makes. (§ II.B.3)</p> <p>[The practice of reciprocal directors and cross-shareholdings] runs counter to openness and independent decision-making. No reciprocal directors and directors representing cross-shareholdings, should the case arise, may sit on the compensation and performance committee. (§ II.B.4)</p> | <p>[T]he presence of genuinely independent Directors in sufficient numbers on ... Board committees is an essential factor in guaranteeing that the interests of all the shareholders will be taken into account in the corporation’s decisions.</p> <p>In order to establish the role recognized for independent Directors, the Committee considers:</p> <ul style="list-style-type: none"> § that they should account for at least one-third of ... the audit committee and the appointments committee; § that they should be in the majority of the compensation and options committee, having regard to its duties; § that they should be identified individually in the annual report. <p>(p. 15)</p> | |

| Berlin Initiative Code (Germany) | German Panel Rules (Germany) | Cromme Commission Code (Germany) | (Reserved) |
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| 22. Number, Structure and Independence of Committees | | | |
| <p><u>Supervisory Board Committees</u> The Supervisory Board forms committees in order to increase working efficiency. The committees should have at least three but no more than five members. The Chairman of the Supervisory Board coordinates the activities between the committees in consultation with the chairpersons of the committees. (Code, IV.3.3)</p> <p>The number and tasks of the committees depend on the size of the Supervisory Board and the respective realities of the company. This includes principally the size of the company as well as the type, degree of diversification and geographical extent of its value-creating processes. Normally, there is to be established:</p> <ul style="list-style-type: none"> § at least one business committee for managerial key policy issues, § a personnel committee for all matters affecting the personnel of the Management Board and, if necessary, a committee pursuant to §27(3) of the Co-Determination Act 1976, § an investment and finance committee, § an audit committee, and § a committee for corporate governance. <p>Next to these are committees to be considered for particularly important functions such as research and development, products and markets of the company. (Code, IV.3.4)</p> <p><u>Management Board Committees</u> <i>Not covered.</i></p> | <p><u>Supervisory Board Committees</u> The Supervisory Board shall ensure independent advice and monitoring of the Management Board through a sufficient number of independent persons who have no current or former business association with the Group. This shall also be taken into consideration for the composition of the Supervisory Board committees. (Code, III.1.b)</p> <p>The Supervisory Board shall establish, in line with its Standing Rules, various committees to deal with complex business matters.... Incorporation and duties of committees are subject to the specific circumstances and the size of the Company. The following committees could be instituted:</p> <ul style="list-style-type: none"> General Committee.... Accounts and Audit Committee.... Personnel Committee.... Nomination Committee.... Market- and Credit Risk Committee.... Mediation Committee. <p>(Code, III.3)</p> <p><u>Management Board Committees</u> <i>Not covered.</i></p> | <p><u>Supervisory Board Committees</u> The Supervisory Board can transfer preparations for the appointment of members of the Management Board to a committee, which also determines the conditions of the employment contracts including compensation. (§V.1.2)</p> <p>Depending on the enterprise's specific circumstances and the number of its employees, the Supervisory Board shall form qualified committees. They serve to increase the efficiency of the Supervisory Board's work and the handling of complex issues. Each respective committee chairman reports regularly to the Supervisory Board on the work of the committee. (§V.3.1)</p> <p>The Supervisory Board shall set up an Audit Committee.... (§V.3.2)</p> <p>The Supervisory Board can delegate other subjects to be handled by one or several committees. These subjects include the strategy of the enterprise, the compensation of the members of the Management Board, investments and financing. (§V.3.3)</p> <p>The Supervisory Board can arrange for committees to prepare Supervisory Board meetings and to take decisions in place of the Supervisory Board. (§V.3.4)</p> <p>Each member of the Supervisory Board shall inform the Chairman of the Supervisory Board of any conflicts of interest.... The Chairman of the Supervisory Board shall inform the Supervisory Board or a committee commissioned for this purpose of any personal conflicts of interest. (§V.5.1)</p> <p><u>Management Board Committees</u> <i>Not covered.</i></p> | |

| Mertzanis Report (Greece) | Federation of Greek Industries Principles (Greece) | IAIM Guidelines (Ireland) | Preda Report (Italy) |
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| <p>The establishment of an Internal Audit Committee should be encouraged, which will consist of non-executive members of the Board of Directors whose power and duties are clearly described during the approval of their appointment by the general shareholder meeting. (Recommendation 4.7)</p> <p>It is a good practice that a review committee, consisting of the majority of non-executive Board members, be established by the general shareholder meeting, which would review management compensation. (Recommendation 7.2)</p> | <p>Non-executive members form the majority in the board member committees.... (§2.2)</p> <p>In order to ensure more effective management of the company, at least two committees, comprised of non-executive board members, are provided and constituted: the Internal Control Committee and the Compensation and Benefits Committee. (§5.1)</p> | <p>The Combined Code recommends that the boards of listed companies should establish a remuneration committee to make recommendations to the board in relation to policy on the remuneration of executive directors and that the membership of this committee should be made up wholly of independent non-executive directors. (Guideline 1)</p> <p><i>The IAIM Guidelines adopt the Combined Code. See the Combined Code:</i></p> <p>§ 1, A.5.1 (Unless the board is small, a nomination committee should be established to make recommendations to the board on all new board appointments. A majority of the members of this committee should be non-executive directors, and the chairman should be either the chairman of the board or a non-executive director.);</p> <p>§ 1, B.2.2 (Remuneration committees should consist exclusively of non-executive directors who are independent of management and free from any business or other relationship which could materially interfere with the exercise of their independent judgement.);</p> <p>§ 1, D.3.1 (The board should establish an audit committee of at least three directors, all non-executive, with written terms of reference which deal clearly with its authority and duties. The members of the committee, a majority of whom should be independent non-executive directors, should be named in the report and accounts.).</p> | <p>The board of directors shall ... delegate powers to the managing directors and to the executive committee. (Code, 1.2)</p> <p>Where the board of directors has established a committee to propose candidates for appointment to the position of director, the majority of the members of such committee shall be non-executive directors. (Code, 7.2)</p> <p>[T]he large proportion of companies with concentrated ownership ..., and the by-laws providing for election lists in some companies with a broad shareholder base, suggested that it would not be advisable to institutionalize [the nominations] committee. (Report, 5.4.1)</p> <p>The board of directors shall form a remuneration committee ..., the majority of whose members should be non-executive directors (Code, 8.1; see Report, 5.4.2)</p> <p>Determining ... remuneration of top management obviously remains the task of the managing directors. (Commentary on Code, 8)</p> <p>The board of directors shall establish an internal control committee ... made up of an appropriate number of non-executive directors. (Code, 10.1; see Report, 5.4.3)</p> <p>See Report, 5.5. ([D]ialogue [with institutional investors] can be fostered by ... an <u>ad hoc</u> ... structure for this function.).</p> |

| Peters Report (The Netherlands) | VEB Recommendations (The Netherlands) | SCGOP Handbook and Guidelines (The Netherlands) | Securities Market Comm'n Recommendations (Portugal) |
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| 22. Number, Structure and Independence of Committees | | | |
| <p><u>Supervisory Board Committees</u> <i>Not covered directly, but see Recommendation 3.2 (The Supervisory Board considers whether to appoint from its midst a selection and nomination committee, an audit committee and a remuneration committee. These committees submit reports on their findings and make recommendations to the full Supervisory Board.).</i></p> <p><u>Management Board Committees</u> <i>Not covered.</i></p> | <p><i>Not covered.</i></p> | <p><i>Not covered.</i></p> | <p>The board is encouraged to create internal control committees with powers conferred for matters in which there are potential situations of conflicts of interest, such as the nomination of directors and managers, the analysis of the remuneration policy and assessment of the corporate structure and governance. (Recommendation 17)</p> <p>If an Executive Committee is created, its composition should reflect, insofar as it is possible, the balance existing in the board between directors linked to dominant shareholders and independent shareholders. (Recommendation 16)</p> |

| Olivencia Report (Spain) | Swedish Shareholders Ass'n Policy (Sweden) | ICSA Code (United Kingdom) | ISC Statement of Best Practice (United Kingdom) |
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| 22. Number, Structure and Independence of Committees | | | |
| <p>The composition of the Executive Committee, if there is one, should reflect the existing balance in the Board of Directors among the different types [of directors]. Relationships between both [the Executive Committee and the board] should be inspired on the transparency principle, in order that the Board is completely aware of the matters dealt with and the decisions made by the Committee. (Code, Recommendation 7)</p> <p>The Board of Directors should create Control Committees within the Board, made up solely of outside directors, for information and accounting control matters (Audit Committee), the selection of directors and executives (Nomination Committee), defining and reviewing remuneration policies (Remuneration Committee), and evaluating the governance system (Compliance Committee). (Code, Recommendation 8)</p> <p>See Topic Heading 23, below.</p> | <p>[T]he general meeting should take the initiative for setting up nomination, audit and remuneration committees. (Guideline 1.2)</p> <p><u>Nomination Committee</u></p> <p>[T]he Shareholders' Association recommends that every company quoted on the stock market set up a nomination committee....</p> <p>The nomination committee should comprise three to five members and be appointed by the company's owners. The majority of the members should represent the principal owners. At least one member should represent the smaller owners. This member can, on request, be nominated by the Shareholders' Association. The chairman of the board should also be on the committee. Members should not be employees of the company. (Guideline 1.2.1)</p> <p><u>Audit Committee</u></p> <p>To assure the quality of the audit and to improve contacts between the board and the company's auditors, an audit committee should be set up, thereby giving the auditors' principals, the shareholders, a better guarantee that their interests are safeguarded. The board should appoint an audit committee from among board members who are not employees of the company. The committee should consist of at least three members and can coopt suitable additional persons. (Guideline 1.2.2)</p> <p><u>Remuneration Committee</u></p> <p>In every company, the board should appoint a remuneration committee. (Guideline 1.2.3)</p> | <p><i>Not covered directly, but see</i> Code, §11 (Where the articles of association allow the board to delegate any of its powers to a committee, the board should give its prior approval to:</p> <p>§ the membership and quorum of any such committee;</p> <p>§ its term of reference; and</p> <p>§ the extent of any powers delegated to it.)</p> | <p>There has been a growing awareness of the value of audit committees and the importance of non-executive directors [on them] has become evident.... (p. 2)</p> <p>A Compensation Committee should be appointed by the Board, consisting solely or mainly of non-executive directors (and in the latter case chaired by a non-executive director). (p. 4)</p> <p>[In the event of a proposed takeover or management buy-out,] [i]deally, the Board should appoint a separate committee consisting wholly or mainly of non-executive directors with direct access to independent advisers.... The committee should be responsible for a separate statement to shareholders, giving the views both of itself and of the independent advisers on the bid. (p. 6)</p> |

| Cadbury Report (United Kingdom) | Greenbury Report (United Kingdom) | Hampel Report (United Kingdom) | The Combined Code/Turnbull Report (United Kingdom) |
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| 22. Number, Structure and Independence of Committees | | | |
| <p>The board should establish an audit committee of at least three non-executive directors with written terms of reference which deal clearly with its authority and duties. (Code, 4.3)</p> <p>A nomination committee should have a majority of non-executive directors on it and be chaired by either the chairman or a non-executive director. (Report, 4.30)</p> <p>Membership [on the audit committee] should be confined to the non-executive directors of the company, and a majority of the non-executives serving on the committee should be independent.... (Report, 4.35(b))</p> <p>We also recommend that boards should appoint remuneration committees consisting wholly or mainly of non-executive directors, and chaired by a non-executive director, to recommend to the board the remuneration of the executive directors in all its forms, drawing on outside advice as necessary. (Report, 4.42)</p> <p>See Report, APPENDIX 4, AUDIT COMMITTEES.</p> <p>See also Topic Heading 23, below.</p> | <p>To avoid potential conflicts of interest, Boards of Directors should set up remuneration committees of Non-Executive Directors to determine ... the company’s policy on executive remuneration and specific remuneration packages for each of the Executive Directors.... (Code, A1)</p> <p>Remuneration committee Chairmen should account directly to the shareholders through the means specified in this Code for the decisions their committees reach. (Code, A2)</p> <p>Remuneration committees should consist exclusively of Non-Executive Directors with no personal financial interest other than as shareholders in the matters to be decided, no potential conflicts of interest arising from cross-directorships and no day-to-day involvement in running the business. (Code, A4)</p> <p>The remuneration committee should consist exclusively of Non-Executive Directors with relevant experience who:</p> <ul style="list-style-type: none"> § have no personal financial interest, other than as shareholders, in the committee’s decisions; § have no “cross-directorships” with the Executive Directors which could be thought to offer scope for mutual agreements to bid up each others’ remuneration. <p>(Commentary on Remuneration Committees, Membership and Qualifications, 4.8)</p> <p>The remuneration committee should consist of at least three Non-Executive Directors (at least two in the case of small companies). If this is not practicable, the remuneration committee’s report to shareholders should explain why. (Commentary on Remuneration Committees, Membership and Qualifications, 4.11)</p> | <p>We support the Cadbury committee’s endorsement of the nomination committee (Cadbury Report, 4.30); indeed, we believe that the use of such a committee should be accepted as best practice.... (Guideline 3.19)</p> <p>Cadbury and Greenbury both recommended that the boards of listed companies should establish a remuneration committee to develop a policy on the remuneration of executive directors and, as appropriate, other senior executives; and to set remuneration packages for the individuals concerned. We agree. We also agree with Greenbury that the membership of this committee should be made up wholly of independent non-executive directors. (Guideline 4.11)</p> <p>Larger companies have implemented the [Cadbury Report] recommendations [that each company should establish an audit committee of at least three non-executive directors, at least two of them independent] almost universally, and we believe that the results have been beneficial. Audit committees have strengthened the independence of the auditors by giving them an effective link to the board; and the explicit remit of the audit committee has strengthened its members in questioning the executive directors. (Guideline 6.3)</p> <p>We do not favour relaxing the guidelines on this point by size of company. (Guideline 6.4)</p> | <p>Unless the board is small, a nomination committee should be established to make recommendations to the board on all new board appointments. A majority of the members of this committee should be non-executive directors, and the chairman should be either the chairman of the board or a non-executive director. (Code § 1, A.5.1)</p> <p>Remuneration committees should consist exclusively of non-executive directors who are independent of management and free from any business or other relationship which could materially interfere with the exercise of their independent judgement. (Code § 1, B.2.2)</p> <p>The board should establish formal and transparent arrangements for considering how they should apply the financial reporting and internal control principles and for maintaining an appropriate relationship with the company’s auditors. (Principle D.3)</p> <p>The board should establish an audit committee of at least three directors, all non-executive, with written terms of reference which deal clearly with its authority and duties. The members of the committee, a majority of whom should be independent non-executive directors, should be named in the report and accounts. (Code § 1, D.3.1)</p> <p>The role of board committees in the review [of the effectiveness of internal control], including that of the audit committee, is for the board to decide, and will depend upon factors such as the size and composition of the board; the scale, diversity and complexity of the company’s operations; and the nature of the significant risks that the company faces. (Turnbull Report, ¶26)</p> |

| NAPF Corporate Governance Code (United Kingdom) | AUTIF Code (United Kingdom) | Hermes Statement (United Kingdom) | PIRC Shareholder Voting Guidelines (United Kingdom) |
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| 22. Number, Structure and Independence of Committees | | | |
| <p>Where an “executive committee”, comprising both directors and senior management, meets regularly to implement board strategy, the board may be content to meet at relatively infrequent intervals provided that the board as a whole is satisfied that agreed strategy is being followed. (§1)</p> <p>Boards should establish a sub-committee (normally called the nomination committee) to deal with director appointments. The nomination committee’s role is to filter proposals and recommend candidates to the board. Final appointments are the responsibility of the whole board. Where boards are very small, say five or less, there is likely to be a case for the entire process to be undertaken by the board itself, dispensing with the need for a nomination committee. (§7)</p> <p>Each board should establish a remuneration committee.</p> <p>The remuneration committee should consist solely of independent non-executive directors and be responsible for making recommendations to the board.</p> <p>The remuneration committee requires a minimum of three independent non-executive directors. (§9)</p> <p>Each board should establish an audit committee, comprising a majority of non-executive directors. The audit committee should report to the board. (§12)</p> | <p>AUTIF encourages member firms, as part of their dialogue with the companies in which they invest and when scrutinizing the annual reports and accounts, to pay particular attention to the companies’ compliance with the Combined Code in the areas summarized below ...</p> <ul style="list-style-type: none"> § nomination and audit committees § remuneration committee and directors’ remuneration § role of chairman and chief executive § board balance § financial reporting principles § internal control system and annual review of its effectiveness. <p>(Guidance Note on Key Principle 5)</p> <p>Principle D.3 [of the Combined Code] recommends the establishment of an audit committee. (Guidance Note on Key Principle 6)</p> | <p>A remuneration committee of independent NEDs is best placed to decide executive remuneration on behalf of the board. (1.4)</p> <p>The nomination committee should comprise a minimum of three directors, a majority of whom should be independent NED. (APPENDIX 3.1)</p> <p>The chairman of the company and the senior independent NED should always be members of the [nomination] committee. (APPENDIX 3.2)</p> <p>The chairman of the nomination committee should normally be a fully independent non-executive director. (APPENDIX 3.4)</p> | <p>Board committees of independent non-executives should be established to deal with matters where executive directors face a conflict of interest. At the least, there should be standing audit, remuneration and nomination committees [which] should have a minimum of three members and should comprise solely independent non-executive directors. It may be appropriate for these committees to invite executive directors to be present at certain meetings, but committees should meet without executives present at least once a year. (Part 2, Directors, p. 5)</p> <p>PRINCIPLE: There should be an independent and transparent appointments and review process.</p> <p>Appointments of all directors, whether executive or non-executive, should be handled by the nomination committee [which] should comprise solely independent directors, though executive directors may well be invited to contribute to discussions on new executive director appointments. (Part 2: Directors, p. 6)</p> <p>PRINCIPLE: Executive remuneration should be determined by a formal and independent procedure.</p> <p><u>Remuneration committee exists comprising wholly independent directors.</u> Executive director remuneration policy should be determined by a remuneration committee which is free from executive influence and the members of which are fully independent by PIRC guidelines. It should have access to independent advice. (Part 2: Directors, p. 7)</p> <p>PRINCIPLE: The audit relationship should be overseen by an independent audit committee.</p> <p><u>An audit committee exists comprising wholly independent directors.</u> In order to perform its functions effectively, the audit committee should be fully independent. (Part 2: Directors, p. 7)</p> |

| OECD Principles/Millstein Report (International) | ICGN Statement/Global Voting Principles (International) | Euroshareholders Guidelines (Pan-European) | EASD Principles and Recommendations (Pan-European) |
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| 23. Committee Meeting Frequency, Length and Agenda | | | |
| <i>Not covered directly, but see Topic Heading 22, above.</i> | <i>Not covered directly, but see Topic Heading 22, above.</i> | <i>Not covered directly, but see Topic Heading 22, above.</i> | <p>Terms of reference should be drawn up for each committee, laying down its authority and its duties. (Recommendation VI.5.a)</p> <p>For the functioning of committees, the same guidelines as for the board as a whole should apply, with the exception of composition. (Recommendation VI.5.b)</p> |

| Recommendations of Federation of Companies (Belgium) | Dual Code of the BXS/CBF (Belgium) | The Director's Charter (FDA) (Belgium) | (Reserved) |
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| 23. Committee Meeting Frequency, Length and Agenda | | | |
| <p>If there is an audit committee, it should comply with the following rules:</p> <p>a) It is set up by the Board of Directors, to which it is accountable and to which it must regularly give an account of its mandate. It meets at least twice each year.</p> <p>b) The composition of the committee is determined by the Board of Directors. It will ensure that the committee includes non-executive directors and independent directors....</p> <p>c) The company auditors and, if such exist, the person responsible for the internal audit and the financial director, should attend the meetings of the committee. These meetings are also accessible to all directors who wish to attend.</p> <p>d) The committee should hear the company auditors at least once each year, on an occasion when the executive directors are not present.</p> <p>e) The committee has the widest investigative powers within its domain and may, by a majority decision, call upon professionals from outside the company and allow them to attend its meetings.</p> <p>f) The composition of the committee is announced in the Annual Report and the Chairman of the committee replies to the questions which are asked at the General Meeting about the activities of the committee.</p> <p>(Note to 4.3)</p> | <p>Irrespective of the special powers invested in certain individuals [in committees], the board of directors as a whole retains responsibility for fulfilling its obligations. (Part I: B.1.5)</p> <p>The Commission's recommendations on audit committees are as follows:</p> <p>a) They should be formally created as sub-committees of the main board, to whom they are answerable and should report regularly; they should be given written terms of reference which deal adequately with their membership, authority and duties; they should meet at least twice a year.</p> <p>b) Membership should be confined to the non-executive directors, and there should be a majority of independent directors....</p> <p>c) The audit committee should have a discussion with the internal and external auditors (including statutory auditors) at least once a year, from which the executive directors may be excluded, to ensure that there are no unresolved issues of concern.</p> <p>d) The audit committee should have explicit authority to investigate any matters within its terms of reference, to have available the resources which it needs to do so and have full access to information. The committee should be able to obtain outside professional advice and, if necessary, to invite outsiders with the relevant experience to attend meetings.</p> <p>(Part I: B.4.3)</p> | <p><i>Not covered directly, but see Topic Heading 22, above.</i></p> | |

| Danish Shareholders Ass'n Guidelines (Denmark) | Nørby Report & Recommendations (Denmark) | Chamber of Commerce/Confederation Code (Finland) | Ministry of Trade & Industry Guidelines (Finland) |
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| 23. Committee Meeting Frequency, Length and Agenda | | | |
| <i>Not covered.</i> | As a rule, if the board appoints a committee, this should only be done in order to prepare decisions that must be reached by all of the directors. It is important that the board ensures that the appointment of a board committee does not result in important information directed at all directors only reaching the board committee. (V.9) | <i>Not covered directly, but see</i> English Summary, 7 (The Board of Directors of the company shall determine the central duties and operating principles of the [Audit] Committee by instructions of guidelines confirmed for the committee.). | <i>Not covered directly, but see</i> 2.2.1 (Committee work or other preparation of issues without the presence of the members of the Board of Directors belonging to the hired top management does not affect the statutory decision-making and responsibilities of the Board of Directors. Subject to the Finnish Companies Act, all members of the Board of Directors shall answer for the decisions made by the Board of Directors. Therefore the handling referred to above can only be preparatory to the actual decision-making of the Board of Directors, but it cannot substitute the actual decision-making.). |

| Viénot I Report (France) | Hellebuyck Commission Recommendations (France) | Viénot II Report (France) | (Reserved) |
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| 23. Committee Meeting Frequency, Length and Agenda | | | |
| <p><u>Remunerations Committee</u> Most boards already have a committee charged with recommending remuneration levels for corporate officers, including in some cases stock option plans, although these may be the responsibility of a separate committee. (p. 18)</p> <p><u>Accounting / Audit Committee(s)</u> Adoption of financial statements is central to the board's supervisory duties as is its obligation to ensure that information provided to markets and shareholders is reliable and clear. Preparatory consideration by a specialized committee, whose membership and powers are made public, offers a guarantee that these duties will be fulfilled with the necessary diligence and impartiality. The Committee thus recommends that each board should appoint an advisory committee principally charged with ensuring the appropriateness and consistency of accounting policies applied in consolidated and company financial statements, and with verifying that internal procedures for collecting and checking information are such that they guarantee its accuracy. Particular attention should be paid to the membership of the audit committee, which should include at least 3 directors, to the exclusion of executive directors and employees, and including at least 1 independent director. (pp. 18-19)</p> <p><u>Selection Committee</u> See Topic Heading 6, above.</p> | <p><i>Not covered directly, but see § II.B.2 (Through the Shareholders' Meeting, the board should inform shareholders of the existence of [standing] committees and the frequency of their meetings.).</i></p> | <p>[M]eetings of ... Board committees ... seem to have increased substantially in recent years, though without reaching the [frequency observed] in UK and US listed corporations. Naturally, the frequency and duration of such meetings cannot be subjected to any standards, as the situations and needs vary extensively in this area. It remains that it is up to the Directors to ensure that they are such as to allow in-depth review and discussion of matters within the purview of the ... committees. (p. 16)</p> <p>[I]t is up to the audit committee to ascertain [the independence of a corporation's outside auditors], and to report on this matter to the Board of Directors every year. Likewise, it is up to the audit committee to ascertain that the amount of fees for auditing, assistance and consultancy paid by the corporation and affiliates of its group to the statutory auditors' network does not account for an excessive percentage of the total fees collected by that network during the year, and to report on the matter to the Board of Directors annually. (p. 17)</p> <p>The election among various [accounting] standards may be momentous for corporations' earnings, according, for instance, to the duration selected for amortization of goodwill, or the duty to amortize intangible assets or not. The financial managers and statutory auditors of corporations are naturally in charge of the technical reviews of this matter. The Committee considers, however, that it is up to the audit committee to obtain the technical reviews supported by appropriate documentation, and to ensure that it is updated having regard to the rapid changes in accounting standards. The Audit Committee should then report to the Board of Directors. (p. 18)</p> | |

| Berlin Initiative Code (Germany) | German Panel Rules (Germany) | Cromme Commission Code (Germany) | (Reserved) |
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| 23. Committee Meeting Frequency, Length and Agenda | | | |
| <p><u>Supervisory Board Committees</u> The chairman of the Supervisory Board prepares a systematic schedule of supervision which stipulates the sequence and main focus of the topics more precisely to be discussed in the individual meetings of the Supervisory Board ... committees. (Code, IV.5.4)</p> <p>The chairpersons stipulate the agenda for the individual meetings of the Supervisory Board ... committees on the basis of the schedule of supervision as well as current developments. (Code, IV.5.7)</p> <p><u>Management Board Committees</u> <i>Not covered.</i></p> | <p><u>Supervisory Board Committees</u> The General Committee shall advise the Management Board and prepare the decisions to be taken by the Supervisory Board.... It discusses the strategy and planning for the Group and its business segments submitted by the Management Board on the basis of different scenarios and their feasibility.... It reviews Corporate Governance Rules and their compliance....</p> <p>The Accounts and Audit Committee ... evaluates the Auditor's reports, and reports to the Supervisory Board on its assessment of the comments in the audit report, particularly with regard to the future development of the Group. It verifies the Management Board's assumptions on the budget figures for the Group and its business segments....</p> <p>The Personnel Committee deals with the personnel issues of the Management Board.... [It] shall make recommendations with regard to the content of the employment contracts of the Management Board....</p> <p>The Nomination Committee is in charge of the composition, size and balance of the Supervisory Board and the proposals for election to the General Meeting....</p> <p>The Market- and Credit Risk Committee supervises the handling of markets risks and credit matters of the Group....</p> <p>The Mediation Committee ... delivers proposals for the appointment of Management Board members if the required two-thirds majority for the appointment or termination of Management Board members has not been achieved. (Code, III.3)</p> <p><u>Management Board Committees</u> <i>Not covered.</i></p> | <p><u>Supervisory Board Committees</u> The Supervisory Board shall set up an Audit Committee which, in particular, handles issues of accounting and risk management, the necessary independence required of the auditor, the issuing of the audit mandate to the auditor, the determination of auditing focal points and the fee agreement. The Chairman of the Audit Committee should not be a former member of the Management Board. (§V.3.2)</p> <p><u>Management Board Committees</u> <i>Not covered.</i></p> | |

| Mertzanis Report (Greece) | Federation of Greek Industries Principles (Greece) | IAIM Guidelines (Ireland) | Preda Report (Italy) |
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| 23. Committee Meeting Frequency, Length and Agenda | | | |
| <p>The Internal Audit Committee:</p> <p>§ Should be established as a sub-committee of the Board of Directors, to which it is accountable, and should inform regularly. The operation of the sub-committee should be characterized by clearly defined reference terms.... The meetings of the sub-committee should take place regularly, two or three times per year.</p> <p>§ Should include in its composition at least three non-executive members of the Board of Directors.</p> <p>§ Should communicate with the internal (independent) and external auditors of the corporation</p> <p>§ Should have the authority to inquire into all matters that fall into its domain, have the required financial resources as well as have access to all necessary information required to accomplish its tasks. The Internal Audit Committee should be able to obtain external advice and, if necessary, to invite external specialists to attend the workings of the committee.</p> <p>§ Should disclose its composition in the corporation's annual report. (Recommendation 4.7)</p> <p>The Board of Directors should make available the resources required to assist the exercise of proper and efficient internal auditing. (Recommendation 4.8)</p> <p>See Recommendation 4.9 (The members of the Board of Directors should disclose to the Internal Audit Committee all necessary information regarding the prospects of the corporation.).</p> | <p>The internal control committee, which meets at least three times per year, evaluates and exploits the findings of the control carried out by the supervisory authorities, and of the internal and external control, by Report to the full board of directors of the company. (§5.2)</p> <p>The compensation and benefit committee's task is to determine the compensation and benefits of any kind provided to the executive members of the board of directors, and to lay down a compensation and benefits policy in respect of the company's executives. (§5.3)</p> <p>The composition and operation of these committees is laid down in the internal regulation and their purpose is to support the whole board of directors in its tasks. (§5.4)</p> | <p>[The remuneration] committee should take responsibility for the framing and explanation of company share option and other long-term incentive schemes (LTISs) and is expected to:</p> <ol style="list-style-type: none"> i. select appropriate performance measures ... ; ii. satisfy itself that relevant performance measures have been fully met on a consistent basis prior to the exercise of options or other LTISs; and iii. ensure that options and other LTISs are only exercised where the company has enjoyed real long-term sustained performance improvement. (Guideline 1) <p>The remuneration committee is expected to ensure that the grant of options (or participation in the case of LTISs) be phased over the lifetime of the scheme rather than be granted in large infrequent blocks. This is to ensure that schemes relate rewards to long-term performance and to ensure that participation is available to key employees in future years. (Guideline 13)</p> <p>The remuneration committee must, prior to granting options to replace those already exercised, be satisfied that there has been a sustained improvement in the performance of the company over the 2 or 3 years preceding the further grant.... In addition, definitive performance criteria as a condition of exercise should be applied as for basic options under an executive scheme. (Guideline 16(ii))</p> | <p>The executive committee – in the person of its chairman – and the managing directors shall periodically report to the board of directors....</p> <p>The bodies with delegated powers shall also provide adequate information ... to the board of directors. They shall provide the board of directors and the board of auditors with the same information. (Code, 5)</p> <p>[The] remuneration committee ... shall submit proposals to the board on the remuneration of the managing directors and of those directors who are appointed to particular positions and, on the indication of the managing directors, on the criteria for determining the remuneration of the company's top management. (Code, 8.1; see the Report, 5.4.2)</p> <p>[T]he internal control committee shall:</p> <ol style="list-style-type: none"> a) assess the adequacy of the internal control system; b) assess the work program prepared by the persons responsible for internal control, and receive periodic reports; c) assess the proposals put forward by auditing firms to obtain the audit engagement, the work program for carrying out the audit and the results thereof as set out in the auditors' report d) report to the board of directors on its activity and the adequacy of the internal control system at least once every six months e) perform other duties entrusted to it by the board of directors, particularly as regards relations with auditing firms. <p>(Code, 10.2; see Code, 9.2 and Report, 5.4.3)</p> |

| Peters Report (The Netherlands) | VEB Recommendations (The Netherlands) | SCGOP Handbook and Guidelines (The Netherlands) | Securities Market Comm'n Recommendations (Portugal) |
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| 23. Committee Meeting Frequency, Length and Agenda | | | |
| <p><u>Supervisory Board Committees</u> The Supervisory Board or the Audit Committee should meet with the auditor at least once a year. (Recommendation 6.4)</p> <p><u>Management Board Committees</u> <i>Not covered.</i></p> | <i>Not covered.</i> | <i>Not covered.</i> | <p>As a general rule, the function of [the nomination, remuneration and corporate governance] committees should be basically informative and consultative, since they are not supposed to replace the board in decision-making but rather provide it with information, advice and proposals that may help it efficiently develop its function of supervision and increase the quality of its performance in these matters. (Commentary on Recommendation 17)</p> |

| Olivencia Report (Spain) | Swedish Shareholders Ass'n Policy (Sweden) | ICSA Code (United Kingdom) | ISC Statement of Best Practice (United Kingdom) |
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| 23. Committee Meeting Frequency, Length and Agenda | | | |
| <p>The role of the Audit Committee is basically that of evaluating the company's auditing system, ensuring that the external auditor is independent, and reviewing the internal control system. The major function of the Nomination Committee is to see to the soundness of the selection process for the company's directors and top management, seeing to it that the candidates meet the profile required for the vacant position. The basic task of the Remuneration Committee is to assist the Board in determining and supervising the remuneration policy of the company's directors and top management. The basic mission of the Compliance Committee is to watch over compliance with the company governance rules, reviewing results from time to time and reporting reform proposals to the Board. (Report, 3.6)</p> <p>[T]he Audit Committee must be entrusted with at least the following powers: (a) propose the auditors, terms and conditions of the audit agreement...; (b) review the company's accounts, watching over compliance with legal requirements and the proper application of generally accepted accounting principles...; (c) act as a communication channel between the Board of Directors and the auditors, evaluating the results of each audit and the management team's response to their recommendations, and mediate and arbitrate in the event of any disagreement regarding the appropriate principles and criteria to be used in the preparation of financial statements; (d) verify the adequacy and integrity of internal control systems and supervise the appointment and replacement of the individuals in charge; (e) supervise the fulfillment of the audit agreement, seeing to it that the opinion on the annual accounts and the main contents of the auditing report are written in a clear and accurate way. (Report, 11.1)</p> <p>[T]he Compliance Committee ... evaluat[es] the efficiency of the company's control and decision rules and watch[es] over their effective observance.... (Report, 12.2)</p> | <p>A nomination committee increases openness around the nomination of board members and individual shareholders are given a means whereby they can communicate their suggestions. (Guideline 1.2.1)</p> <p>The duties of the audit committee:</p> <p>§ to maintain contact with the auditors on an ongoing basis throughout the year, with aims that include checking that the company's internal and external auditing fulfil the requirements incumbent on a [listed] company;</p> <p>§ to discuss the scope and focus of the auditing work;</p> <p>§ to deal with any differences of opinion between the corporate leadership and the auditors;</p> <p>§ to ensure that important observations made by the auditors are brought to the attention of the whole board. (Guideline 1.2.2)</p> <p>The [remuneration] committee shall be responsible for ensuring that comprehensive agreements ... are drawn up with the managing director and other key executives. (Guideline 1.2.3)</p> <p>[T]he remuneration committee ... should both determine the salary and other conditions of employment for the managing director, and the principles for salary scales and other conditions of employment for other people involved in corporate management. (Guideline 2.4.1)</p> | <p>The board should establish written procedures for the conduct of its business which should include the matters covered in this Code. A copy of these written procedures should be given to each director. Compliance should be monitored, preferably by an audit committee of the board, and breaches of the procedures should be reported to the board. (Code, §1)</p> <p>Where the articles of association allow the board to delegate any of its powers to a committee, the board should give its prior approval to:</p> <p>§ the membership and quorum of any such committee;</p> <p>§ its term of reference; and</p> <p>§ the extent of any powers delegated to it. (Code, §11)</p> <p>The minutes of any meetings of committees of the board (or a written summary thereof) should be circulated to the board prior to its next meeting and the opportunity should be given at that meeting for any member of the board to ask questions thereon. (Code, §12)</p> | <p>All service contracts should be approved by a Compensation Committee. (p. 4)</p> <p>The [Compensation] Committee's function is to determine the salaries and emoluments packages of the executive directors. This would include salaries and also participation in share options, profit sharing and incentive remuneration schemes and all other bonuses and benefits receivable by the executive directors. Executive directors should not play any part in deciding their own compensation packages. (p. 4)</p> |

| Cadbury Report (United Kingdom) | Greenbury Report (United Kingdom) | Hampel Report (United Kingdom) | The Combined Code/Turnbull Report (United Kingdom) |
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| 23. Committee Meeting Frequency, Length and Agenda | | | |
| <p>[A] nomination committee [has] the responsibility of proposing to the board, in the first instance, any new appointments, whether of executive or of non-executive directors. (Report, 4.30)</p> <p>[Audit committees] should normally meet at least twice a year. (Report, 4.35(a))</p> <p>The audit committee's duties should be determined in the light of the company's needs but should normally include:</p> <ul style="list-style-type: none"> i. making recommendations to the board on the appointment of the external auditor, the audit fee, and any questions of resignation or dismissal; ii. review of the half-year and annual financial statements before submission to the board; iii. discussion with the external auditor about the nature and scope of the audit, co-ordination where more than one audit firm is involved, any problems or reservations arising from the audit, and any matters which the external auditor wishes to discuss, without executive board members present; iv. review of the external auditor's management letter; v. review of the company's statement on internal control systems prior to endorsement by the board; vi. review of any significant findings of internal investigations. <p>(Report, 4.35(e))</p> <p>Where an internal audit function exists, the audit committee should ensure that it is adequately resourced and has appropriate standing within the company. (Report, 4.35(f))</p> | <p>Remuneration committees should consult the Company Chairman and/or Chief Executive about their proposals and have access to professional advice inside and outside the company. (Code, A7)</p> <p>The remuneration committee should make a report each year to the shareholders on behalf of the Board. The report should form part of, or be annexed to, the company's Annual Report and Accounts. It should be the main vehicle through which the company accounts to shareholders for Directors' remuneration. (Code, B1)</p> <p>Remuneration committees must provide the packages needed to attract, retain and motivate Directors of the quality required but should avoid paying more than is necessary for this purpose. (Code, C1)</p> <p>Remuneration committees should judge where to position their company relative to other companies. (Code, C2)</p> <p>Remuneration committees should be sensitive to the wider scene, including pay and employment conditions elsewhere in the company, especially when determining annual salary increases. (Code, C3)</p> <p>Remuneration committees' first concern should be with the remuneration of the Executive Directors. However, their remit may need to extend to other senior executives in the company even if they are not formally Executive Directors. (Commentary on Remuneration Committees, 4.5)</p> <p><i>See Code, C5 – C12 (additional remuneration committee tasks and matters for consideration).</i></p> <p><i>See also Code, D1 – D6 (Directors' service contracts and compensation).</i></p> <p><i>See also Commentary on Remuneration Committees, 4.4 (terms of reference for remuneration committees).</i></p> | <p><i>See Topic Heading 22, above.</i></p> | <p>The remuneration committee should provide the packages needed to attract, retain and motivate executive directors of the quality required, but should avoid paying more than necessary for this purpose. (Code § 1, B.1.1)</p> <p>Remuneration committees should judge where to position their company relative to other companies. They should be aware what comparable companies are paying and should take account of relative performance. (Code § 1, B.1.2)</p> <p>Remuneration committees should be sensitive to the wider scene, including pay and employment conditions elsewhere in the group, especially when determining annual salary increases. (Code § 1, B.1.3.)</p> <p>To avoid potential conflicts of interest, boards of directors should set up remuneration committees of independent non-executive directors to make recommendations to the board, within agreed terms of reference, on the company's framework of executive remuneration and its cost; and to determine on their behalf specific remuneration packages for each of the executive directors, including pension rights and any compensation payments. (Code § 1, B.2.1)</p> <p>The duties of the audit committee should include keeping under review the scope and results of the audit and its cost effectiveness and the independence and objectivity of the auditors. (Code § 1, D.3.2)</p> |

| NAPF Corporate Governance Code (United Kingdom) | AUTIF Code (United Kingdom) | Hermes Statement (United Kingdom) | PIRC Shareholder Voting Guidelines (United Kingdom) |
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| 23. Committee Meeting Frequency, Length and Agenda | | | |
| <p>Remuneration committees must set, and take responsibility for, reward levels. Guidance from institutional shareholders can only be general in nature and should be so regarded by companies.</p> <p>Remuneration committees should be sensitive to the wider scene, including pay and employment conditions elsewhere in the group, especially when determining annual salary increases. (§9(ii))</p> <p>The audit committee is responsible for ensuring that management applies financial reporting and internal control principles. The committee must maintain an appropriate relationship with the company's auditors. This will include reviewing the scope and results of the audit, its cost-effectiveness and the independence and objectivity of the auditors. (§12)</p> | <p><i>Not covered directly, but see</i> Guidance Note on Key Principle 6 (Companies listed on the London Stock Exchange are required, as a continuing obligation of listing, to make two disclosure statements. Firstly, they must report on how they apply the principles in the Combined Code on Corporate Governance.... Secondly, listed companies are also required to confirm that they comply with the Code provisions or – where they do not – to provide an explanation.).</p> | <p>Remuneration committees of independent NEDs are best placed to decide the remuneration packages necessary to recruit, retain and motivate executives. They should take professional advice as necessary. Where independent advisers are appointed, they should be responsible to the remuneration committee and not the company EDs. (APPENDIX 1.1.2)</p> <p>The nomination committee should be formally constituted as a sub-committee of the main board, to whom it is answerable and to whom it should report. It should be given written terms of reference which deal adequately with its membership, authority and duties. (APPENDIX 3.3)</p> <p>Remuneration committees should explain proposed schemes clearly to shareholders, justifying the structure of the scheme and the relevance of the performance criteria chosen. (APPENDIX 3.4)</p> <p>Hermes recommends that the nomination committee be responsible, after consultation with other directors, for finalizing the candidate specification for all board appointments and for approving the process by which suitable candidates are identified and short listed, including choosing a third-party advisor where appropriate. (APPENDIX 3.5)</p> <p>The nomination committee should ensure that all board appointments undergo an appropriate induction program. (APPENDIX 3.6)</p> | <p>All companies, including those with small boards, should establish nomination committees with clear terms of reference. Shareholders need to have confidence in the independence and transparency of the appointments process which results in proposals to nominate or re-elect directors to the board. Appointments should be demonstrably made on merit alone. The directors should make a clear statement regarding these processes. (Part 2: Directors, pp. 6-7)</p> <p>[A]n audit committee [reviews] the financial statements provided to the auditors and [provides] an opportunity for the auditors to meet privately over issues of concern. (Part 4, Audit and Reporting, p. 12)</p> <p>Appointments of all directors, whether executive or non-executive, should be handled by the nomination committee. (Part 2: Directors, p. 6)</p> |

| OECD Principles/Millstein Report (International) | ICGN Statement/Global Voting Principles (International) | Euroshareholders Guidelines (Pan-European) | EASD Principles and Recommendations (Pan-European) |
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| 24. Assignment and Rotation of Committee Members | | | |
| <p>Boards should consider assigning a sufficient number of non-executive board members capable of exercising independent judgement to tasks where there is a potential for conflict of interest. Examples of such key responsibilities are financial reporting, nomination and executive board remuneration. (OECD Principle V.E.1)</p> <p><i>See</i> OECD Principle V.E Annotation at 41-42 ([Independent board members] can play an important role in areas where the interests of management, the company and shareholders may diverge, such as executive remuneration, succession planning, changes of corporate control, takeover defenses, large acquisitions and the audit function.).</p> <p><i>See also</i> Topic Heading 22, <i>above</i>.</p> | <p>Responsibilities [of independent non-executive directors] should include ... staffing key committees of the board. (ICGN Amplified OECD Principle V at 9)</p> <p><i>See</i> OECD Principle V.E Annotation at 41-42 ([Independent board members] can play an important role in areas where the interests of management, the company and shareholders may diverge, such as executive remuneration, succession planning, changes of corporate control, takeover defenses, large acquisitions and the audit function.).</p> | <p><i>Not covered.</i></p> | <p><i>Not covered.</i></p> |

| Recommendations of Federation of Companies (Belgium) | Dual Code of the BXS/CBF (Belgium) | The Director's Charter (FDA) (Belgium) | (Reserved) |
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| 24. Assignment and Rotation of Committee Members | | | |
| <p>If there is an appointments committee, it should be composed mostly of non-executive directors and chaired by the Chairman of the Board of Directors or by a non-executive director. The appointments committee should make proposals to the Board of Directors, on the one hand for the appointment of non-executive directors, and on the other hand for appointments to certain key posts. (Note to 2.3)</p> | <p><i>Not covered directly, but see Topic Heading 19, above, and Topic Heading 21, below.</i></p> | <p><i>Not covered.</i></p> | |

| Danish Shareholders Ass'n Guidelines (Denmark) | Nørby Report & Recommendations (Denmark) | Chamber of Commerce/Confederation Code (Finland) | Ministry of Trade & Industry Guidelines (Finland) |
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| 24. Assignment and Rotation of Committee Members | | | |
| <i>Not covered.</i> | <i>Not covered.</i> | <p><i>Not covered directly, but see</i> English Summary, 1 (The company shall confirm in writing the duties of the administrative bodies and their individual members, if they are assigned special duties and areas of responsibility supplementing those in the applicable legislation. . . .</p> <p>The duties and areas of responsibility of the administrative bodies and their members have to be explained in the Annual Report and in the Listing Particulars, when they have been assigned special duties supplementing the applicable legislation. With regard to individual members of the Board of Directors, the information has to be given when they are employed by the company. An account shall further be given on the order in which the duties and areas of responsibility of the members of the Board of Directors have been confirmed.).</p> | [T]he forming of working groups (“committees”) from the external members should be discussed at least by the Boards of Directors of listed companies. (2.2.1) |

| Viénot I Report (France) | Hellebuyck Commission Recommendations (France) | Viénot II Report (France) | (Reserved) |
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| 24. Assignment and Rotation of Committee Members | | | |
| <p>[T]he Committee advises boards against appointing directors to their remunerations or audit committees when these directors represent another company where its own representatives are members of the equivalent committees. (p. 14)</p> <p>[T]he Committee recommends that boards avoid appointing directors to their remunerations committee when these directors represent another company whose own representatives are members of the equivalent committee. (p. 18)</p> | <p>It is recommended that [committees] shall comprise independent directors up to one-third of their members and in the majority in the compensation and performance committee.</p> <p>Company executives or employees should not be members of the compensation and performance committee or of the audit committee. (§ II.b.2)</p> | <p><i>Not covered.</i></p> | |

| Berlin Initiative Code (Germany) | German Panel Rules (Germany) | Cromme Commission Code (Germany) | (Reserved) |
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| 24. Assignment and Rotation of Committee Members | | | |
| <i>Not covered.</i> | <p><u>Supervisory Board Committees</u> With regard to the composition of [Supervisory Board] committees, the Supervisory Board shall ensure the requisite professional experience. (Code, III.3)</p> <p><u>Management Board Committees</u> <i>Not covered.</i></p> | <p><u>Supervisory Board Committees</u> The Chairman of the Supervisory Board shall also chair the committees that handle contracts with members of the Management Board and prepare the Supervisory Board meetings. He should not be Chairman of the Audit Committee. (§V.2)</p> <p>The Chairman of the Audit Committee should not be a former member of the Management Board. (§V.3.2)</p> <p><u>Management Board Committees</u> <i>Not covered.</i></p> | |

| Mertzanis Report (Greece) | Federation of Greek Industries Principles (Greece) | IAIM Guidelines (Ireland) | Preda Report (Italy) |
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| 24. Assignment and Rotation of Committee Members | | | |
| <i>Not covered.</i> | <p><i>Not covered directly, but see §2.1 (The board of directors of a company listed on the Athens Stock Exchange must include a number of members necessary to ensure ... the allocation, to certain of these members, of tasks resulting from the necessity to ensure proper corporate governance.).</i></p> <p><i>See also §2.2 (Non-executive members form the majority in the board member committees....).</i></p> | <i>Not covered.</i> | <p>The managing directors shall ... appoint one or more persons to run [the internal control committee]. (Code, 9.1)</p> <p>[P]rovision [is] made for the possible participation at meetings of the [internal control] committee of the chairman of the board of auditors, as the representative of the control body provided for in the by-laws. The managing directors may also participate in the internal control committee, since they are empowered to intervene in the matters examined and to identify adequate measures to tackle potentially critical situations. (Commentary on Code, 10)</p> |

| Peters Report (The Netherlands) | VEB Recommendations (The Netherlands) | SCGOP Handbook and Guidelines (The Netherlands) | Securities Market Comm'n Recommendations (Portugal) |
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| 24. Assignment and Rotation of Committee Members | | | |
| <i>Not covered.</i> | <i>Not covered.</i> | <i>Not covered.</i> | <i>Not covered directly, but see Commentary on Recommendation 17 ([T]he members of each committee [need not] be different; however, it is not recommended to unite all responsibilities into one single committee, because of the risk of reducing its efficiency due to an excess of work and concentration of powers.).</i> |

| Olivencia Report (Spain) | Swedish Shareholders Ass'n Policy (Sweden) | ICSA Code (United Kingdom) | ISC Statement of Best Practice (United Kingdom) |
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| 24. Assignment and Rotation of Committee Members | | | |
| <p>[I]t seems wise to entrust [the nomination committee] with ... propos[ing] which directors should be in each Committee. (Report, 5.1)</p> <p>[T]he Committee ... specifically suggests the possibility of creating internal rotation guidelines for independent directors regarding their assignment to specific control tasks. It is basically a question of avoiding their permanent attachment to the same Control Committee. (Report, 5.4)</p> | <p><i>Not covered.</i></p> | <p><i>Not covered directly, but see Code, §11 (Where the articles of association allow the board to delegate any of its powers to a committee, the board should give its prior approval to:</i></p> <ul style="list-style-type: none"> § the membership and quorum of any such committee; § its term of reference; and § the extent of any powers delegated to it.) | <p><i>Not covered.</i></p> |

| Cadbury Report (United Kingdom) | Greenbury Report (United Kingdom) | Hampel Report (United Kingdom) | The Combined Code/Turnbull Report (United Kingdom) |
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| 24. Assignment and Rotation of Committee Members | | | |
| <i>Not covered.</i> | <p>It is sometimes suggested that remuneration committees should include one or more independent members not associated with the company's Board or management. In our view, this would be wrong. The Board must be responsible for all aspects of a company's affairs. (Commentary on Remuneration Committees, Membership and Qualifications, 4.10)</p> <p>The remuneration committee should consist exclusively of Non-Executive Directors with relevant experience who:</p> <ul style="list-style-type: none"> § have no personal financial interest, other than as shareholders, in the committee's decisions; § have no "cross-directorships" with the Executive Directors which could be thought to offer scope for mutual agreements to bid up each others' remuneration; § have a good knowledge of the company and its Executive Directors, a keen interest in its progress and a full understanding of shareholders' concerns; and § have a good understanding, enhanced as necessary by appropriate training or access to expert advice, of the areas of remuneration committee business. <p>(Commentary on Remuneration Committees, Membership and Qualifications, 4.8)</p> <p>Executive Directors should not be members of the remuneration committee. (Commentary on Remuneration Committees, Membership and Qualifications, 4.14)</p> | <i>Not covered.</i> | <i>Not covered.</i> |

| NAPF Corporate Governance Code (United Kingdom) | AUTIF Code (United Kingdom) | Hermes Statement (United Kingdom) | PIRC Shareholder Voting Guidelines (United Kingdom) |
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| 24. Assignment and Rotation of Committee Members | | | |
| | <i>Not covered.</i> | <p>The senior NED should chair some (or all) of the board subcommittees. Where the board chairman either combines the role of chairman and chief executive, or has at any time been an executive director of the company, then the senior NED might chair both the nomination committee and the remuneration committee. (APPENDIX 2.1)</p> <p>The chairman of the company and the senior independent NED should always be members of the [nomination] committee. (APPENDIX 3.2)</p> <p>The chairman of the remuneration committee should normally be a fully independent NED. (APPENDIX 3.4)</p> | <i>Not covered.</i> |

| OECD Principles/Millstein Report (International) | ICGN Statement/Global Voting Principles (International) | Euroshareholders Guidelines (Pan-European) | EASD Principles and Recommendations (Pan-European) |
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| 25. Formal Evaluation of the Chief Executive Officer | | | |
| <p><i>Not covered directly, but see</i> OECD Principle V.D.2 (The board should fulfil certain key functions, including ... [s]electing, compensating, monitoring and, when necessary, replacing key executives.).</p> <p><i>See also</i> OECD Principle V.E Annotation at 41 ([Independent board members] can bring an objective view to the evaluation of the performance of ... management.).</p> | <p><i>Not covered directly, but see</i> OECD Principle V.D.2 (The board should fulfil certain key functions, including ... [s]electing, compensating, monitoring and, when necessary, replacing key executives.).</p> <p><i>See also</i> OECD Principle V.E Annotation at 41 ([Independent board members] can bring an objective view to the evaluation of the performance of ... management.).</p> | <p><i>Not covered directly, but see</i> Commentary on Recommendations 10(a) and 10(b) (Non-executive members of the board, as well as – in a two-tier structure – members of the supervisory board, are concerned with the supervision of management policy and the general state of affairs in the company. Their main tasks are (in order of importance):</p> <ul style="list-style-type: none"> § to control and supervise the executive board members [and] § to ensure the good quality of the executive board.). | <p><i>Not covered directly, but see</i> Recommendation VII.6 (Evaluation and review procedures of management performance should be established, and their existence disclosed.).</p> <p><i>See also</i> Recommendation IX.6.b (Outside business activities of executives should be reported to and, if significant, approved by the board.).</p> |

| Recommendations of Federation of Companies (Belgium) | Dual Code of the BXS/CBF (Belgium) | The Director's Charter (FDA) (Belgium) | (Reserved) |
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| 25. Formal Evaluation of the Chief Executive Officer | | | |
| <p><i>Not covered directly, but see 2.1 (A recommendation from [the non-executive directors] is required for appointments to certain key posts and for the standards of conduct which the company imposes on itself.).</i></p> | <p><i>Not covered.</i></p> | <p><i>Not covered directly, but see p. 4 (The Director undertakes to verify that the powers and responsibilities of ... Management are clearly established, and specifically that the powers of management accorded to the Management are clearly defined.</i></p> <p><i>The Director undertakes to verify that the Board effectively controls ... the activity of Management. In particular, the Director will be attentive ... [t]hat the Management cooperate fully and without reticence in regards to the Board's goal of control.).</i></p> <p><i>See also p. 5 (The Director undertakes to see to it that the company's Management is aware of the interests, views, and expectations of its partners [<u>i.e.</u>, stakeholders]; that procedures are implemented to manage these relationships, and that proper and periodic communication is exchanged with these partners.).</i></p> | |

| Danish Shareholders Ass'n Guidelines (Denmark) | Nørby Report & Recommendations (Denmark) | Chamber of Commerce/Confederation Code (Finland) | Ministry of Trade & Industry Guidelines (Finland) |
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| 25. Formal Evaluation of the Chief Executive Officer | | | |
| <p><i>Not covered directly, but see Topic Heading 26, below.</i></p> | <p><i>Not covered directly, but see V.11 (It is recommended that the board evaluates the management's work and results according to already established explicit criteria once a year.).</i></p> <p><i>See also V.12 (It is recommended that the management and the board establish a procedure by which the collaboration between the board and the management is assessed in an annual meeting between the managing director and the chairman of the board. The result of the assessment should be presented to the entire board.).</i></p> | <p><i>Not covered directly, but see English Summary, 2 (The Board of Directors of the company shall define the central terms of the employment relationship of the Managing Director in a Managing Director Agreement, which shall be approved by the body appointing the Managing Director.).</i></p> | <p><i>Not covered.</i></p> |

| Viénot I Report (France) | Hellebuyck Commission Recommendations (France) | Viénot II Report (France) | (Reserved) |
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| 25. Formal Evaluation of the Chief Executive Officer | | | |
| <i>Not covered directly, but see p. 15 (The appointment of the chairman ... is the sole responsibility of the board.).</i> | <i>Not covered directly, but see Topic Heading 26, below.</i> | <i>Not covered.</i> | |

| Berlin Initiative Code (Germany) | German Panel Rules (Germany) | Cromme Commission Code (Germany) | (Reserved) |
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| 25. Formal Evaluation of the Chief Executive Officer | | | |
| <p>Regular evaluation promotes continuous improvement in the corporate governance of a company. (Thesis 10)</p> <p>The individual performance of ... the Chairman of the Management Board is ... to be systematically evaluated annually by the personnel committee. In this, the target-orientated development of the company and the individual contributions made [by the Chairman] provide the scale for making the assessment. (Code, II.1.10)</p> <p>See Code, III.3.3 (The Chairman of the Management Board ... is <u>primus inter pares</u> (and not “CEO”). In particular, he does not have right of command over the other members of the Management Board.).</p> | <p><i>Not covered directly, but see Code, III.3 ([C]ompensation elements shall be determined by systematic performance evaluation of the individual Management Board members [by the Supervisory Board’s personnel committee].).</i></p> | <p><i>Not covered directly, but see §IV.2.2 (Compensation of the members of the Management Board is determined by the Supervisory Board ... on the basis of a performance assessment.).</i></p> <p><i>See also §V.1.1 (The Supervisory Board appoints and dismisses the members of the Management Board.).</i></p> <p><i>See also §V.1.3 (The Supervisory Board shall issue Terms of Reference.).</i></p> <p><i>See also Topic Heading 16, above.</i></p> | |

| Mertzanis Report (Greece) | Federation of Greek Industries Principles (Greece) | IAIM Guidelines (Ireland) | Preda Report (Italy) |
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| 25. Formal Evaluation of the Chief Executive Officer | | | |
| <p>Shareholders should have the right to ... approval of the ... chief executive officer (CEO) [and] his/her duties ..., following the recommendations of the Board of Directors. (Recommendation 1.2.6)</p> <p>See Recommendation 5.1 ([T]he Board should ... monitor continuously the corporation's executive management.).</p> <p>See also Recommendation 5.3.3 (The Board of Directors has the responsibility ... for ... [t]he selection, appointment and monitoring of executive management ... by taking account of the corporation's interests, as well as the executive management's dismissal and replacement.).</p> | <p><i>Not covered directly, but see §3.2(b) (The Internal Operation Regulation must cover ... procedures for the engagement of management executives and their evaluation in the exercise of their duties.).</i></p> | <p>[The remuneration committee] is expected to select appropriate performance measures [for evaluating and remunerating the CEO and other executive directors, and] satisfy itself that relevant performance measures have been fully met. (Guideline 1)</p> <p>See Guideline 2 (All share option and other LTISs should require the satisfaction of measurement criteria which are based on sustained and significant improvement in the underlying financial performance of the company.).</p> <p>See also Guidelines, Appendix 1 (The responsibility for setting performance criteria to be used as the basis on which share option and other long-term LTISs are exercisable is a matter for the remuneration committee.).</p> | <p><i>Not covered directly, but see Code, 8.1 (The [remuneration] committee ... shall submit proposals to the board ... on criteria for determining the remuneration of the company's top management.).</i></p> <p>See also Code, 8.2 ([I]n determining the total remuneration payable to the managing directors, the board of directors shall provide for a part to be linked to the company's profitability and, possibly, to the achievement of specific objectives laid down in advance by the board of directors itself.).</p> |

| Peters Report (The Netherlands) | VEB Recommendations (The Netherlands) | SCGOP Handbook and Guidelines (The Netherlands) | Securities Market Comm'n Recommendations (Portugal) |
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| 25. Formal Evaluation of the Chief Executive Officer | | | |
| <i>Not covered.</i> | <p>Shareholders should be able to file a resolution for dismissal of a member of the executive board. Adoption of this resolution requires at least two-thirds support and a quorum of fifty percent. (Recommendation 7)</p> <p><i>See</i> Commentary on Recommendation 7 (The possibility of dismissal will be used rarely but does offer sanctions when members of the supervisory board fail to replace dysfunctional management.).</p> | <i>Not covered directly, but see</i> Topic Heading 26, <i>below.</i> | <i>Not covered directly, but see</i> Recommendation 2 (Information should be disclosed on the actual functions of each member of the board of directors and executive management of the company....). |

| Olivencia Report (Spain) | Swedish Shareholders Ass'n Policy (Sweden) | ICSA Code (United Kingdom) | ISC Statement of Best Practice (United Kingdom) |
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| 25. Formal Evaluation of the Chief Executive Officer | | | |
| <p>[I]t seems wise to complement these measures [counterbalancing the power of a combined CEO/Chairman] with an evaluation of the Chairman's performance once a year – as Chairman and as corporate CEO. (Report, 3.2)</p> | <p><i>Not covered directly, but see</i> Guideline 2.4.3 (If the company's board wishes to give notice to a managing director on account of unsatisfactory performance, serious differences of opinion, changed ownership structure, or the like, the managing director should receive severance payment that normally does not exceed two years' basic salary, including salary under notice. The severance pay should not include any bonus. There can be what is known as a settlement procedure, but this should not be used during the first twelve months after notice has been given. Severance pay shall not be paid if the managing director resigns on his own initiative or has seriously mismanaged his assignment.).</p> | <p><i>Not covered.</i></p> | <p>The Board has the power to appoint, monitor the performance of and, if necessary, dismiss the Chief Executive. (p. 2)</p> <p>[T]he importance of non-executive directors has become evident, particularly in matters concerning ... remuneration of the senior management.... (p. 2)</p> |

| Cadbury Report (United Kingdom) | Greenbury Report (United Kingdom) | Hampel Report (United Kingdom) | The Combined Code/Turnbull Report (United Kingdom) |
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| 25. Formal Evaluation of the Chief Executive Officer | | | |
| <i>Not covered directly, but see Report, 4.4 & 4.5 (noting the important contributions non-executive directors have in reviewing the performance of the board and of the CEO).</i> | The [remuneration] committee may wish to consult the other Non-Executive Directors in its evaluation of the Chief Executive. (Commentary on Remuneration Committees, Membership and Qualifications, 4.14) | <i>Not covered.</i> | <i>Not covered.</i> |

| NAPF Corporate Governance Code (United Kingdom) | AUTIF Code (United Kingdom) | Hermes Statement (United Kingdom) | PIRC Shareholder Voting Guidelines (United Kingdom) |
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| 25. Formal Evaluation of the Chief Executive Officer | | | |
| <p><i>Not covered directly, but see Topic Heading 7, above, and Topic Heading 26, below.</i></p> | <p><i>Not covered.</i></p> | <p>The senior NED should be responsible for completing a periodic performance appraisal of the company chairman. (APPENDIX 2.4)</p> <p><i>See 8.2 (Management contracts should have notice periods of no more than one year.).</i></p> | <p><i>Not covered directly, but see Part 2: Directors, p. 4 ([T]he board’s role [is] holding the executive management accountable.).</i></p> <p><i>See also Part 2, Directors, p. 6 (Former chief executives should not be appointed as chairmen (whether executive or non-executive) as this may also inhibit an objective assessment of the executive management...)</i></p> <p><i>[T]he board’s function of holding the executive management accountable will be impeded if a majority of the board are executives. In order that the board is able to fulfill its primary roles of leading the company and holding executive management accountable, we consider it best practice that a clear majority of the directors are non-executive.).</i></p> <p><i>See also Topic Heading 26, below.</i></p> |

| OECD Principles/Millstein Report (International) | ICGN Statement/Global Voting Principles (International) | Euroshareholders Guidelines (Pan-European) | EASD Principles and Recommendations (Pan-European) |
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| 26. Executive Compensation | | | |
| <p>The board should fulfil certain key functions, including ... [r]eviewing key executive ... remuneration. (OECD Principle V.D.3)</p> <p>[Independent board members] can play an important role in areas where the interest of management, the company and shareholders may diverge, such as executive remuneration. (OECD Principle V.E Annotation at 41-42)</p> <p>See OECD Principle IV.A.4 (Disclosure should include, but not be limited to, material information on ... key executives, and their remuneration.).</p> | <p>Remuneration of ... key executives should be aligned with the interests of shareholders. (ICGN Statement 5 at 4; ICGN Amplified OECD Principle IV at 8)</p> <p><i>The ICGN Statement adopts OECD Principle V.D.3 (The board should fulfil certain key functions, including ... [r]eviewing key executive ... remuneration.).</i></p> <p><i>See OECD Principle V.E Annotation at 41-42 ([Independent board members] can play an important role in areas where the interest of management, the company and shareholders may diverge, such as executive remuneration.).</i></p> <p><i>See also OECD Principle IV.A.4 (Disclosure should include, but not be limited to, material information on ... key executives and their remuneration.).</i></p> | <p>The payment of executive directors can to some extent be flexible – related to the company’s profitability – but shall not exceed double the fixed payment. (Commentary on Recommendations 10(a) and 10(b))</p> | <p>[Management’s] incentives should, as far as possible, be aligned with those of the company and its shareholders as a whole. (Principle VII)</p> <p>Appointment and remuneration of executives should be determined in accordance with the principles and policies defined by the board and its relevant committee, which should strive to align executives’ interest with those of the company and its shareholders as a whole. (Recommendation VII.5.a)</p> |

| Recommendations of Federation of Companies (Belgium) | Dual Code of the BXS/CBF (Belgium) | The Director's Charter (FDA) (Belgium) | (Reserved) |
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| 26. Executive Compensation | | | |
| <p>[T]he remuneration of executive directors should be submitted to [the remuneration] committee for an opinion.</p> <p>If there is no remuneration committee, the remuneration of executive directors should be submitted to the non-executive directors.). (3.1)</p> | <p>The Belgian Commission on Corporate Governance regards it as good practice for part of the executive management's pay to be related to the company's performance and/or value. (Part I: B.3.1)</p> <p>The executive management's pay should be subject to the recommendations of a remuneration committee, where such exists, made up of a majority of non-executive directors. In case no remuneration committee is created, the board of directors should decide on the principles of the remuneration of the executive management, in the absence of the executive directors. (Part I: B.3.2)</p> | <p><i>Not covered.</i></p> | |

| Danish Shareholders Ass'n Guidelines (Denmark) | Nørby Report & Recommendations (Denmark) | Chamber of Commerce/Confederation Code (Finland) | Ministry of Trade & Industry Guidelines (Finland) |
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| 26. Executive Compensation | | | |
| <p>The board or a special committee should decide upon the remuneration of company [executives]. (II. Governance)</p> <p>The remuneration of [executives] and board members should, to a reasonable extent, depend on the company's profitability and share price development. (II. Governance)</p> <p>[Executives'] dismissal compensation should normally not exceed 2 years payment. The compensation should not be paid if the [executive] severely mismanages his/her job, or if he/she resigns on his/her own initiative. The dismissal compensation should not include any kind of bonuses. (II. Governance)</p> <p>Motivating programmes are seen as positive – providing they are reasonable in scope. (III. Motivating Programmes)</p> | <p>A competitive remuneration is a prerequisite for attracting and keeping competent ... managers. The remuneration to ... the managers should be reasonable in connection with the assigned tasks and the responsibilities which are connected with solving these tasks. (VI)</p> <p>The board establishes the principles and the guidelines for the preparation of any incentive schemes for the company's managers.... It is recommended that the total remuneration is competitive and reasonable and that it reflects how the managers ... have performed independently, as well as how much value they have created for the company. Likewise, incentive schemes should reflect the interests of the shareholders and the company, be adjusted to the company's specific circumstances and be reasonable in relation to the tasks and the responsibilities of the managers....</p> <p>If the remuneration for the managers consists of share or subscription options, we recommend that the schemes are set up as roll-over schemes (<u>i.e.</u> the options are allocated and expire over a number of years) and that the redemption price is higher than the market price at the time of the allocation. Moreover, the schemes should be set up in a way that promotes long-term behaviour and they should be transparent, as well as clearly understandable to outsiders. (VI.1)</p> <p>It is recommended that any redundancy schemes for a manager be reasonable and reflect the results the individual manager has achieved, the cause of the resignation and the manager's responsibilities, as well as the remuneration which the manager in question has received. (VI.3)</p> | <p>The company shall determine the general principles that will be complied with when deciding on the salaries and other privileges of the top management. If a member of the Board of Directors is, in addition to the fee for his membership in the Board of Directors, paid another fee on another basis, the Board of Directors shall always be informed thereof. Information regarding the payment of such fees shall have to be notified in the Annual Report and in the Listing Particulars. (English Summary, 6)</p> | <p>In order to make known by the interest groups the bonuses whereby the Board of Directors works for increasing value-added, the annual report should include ... [i]nformation on the principles followed when deciding on the salaries and other bonuses of the company management. (2.2.2)</p> <p><i>See 2.2.1</i> (In smaller companies, [the independence of the Board's decision-making] can be arranged by handling certain issues without the presence of the members of the Board of Directors that belong to the hired top management of the company. Such issues [include] determining the salaries and other bonuses [of management].).</p> |

| Viénot I Report (France) | Hellebuyck Commission Recommendations (France) | Viénot II Report (France) | (Reserved) |
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| 26. Executive Compensation | | | |
| <p>Most boards already have a committee charged with recommending remuneration levels for corporate officers, including in some cases stock option plans, although these may be the responsibility of a separate committee. (p. 18)</p> | <p>Executive compensation and its adjustment up or down should be tied to the performance of the company and the value of the company's share. (§ II.C.1)</p> <p>The board should deliberate on executive compensation and should publish its method of calculation and the existence, if any, of stock options. (§ II.C.2)</p> <p>AFG-ASFFI considers that the number, exercise price and duration of stock options held by ... the company's ten most highly compensated persons exercising management functions shall be the subject of particular individual information....</p> <p>AFG-ASFFI is in favor of stock options without discount. (§ II.C.3)</p> <p>The Commission is opposed to severance payments that are not a function of the individual's time of service or of his compensation and of the company's intrinsic value during his period of service. (§ II.C.4)</p> | <p>The Committee recommends that with assistance from the Compensation Committee.... the Board of Directors of any listed corporation should [disclose] to the Shareholders ... the compensation collected by the corporate officers. (p.11)</p> <p>Compensation means the direct or indirect compensation of any kind by all the French and foreign companies consolidated, including those consolidated by the equity method, in the group's accounts. (p.12)</p> | |

| Berlin Initiative Code (Germany) | German Panel Rules (Germany) | Cromme Commission Code (Germany) | (Reserved) |
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| 26. Executive Compensation | | | |
| <p><i>Not covered directly, but see Topic Heading 16, above.</i></p> | <p>The remuneration of ... Executive Staff shall include sufficient motivation to ensure long-term corporate value creation. This includes share option programs and performance-related incentives related to the share price development and the continuing success of the Company. In connection with the granting of share options and similar rights to ... the executive staff ... [t]he exercise of the rights arising from share option programs shall not be possible before three (but in no case earlier than two) years since the grant. To document the incentive character as well as to balance the surrender of the subscription right by the shareholders, the exercise shall depend on achieving or exceeding relevant and transparent benchmarks (e.g., the development of an industry index). (Code, II.3.a)</p> <p><i>See Code, II.4(h) (The purchase and sale of Company shares, options or other share derivatives by ... senior Group executives are subject to special rules.).</i></p> <p><i>See also Topic Heading 16, above.</i></p> | <p><i>Not covered directly, but see Topic Heading 16, above.</i></p> | |

| Mertzanis Report (Greece) | Federation of Greek Industries Principles (Greece) | IAIM Guidelines (Ireland) | Preda Report (Italy) |
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| 26. Executive Compensation | | | |
| <p>Shareholders should have the right to ... the approval of the ... chief executive officer (CEO) [and] his/her ... compensation, following the recommendations of the Board of Directors. (Recommendation 1.2.6)</p> <p>The Board of Directors has the responsibility ... for ... [t]he selection, appointment and monitoring of executive management and the determination of their compensation. (Recommendation 5.3.3)</p> <p>It is good practice that management compensation be tied to the corporation's general level of profitability and overall performance.... It is a good practice that concrete determination procedures be adopted for management compensation. (Recommendation 7.1)</p> <p>It is a good practice that a review committee, consisting of the majority of non-executive Board members, be established by the general shareholder meeting, which would review management compensation. (Recommendation 7.2)</p> | <p><i>Not covered directly, but see §5.3 (The compensation and benefit committee's task is to determine the compensation and benefits of any kind provided to the executive members of the board of directors, and to lay down a compensation and benefits policy in respect of the company's executives.).</i></p> | <p>The IAIM recognizes the benefits of share option and other incentive schemes in aligning the interests of participants in such schemes with those of shareholders and in focusing attention on long-term growth in shareholder value. (Introduction, 2)</p> <p>In voting in favour of share option and other incentive schemes, institutional shareholders have a responsibility to ensure that, in return, enhanced performance is achieved, giving an enhanced return to their clients. The extent of enhanced performance will vary with the level of equity or economic dilution involved in schemes. (Introduction, 3)</p> <p>Over a period of 10 years, no more than 10% of issued ordinary share capital ... should be utilized for share options, LTIS, PSS and SAYE [schemes] of all kinds. (Guideline 5)</p> <p>In acknowledging a trend to wider share ownership, it is emphasized that part or all of the 10% of issued ordinary share capital available under Guideline 5 is available for broadly based employee share schemes meeting the requirements set out in these Guidelines. In addition, over a period of 10 years, a further amount of up to a total of 5% of issued ordinary share capital ... may, following approval by the IAIM, be used for broadly based employee share schemes of all kinds. The Guidelines governing the applicability of this principle are set out below under the headings of Profit Sharing Schemes, Save As You Earn Schemes and ESOPs. (Introduction to Employee-Wide Share Schemes)</p> | <p>The board of directors shall ... determine, after examining the proposal of the special committee and consulting the board of auditors, the remuneration of the managing directors and of those directors who are appointed to particular positions within the company and, where the shareholders' meeting has not already done so, allocate the total amount to which the members of the board and of the executive committee are entitled. (Code, 1.2.c)</p> <p>The [remuneration] committee ... shall submit proposals to the board on the remuneration of the managing directors and of those directors who are appointed to particular positions and, on the indication of the managing directors, on the criteria for determining the remuneration of the company's top management. (Code, 8.1)</p> <p>As a general rule, in determining the total remuneration payable to the managing directors, the board of directors shall provide for a part to be linked to the company's profitability and, possibly, to the achievement of specific objectives laid down in advance by the board of directors itself. (Code, 8.2)</p> <p>The Committee believes that the appropriate structuring of the total remuneration of managing directors is one of the main means of aligning their interests with those of the shareholders and that systems of variable remuneration linked to results ... make it easier to motivate the entire top management. (Commentary on Code, 8; see Report, 5.4.2)</p> <p>It is important that remuneration packages should be able to attract and motivate persons with adequate experience and ability ... for top management positions. (Report, 5.4.2)</p> |

| Peters Report (The Netherlands) | VEB Recommendations (The Netherlands) | SCGOP Handbook and Guidelines (The Netherlands) | Securities Market Comm'n Recommendations (Portugal) |
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| 26. Executive Compensation | | | |
| <p>An employee stock option plan serves to strengthen involvement in the company over the long-term (at least 3 years). The employee stock option is a form of remuneration which should be related to the degree of success of the efforts made by the person concerned to enhance the market value of the company. This should be reflected in the conditions on which the stock options are granted. (Recommendation 4.6)</p> <p>Members of the [Management Board] should not in any way derive personal gain from the company's activities other than via the agreed remuneration or through capital growth and dividends resulting from their holding of securities and related instruments. This means that, to prevent every semblance of misuse, they should accept limitations on their freedom of action with regard to their private property, in the form of both shares in the company and related instruments, as well as limitations on the acceptance of additional posts. (Recommendation 4.7)</p> | <p>Stock option plans should be described in a separate document and should be approved by shareholders. (Recommendation 9)</p> <p>Unrestricted stock option plans leave room for excessive rewards and dilution of earnings per share. (Commentary on Recommendation 9)</p> | <p>Shareholders at the general meeting must approve option scheme plans in advance. This is to create a clear relationship between achieving strategic goals and rewards in the form of options. (Guideline 14)</p> <p><i>See</i> Guideline 15 (Dilution of earnings per share must be avoided as much as possible in the design of options plans. If this cannot be avoided, the company should strive to be as transparent as possible in explaining dilution aspects.).</p> | <p>The board is encouraged to create internal control committees with powers conferred for matters in which there are potential situations of conflicts of interest, such as ... analysis of the remuneration policy.... (Recommendation 17)</p> |

| Olivencia Report (Spain) | Swedish Shareholders Ass'n Policy (Sweden) | ICSA Code (United Kingdom) | ISC Statement of Best Practice (United Kingdom) |
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| 26. Executive Compensation | | | |
| <p><i>Not covered directly, but see Topic Heading 30, below.</i></p> | <p>[The remuneration] committee should be responsible for ensuring that comprehensive and well thought through contracts are drawn up with the managing director and other key executives.</p> <p>The remuneration committee should also be responsible for ensuring that principles for salary structures and other terms of employment are additionally drawn up for other people in corporate management. This increases the likelihood that these matters will receive a balanced and thorough treatment.</p> <p>It is the remuneration committee and ultimately the board that decide on salary levels and other terms of employment for the company's key executives, in the first place the managing director and that person's deputy. (Guideline 2.4.2)</p> <p>Remuneration to the managing director and other key executives shall be sufficient to attract and keep leaders of the right caliber to run the company well. Remuneration should reflect the importance of the post and the responsibility of its incumbent. Salaries for the company's key executives can well be performance-based. (Guideline 2.4.3)</p> <p><i>See Guideline 2.4.3 (managing director's pension benefits).</i></p> <p><i>See also Guideline 3 (incentive programmes for both executives and other employees).</i></p> | <p><i>Not covered.</i></p> | <p>The [Compensation] Committee's function is to determine the salaries and emoluments packages of the executive directors. This would include salaries and also participation in share options, profit sharing and incentive remuneration schemes and all other bonuses and benefits receivable by the executive directors. Executive directors should not play any part in deciding their own compensation packages. (p. 4)</p> |

| Cadbury Report (United Kingdom) | Greenbury Report (United Kingdom) | Hampel Report (United Kingdom) | The Combined Code/Turnbull Report (United Kingdom) |
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| 26. Executive Compensation | | | |
| <p>[Executive] Directors' service contracts should not exceed three years without shareholders' approval. (Code, 3.1)</p> <p>Executive directors' pay should be subject to the recommendations of a remuneration committee made up wholly or mainly of non-executive directors. (Code, 3.3)</p> <p>We also recommend that boards appoint remuneration committees consisting wholly or mainly of non-executive directors, and chaired by a non-executive director, to recommend to the board the remuneration of the executive directors in all its forms, drawing on outside advice as necessary. (Report, 4.42)</p> | <p>The remuneration packages UK companies offer must be sufficient to attract, retain and motivate ... managers of the highest quality. (Introduction, 1.10)</p> <p>Boards should develop clear terms of reference for their remuneration committees. These should require the committee:</p> <p>§ to determine on behalf of the Board and the shareholders the company's broad policy for executive remuneration and the entire individual remuneration packages for each of the Executive Directors and, as appropriate, other senior executives;</p> <p>§ in doing so, to give the Executive Directors every encouragement to enhance the company's performance and to ensure that they are fairly, but responsibly, rewarded for their individual contributions;</p> <p>§ to comply with our Code of best practice;</p> <p>§ to report and account directly to the shareholders, on the Board's behalf, for their decisions.</p> <p>(Commentary on Remuneration Committees, 4.4)</p> <p>Although Executive Directors should not be members of the remuneration committee, the company's Chairman and/or Chief Executive should normally be invited to attend meetings to discuss the performance of the other Executive Directors and make proposals as necessary. (Commentary on Remuneration Committees, Membership and Qualifications, 4.14)</p> | <p>[A] significant part of executive directors' remuneration should be linked to the company's performance, whether by annual bonuses, share option schemes, or long-term incentive plans. (Guideline 4.6)</p> | <p>A proportion of executive directors' remuneration should be structured so as to link rewards to corporate and individual performance. (Principle B.1)</p> <p>Companies should establish a formal and transparent procedure for developing policy on executive remuneration and for fixing the remuneration packages of individual executive directors. No director should be involved in deciding his or her own remuneration. (Principle B.2)</p> <p>The performance-related elements of remuneration should form a significant proportion of the total remuneration package of executive directors, and should be designed to align their interests with those of shareholders and to give these directors keen incentives to perform at the highest levels. (Code § 1, B.1.4)</p> <p>Executive share options should not be offered at a discount save as permitted by paragraphs 13.30 and 13.31 of the Listing Rules. (Code § 1, B.1.5)</p> |

| NAPF Corporate Governance Code (United Kingdom) | AUTIF Code (United Kingdom) | Hermes Statement (United Kingdom) | PIRC Shareholder Voting Guidelines (United Kingdom) |
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| 26. Executive Compensation | | | |
| <p>Policy on executive remuneration should follow a formal and transparent procedure.</p> <p>No director should be involved in deciding his or her own remuneration. (§9(i))</p> <p>Performance-related elements of remuneration should form a significant proportion of the total remuneration package of executive directors and should be designed to align their interests with those of shareholders and to give those directors keen incentives to perform at the highest levels. The balance between the performance and salary-related elements will depend on the nature of the underlying business. (§9(ii))</p> <p><i>See Topic Heading 16, above.</i></p> | <p>Principle B.2 of the Combined Code recommends that companies should establish a formal and transparent procedure for developing policy on executive remuneration. In practice, this normally results in the appointment of a remuneration committee. There have been suggestions, as part of the DTI's review of company law, that a company's remuneration policy (and possibly also the report of the remuneration committee) should be ratified at the AGM. (Guidance Note on Key Principle 6)</p> <p>Member firms should consider the remuneration policy of companies in which they invest. They may wish to pay particular attention to those elements of remuneration packages, for directors and senior executives, which are performance related, including share options, and to compensation arrangements. (Guidance Note on Key Principle 6)</p> | <p>A remuneration committee of independent non-executive directors is best placed to decide executive remuneration on behalf of the board. Actual and potential awards should not be excessive and should be directly related to the success of the company and aligned over time to the returns achieved by shareholders. Hermes encourages companies to put the board's remuneration report to a vote at the AGM... (1.4)</p> <p>Performance-related remuneration is the principal means by which executive directors are motivated to achieve greater shareholder value and are rewarded for doing so. (APPENDIX 1.1.1)</p> <p>Performance-related remuneration should be aligned over time with returns earned by shareholders. Increases in remuneration should be driven by improved performance.... (APPENDIX 1.1.3)</p> <p>Although it is accepted that companies have to offer packages that are competitive in the local market, there are certain features that should be universal. (APPENDIX 1.1.5)</p> <p>Incentive schemes should be designed to reward exceptional performance. Awards should be scaled.... No award should be made where targets are not met. (APPENDIX 3.1)</p> <p>Remuneration committees should explain proposed schemes clearly to shareholders, justifying the structure of the scheme and the relevance of the performance criteria chosen... The link between company performance and executive reward should be clear. (APPENDIX 3.4)</p> <p>In Hermes' view, schemes based on the grant of shares are preferable to many share option schemes. (APPENDIX 4.2)</p> <p><i>See generally</i> APPENDIX 1: REMUNERATION.</p> | <p>Most companies justify their remuneration policy in the general terms of the need to "attract, retain and motivate" executives. However, companies have different circumstances, structures and outlooks. Their policies should reflect this. Financial rewards need to be seen in the context of ... other terms and conditions, the company's culture and its aims and objectives. Care should be taken that rewards are not overgenerous and out of line with returns received by shareholders and the benefits received by other stakeholders, including employees. (Part 3: Directors' Remuneration, p. 8)</p> <p><i>See Part 3: Directors' Remuneration, p. 8</i> (When considering pay policy, remuneration committees will be held accountable for breaches of best practice on remuneration issues or failure to seek shareholder authorization.)</p> <p><i>See also</i> Topic Heading 16, <i>above</i>.</p> |

| OECD Principles/Millstein Report (International) | ICGN Statement/Global Voting Principles (International) | Euroshareholders Guidelines (Pan-European) | EASD Principles and Recommendations (Pan-European) |
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| 27. Succession Planning / Management Development | | | |
| <p>The board should fulfil certain key functions, including . . . overseeing succession planning. (OECD Principle V.D.2)</p> <p>[Independent board members] can play an important role in areas where the interests of management, the company and shareholders may diverge, such as . . . succession planning. (OECD Principle V.E Annotation at 41-42)</p> | <p><i>The ICGN Statement adopts</i> OECD Principle V.D.2 (The board should fulfil certain key functions, including ... overseeing succession planning.).</p> <p><i>See also</i> OECD Principle V.E Annotation at 41-42 ([Independent board members] can play an important role in areas where the interests of management, the company and shareholders may diverge, such as ... succession planning.).</p> | <p><i>Not covered.</i></p> | <p><i>Not covered.</i></p> |

| Recommendations of Federation of Companies (Belgium) | Dual Code of the BXS/CBF (Belgium) | The Director's Charter (FDA) (Belgium) | (Reserved) |
|---|---------------------------------------|---|------------|
| 27. Succession Planning / Management Development | | | |
| <i>Not covered.</i> | <i>Not covered.</i> | <i>Not covered.</i> | |

| Danish Shareholders Ass'n Guidelines (Denmark) | Nørby Report & Recommendations (Denmark) | Chamber of Commerce/Confederation Code (Finland) | Ministry of Trade & Industry Guidelines (Finland) |
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| 27. Succession Planning / Management Development | | | |
| <i>Not covered.</i> | <i>Not covered.</i> | <i>Not covered.</i> | <i>Not covered.</i> |

| Viénot I Report (France) | Hellebuyck Commission Recommendations (France) | Viénot II Report (France) | (Reserved) |
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| 27. Succession Planning / Management Development | | | |
| <p>In contrast to the situation in other countries, it is generally thought that French boards do not make adequate provision for the replacement of the chairman, which makes for some concern on the market.</p> <p>The Committee thus recommends that it should be the permanent responsibility of the selection committee to be in a position to propose successors at short notice, although clearly this would require confidentiality. (p. 15)</p> | <p><i>Not covered.</i></p> | <p>The Committee wishes to stress the need for a plan for succession of executive Directors.</p> <p>This is one of the main tasks of the appointments committee, though it may, if appropriate, be assigned by the Board to an <i>ad hoc</i> committee.</p> <p>It is natural that the corporation's Chairman should be a member of the committee in performance of this assignment. However, even though his or her opinion should be obtained, it is not desirable that the Chairman should chair this committee. (p. 18)</p> <p>The appointments committee (or an <i>ad hoc</i> committee) should draw up a plan for succession of the executive directors. The chairman should be a member of that committee, but not its chairman. (p. 26)</p> | |

| Berlin Initiative Code (Germany) | German Panel Rules (Germany) | Cromme Commission Code (Germany) | (Reserved) |
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| 27. Succession Planning / Management Development | | | |
| <p>Recruiting members of the Management Board from within the ranks of the company's own executives is the normal case and is the result of planned training for the next generation. The Management Board should be endowed with a particularly good insight into the current potential of junior management by reason of its position as organ of management. Consequently, it is advisable that the members of the Management Board (as part of their managerial functions) narrow down the circle of potential successors to a manageable number of persons. The Chairman of the Supervisory Board is kept informed about this from time to time. (Code, II.1.4)</p> <p>The suggestions of the Management Board should certainly not unduly restrict the options of the Supervisory Board as regards personnel. The Supervisory Board can and must more objectively assess the contribution of possible candidates to an optimal qualification profile of the organ of management, by reason of its greater distance. Accordingly, the Management Board's knowledge of personnel matters is to be combined with the neutrality of the Supervisory Board. (Code, II.1.5)</p> <p>In order to allow the members of the Supervisory Board the opportunity of systematically becoming acquainted with potential candidates for membership of the Management Board, the Management Board regularly suggests persons from the inner circle of junior management for presentations in the Supervisory Board and its committees. (Code, II.1.7)</p> | <p>The Supervisory Board appoints the members of the Management Board and ensures orderly long-term succession planning (§ 84 German Stock Corporation Act). (Code, III.2.a)</p> <p>The personnel committee [of the Supervisory Board] deals with the personnel issues of the Management Board (including its succession planning). (Code, III.3)</p> | <p>Together with the Management Board, [the Supervisory Board] ensures that there is long-term successor planning. (§V.1.2)</p> | |

| Mertzanis Report (Greece) | Federation of Greek Industries Principles (Greece) | IAIM Guidelines (Ireland) | Preda Report (Italy) |
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| 27. Succession Planning / Management Development | | | |
| <p>[E]fficient governance means that, in view of the accomplishment of good long-term corporate performance and sustainability, executive management should be endowed with considerable flexibility and freedom of movement which would make possible the proper and timely acquisition and implementation of organisational and technological knowledge. Efficient knowledge is an essential prerequisite for the effective confrontation of modern competitive challenges. In such a flexible framework, the required long-term commitment and efficiency of management will be secured by the proper development, consistent monitoring and effective supervision of the capital market. (Introduction)</p> | <i>Not covered.</i> | <i>Not covered.</i> | <i>Not covered.</i> |

| Peters Report (The Netherlands) | VEB Recommendations (The Netherlands) | SCGOP Handbook and Guidelines (The Netherlands) | Securities Market Comm'n Recommendations (Portugal) |
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| 27. Succession Planning / Management Development | | | |
| At least once a year the Supervisory Board should meet without the [Management Board] and discuss ... the composition and performance of the [Management Board], including issues regarding succession.... (Recommendation 3.5) | <i>Not covered.</i> | <i>Not covered.</i> | <i>Not covered.</i> |

| Olivencia Report (Spain) | Swedish Shareholders Ass'n Policy (Sweden) | ICSA Code (United Kingdom) | ISC Statement of Best Practice (United Kingdom) |
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| 27. Succession Planning / Management Development | | | |
| <i>Not covered.</i> | <i>Not covered.</i> | <i>Not covered.</i> | [T]he importance of non-executive directors has become evident ... in matters concerning top management succession... (p. 2) |

| Cadbury Report (United Kingdom) | Greenbury Report (United Kingdom) | Hampel Report (United Kingdom) | The Combined Code/Turnbull Report (United Kingdom) |
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| 27. Succession Planning / Management Development | | | |
| <i>Not covered.</i> | <i>Not covered.</i> | <i>Not covered.</i> | <i>Not covered.</i> |

| NAPF Corporate Governance Code (United Kingdom) | AUTIF Code (United Kingdom) | Hermes Statement (United Kingdom) | PIRC Shareholder Voting Guidelines (United Kingdom) |
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| 27. Succession Planning / Management Development | | | |
| <i>Not covered.</i> | <i>Not covered.</i> | <i>Not covered.</i> | [T]he chairman should have a key role in determining board appraisal in which the performance of the chief executive and their succession must be considered objectively. This can only be done if the posts are separate. (Part 2: Directors, p. 4) |

| OECD Principles/Millstein Report (International) | ICGN Statement/Global Voting Principles (International) | Euroshareholders Guidelines (Pan-European) | EASD Principles and Recommendations (Pan-European) |
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| 28. Outside Advice | | | |
| <p>An annual audit should be conducted by an independent auditor in order to provide an external and objective assurance on the way in which financial statements have been prepared and presented. (OECD Principle IV.C)</p> <p>It is widely felt that the application of high quality audit standards and codes of ethics is one of the best methods for increasing independence and strengthening the standing of the profession. Further measures include strengthening of board audit committees and increasing the board's responsibility in the auditor selection process.</p> <p>Other proposals have been considered by OECD countries. Some countries apply limitations on the percentage of non-audit income that the auditor can receive from a particular client. Other countries require companies to disclose the level of fees paid to auditors for non-audit services. In addition, there may be limitations on the total percentage of auditor income that can come from one client. Examples of other proposals include quality reviews of auditors by another auditor, prohibitions on the provision of non-audit services, mandatory rotation of auditors and the direct appointment of auditors by shareholders. (OECD Principle IV.C Annotation at 38)</p> <p>The contributions of non-executive board members to the company can be enhanced by providing ... recourse to independent external advice at the expense of the company. (OECD Principle V.F Annotation at 43)</p> <p>Policy makers and regulators should encourage sound audit practices, which include board selection of, and reliance on, an independent auditor. (Millstein Report, Perspective 16)</p> | <p><i>The ICGN Statement adopts</i> OECD Principle IV.C (An annual audit should be conducted by an independent auditor in order to provide an external and objective assurance on the way in which financial statements have been prepared and presented.).</p> <p>The ICGN advocates annual audits of corporations by independent, outside auditors, together with measures that enhance confidence in the quality and independence of the audit. The ICGN itself has voted support for the development of the highest quality international accounting standards, and would encourage corporations to apply those or other standards of comparable quality. The ICGN also backs active, independent board audit committees and, to limit the risks of possible conflicts of interest, disclosure of the fees paid to auditors for non-audit services. (ICGN Amplified OECD Principle IV at 8)</p> <p>The contributions of non-executive board members to the company can be enhanced by providing ... recourse to independent external advice at the expense of the company. (OECD Principle V.F Annotation at 43)</p> | <p>Auditors have to be independent and should be elected by the general meeting. (Recommendation 6)</p> | <p>Basic shareholder rights include ... approving of the external auditors, subject to legal constraints. (Recommendation I.1.d)</p> <p>The external auditors should be independent and free from conflicting interests which, if they exist, must be disclosed. (Recommendation VIII.7)</p> <p>The external auditors' responsibilities towards shareholders are without prejudice to their additional duties of informing the board of their findings with regard to internal controls and other verifications. (Recommendation VIII.8)</p> <p>The external auditors should be present at shareholders meetings to which they report and on request at relevant board and committee meetings. (Recommendation VIII.9)</p> <p>Auditors should be given a hearing by the board at their request. (Recommendation VIII.10)</p> |

| Recommendations of Federation of Companies (Belgium) | Dual Code of the BXS/CBF (Belgium) | The Director's Charter (FDA) (Belgium) | (Reserved) |
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| 28. Outside Advice | | | |
| <p>The Board of Directors must ensure that objective relationships are developed with the company auditors, based on the highest degree of professionalism. (4.2)</p> <p>The company auditors and, if such exist, the person responsible for the internal audit and the financial director should attend the meetings of the [audit] committee....</p> <p>The [audit] committee should hear the company auditors at least once each year, on an occasion when the executive directors are not present....</p> <p>The [audit] committee has the widest investigative powers within its domain and may, by a majority decision, call upon professionals from outside the company and allow them to attend its meetings. (Note to 4.3)</p> | <p>There should be an agreed procedure for directors in the furtherance of their duties to take independent professional advice at the company's expense. (Part I: B.1.6))</p> <p>The board should ensure that the auditors have no relationship with the company, whether directly or indirectly, which could influence their judgement. (Part I: B.4.2)</p> <p>The audit committee should have a discussion with the internal and external auditors (including statutory auditors) at least once a year, from which the executive directors may be excluded, to ensure that there are no unresolved issues of concern. (Part I: B.4.3.c)</p> <p>The audit committee ... should be able to obtain outside professional advice and, if necessary, to invite outsiders with relevant experience to attend meetings.... (Part I: B.4.3.d)</p> <p><i>See</i> Part I: A.2 ([T]he General Meeting of Shareholders is responsible for appointing ... the auditors. (Part I: A.2)</p> | <p>[When voicing opposition,] the Director will ... consider ... [o]btaining ... professional advice. (p. 3)</p> <p>[T]he Director will be attentive:</p> <p>§ That the Board, if it creates an internal auditing committee, ensures that it be ... in direct and permanent contact with the company's auditors</p> <p>§ That the company's internal controlling body functions efficiently and that it be regularly controlled by the auditors. (p. 4)</p> | |

| Danish Shareholders Ass'n Guidelines (Denmark) | Nørby Report & Recommendations (Denmark) | Chamber of Commerce/Confederation Code (Finland) | Ministry of Trade & Industry Guidelines (Finland) |
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| 28. Outside Advice | | | |
| <p>The auditors should be independent of the management, and they should be elected by the shareholders – for a total period of maximum 7 years. (I. The Annual General Meeting)</p> <p>[T]he auditors should carefully evaluate [employee motivation] programmes and answer all questions at the shareholders meeting. (III. Motivating Programmes)</p> | <p>[T]he board should consider how any collaboration with the company's external audit could contribute to the risk management.... (VII.1)</p> | <p><i>Not covered.</i></p> | <p>[A]uditors and internal auditors should be provided annually with the opportunity to discuss the auditing of the company without the presence of the members of the Board of Directors belonging to the hired management of the company. (2.2.1)</p> <p>See 2.1.2 (In the annual report or the relating environmental audit, an account of the measures implemented should be given in order to take account of <i>environmental values</i> in the business of the company.).</p> |

| Viénot I Report (France) | Hellebuyck Commission Recommendations (France) | Viénot II Report (France) | (Reserved) |
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| 28. Outside Advice | | | |
| <i>Not covered.</i> | <i>Not covered.</i> | <p>The Committee considers it legitimate for Board committees to be allowed the opportunity ... to call for outside technical reviews at the corporation's expense. It goes without saying that this option should be exercised by committees only in performance of their respective duties, and after informing the Chairman of the Board of Directors. In all cases, the committees should report to the Board of Directors on the information and opinions obtained on such occasions. (p. 17)</p> <p>The independence of a corporation's auditors should not be jeopardized by the award to entities belonging to their networks of assistance or consulting assignments (technical, legal, tax, organization, etc.) by the corporation itself or by other affiliates of its group, which are of material importance either in terms of stakes for the corporation and its group or in terms of the related fees. (p. 17)</p> <p>The election among various [accounting] standards may be momentous for corporations' earnings.... The financial managers and statutory auditors of corporations are naturally in charge of the technical reviews of this matter. (p. 18)</p> | |

| Berlin Initiative Code (Germany) | German Panel Rules (Germany) | Cromme Commission Code (Germany) | (Reserved) |
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| 28. Outside Advice | | | |
| <p>[The Supervisory Board's] controlling activities are supported and complemented by the auditor who [independently] examines the company's rendering of accounts. (Code, I.5)</p> <p>The auditor is an independent guarantor of open disclosure for the reference groups of the company and, in addition, is a supportive partner to the Supervisory Board in the supervisory process. The auditor controls separate parts of Management Board dealings but is also available to the Management Board as advisor. (Code, VI.2.1)</p> <p>In the case of a public corporation with a stock market quotation, the auditor also has to assess the efficiency of risk management. (Code, VI.2.4)</p> <p>Apart from the audit certificate required by statute, the auditor also prepares a report for the Management Board noting the weak points in the company (management letter). (Code, VI.2.5)</p> <p>The independence of the auditor is essential for a consistent and reliable control. Hence, the auditor takes all reasonable steps to safeguard neutrality. (Code, VI.2.6)</p> <p>The Supervisory Board should also take into consideration, on the recommendation for the appointment of the auditor, whether the work of the auditor should undergo evaluation by an expert third party at regular intervals (peer review). (Code, VI.2.7)</p> | <p>The Supervisory Board mandates the Auditors to audit the Company and the Group annual accounts (§ 111 German Stock Corporation Act). To ensure the independence of the auditors, particular regard shall be given:</p> <p>§ that the mandated Auditor has not achieved during the last 5 years with the Audit and advice of the Company ... more than 30% of its total revenue....</p> <p>§ that no auditor is employed in the Audit that has issued the auditors' confirmation for the Annual Accounts or Group Accounts in more than 6 instances in the 10 years preceding the audit;</p> <p>§ that no conflicts of interest exist for the auditor.</p> <p>The Supervisory Board may call for additional audit issues that extend the legally required scope and focus of the audit. The stipulation of the audit fee is part of the appointment process. Audit-related meetings shall be held in the presence of the Auditors (§ 171 German Stock Corporation Act). (Code, III.2.e)</p> <p>[The tasks of the Accounts and Audit Committee include] selection of the Auditor, the determination of additional major auditing issues, as well as the determination of the Auditor's fee. The selection of the Auditor takes into account the participation of the Auditor in a regular external peer review.... Furthermore, the fees for other consulting services shall be seen in relation to the auditing fee; if necessary, this relationship can lead to limiting consulting fees. (Code, III.3)</p> | <p>The General Meeting ... elects ... the auditor. (§II.2.1)</p> <p>Prior to submitting a proposal for election [of the outside auditor], the Supervisory Board or, respectively, the Audit Committee shall obtain a statement from the intended auditor stating whether, and where applicable, which professional, financial and other relationships exist between the auditor and its executive bodies and head auditors on the one hand, and the enterprise and the members of its executive bodies on the other hand, that could call its independence into question....</p> <p>The Supervisory Board shall agree with the auditor that the Chairman of the Supervisory Board will be informed immediately of any grounds for disqualification or impartiality occurring during the audit, unless such grounds are eliminated. (§VII.2.1)</p> <p>The Supervisory Board commissions the auditor to carry out the audit and concludes an agreement on the latter's fee. In this respect, the Supervisory Board shall consult the Management Board. (§VII.2.2)</p> <p>The Supervisory Board shall arrange for the auditor to inform it and/or note in the Auditor's Report if, during the performance of the audit, the auditor comes across facts which show a misstatement by the Management Board and Supervisory Board on the Code. (§VII.2.3)</p> <p>The auditor takes part in the Supervisory Board's deliberations on the Annual Financial Statements and Consolidated Financial Statements and reports on the essential results of its audit. (§VII.2.4)</p> <p><i>See generally</i> §VII, Reporting and Audit of the Annual Financial Statements.</p> | |

| Mertzanis Report (Greece) | Federation of Greek Industries Principles (Greece) | IAIM Guidelines (Ireland) | Preda Report (Italy) |
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| 28. Outside Advice | | | |
| <p>[T]he general shareholder meeting has the responsibility of appointing ... the external ... auditors. (Introduction)</p> <p>Shareholders should have the right to participate equitably and efficiently in the general shareholder meetings and be sufficiently, timely and properly informed on the decisions that need to be made regarding fundamental changes in the corporation. These changes include ... the approval of the appointment and/or dismissal of the external and internal auditors, their duties and compensation, following the recommendations of the Board of Directors. (Recommendation 1.2.7)</p> <p>The Board of Directors should ensure the general shareholder meetings that the external auditors have no relationship with the corporation, directly or indirectly, which could affect their judgement and evaluation. (Recommendation 4.5)</p> <p>The Internal Audit Committee ... [s]hould communicate with the internal (independent) and external auditors of the corporation with the purpose of achieving a settlement of all unresolved issues in the corporation. (Recommendation 4.7.3)</p> <p>Procedures should be established that allow the Board of Directors to obtain advice by external advisors, which would assist the exercise of their duties. The corporation should meet the cost of external advice. (Recommendation 5.9)</p> <p><i>See Footnote 3 to Recommendation 4.6 (legal requirements for Board oversight of external and internal auditors, and expansion of such requirements).</i></p> | <p><i>Not covered directly, but see §4.4 (In the exercise of his duties, the internal controller may obtain knowledge of any book, document, bank account information or portfolio of the company, and access any service of the company.).</i></p> | <p><i>Not covered directly, but the IAIM Guidelines adopt the Combined Code. See the Combined Code:</i></p> <p>§ 1, A.1.3 (There should be a procedure agreed by the board for directors in the furtherance of their duties to take independent professional advice if necessary, at the company's expense.).</p> <p>§ 1, B.2.5 (Remuneration committees should consult the chairman and/or chief executive officer about their proposals relating to the remuneration of other executive directors and have access to professional advice inside and outside the company.).</p> | <p>[T]he [remuneration] committee may employ external consultants at the company's expense. (Code, 8.1)</p> <p>[The internal control committee] should assess ... the reports of the external auditors ... and the offers and work programmes of auditing firms. (Report, 5.4.3)</p> |

| Peters Report (The Netherlands) | VEB Recommendations (The Netherlands) | SCGOP Handbook and Guidelines (The Netherlands) | Securities Market Comm'n Recommendations (Portugal) |
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| 28. Outside Advice | | | |
| The Supervisory Board may grant an assignment to the auditor to assess the accuracy of reports by the [Management Board] on compliance with the verifiable recommendations. (6.2) | <i>Not covered.</i> | Unless the law or articles of association determine otherwise, it is the task of shareholders to appoint the ... auditors. (Handbook, p. 8) | <i>Not covered.</i> |

| Olivencia Report (Spain) | Swedish Shareholders Ass'n Policy (Sweden) | ICSA Code (United Kingdom) | ISC Statement of Best Practice (United Kingdom) |
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| 28. Outside Advice | | | |
| <p>The right of all directors to collect and obtain the information and advice needed to fulfill their supervision functions must be formally recognized. Appropriate channels should be created to exercise this right, even resorting to outside experts in special circumstances. (Code, Recommendation 14)</p> <p>The Board of Directors and the Audit Committee should watch over situations that may pose risks for the independence of the external auditors of the company. They should particularly check the percentage that the company's fees represent in the total revenues of the auditing firm and should publicly report any fees corresponding to professional services other than auditing. (Code, Recommendation 21)</p> | <p>If necessary, in matters of importance for the company, individual board members should have the right, at the cost of the company, to seek information and advice from independent sources. (Guideline 2.2)</p> <p>The company's auditor is appointed by the shareholders and has the role of independent examiner. The Shareholders' Association considers that the auditor, prior to a directed new placement for employees, ought to examine the program and evaluation that is the basis for the terms of the issue. The auditor should also be able to inform the shareholders at the general meeting about the proposed scheme. (Guideline 3.6)</p> | <p><i>Not covered directly, but see Code, §2</i> (The board should ensure that each director is given on appointment sufficient information to enable him/her to perform his/her duties. In particular, guidance for non-executive directors should cover the procedures:</p> <ul style="list-style-type: none"> § for obtaining information concerning the company; and § for requisitioning a meeting of the board.) | <p>It is recognized that professional advisers such as merchant bankers and solicitors may well fulfil a specialist role.... (p. 3)</p> <p>[In the event of a proposed takeover or management buy-out,] where the the buy-out consortium comprises or includes management, the need for full disclosure and independent advice becomes more acute....</p> <p>Ideally, the Board should appoint a separate committee... with direct access to independent advisers. The independent advisers should have access to all information necessary to enable them to give a fully informed opinion as to the merits of the offer.</p> <p>The consortium should not have access to the company's usual professional advisers, since that would aggravate the conflict of interest. (pp. 5-6)</p> |

| Cadbury Report (United Kingdom) | Greenbury Report (United Kingdom) | Hampel Report (United Kingdom) | The Combined Code/Turnbull Report (United Kingdom) |
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| 28. Outside Advice | | | |
| <p>There should be an agreed procedure for directors, in the furtherance of their duties, to take independent professional advice if necessary, at the company's expense. (Code, 1.5)</p> <p>The board should ensure that an objective and professional relationship is maintained with the auditors. (Code, 4.2)</p> <p>Occasions may arise when directors have to seek legal or financial advice in the furtherance of their duties. They should always be able to consult the company's advisors. If, however, they consider it necessary to take independent professional advice, we recommend that they should be entitled to do so at the company's expense, through an agreed procedure laid down formally, for example in a Board Resolution, in the Articles, or in the Letter of Appointment. (Report, 4.18)</p> <p>We also recommend that boards should appoint remuneration committees ... [that draw] on outside advice as necessary. (Report, 4.42)</p> <p>[T]he shareholders appoint the auditors to provide an external check on the directors' financial statements. (Report, 6.1)</p> <p>The company's statement of compliance should be reviewed by the auditors insofar as it relates to paragraphs 1.4, 1.5, 2.3, 2.4, 3.1 to 3.3, and 4.3 to 4.6 of the Code. (Footnote, p. 60)</p> | <p>Remuneration committees should ... have access to professional advice inside and outside the company. (Code, A7)</p> <p>The remuneration committee should ... have a good understanding, enhanced as necessary by appropriate training or access to expert advice, of the areas of remuneration committee business. (Commentary on Remuneration Committees, Membership and Qualifications, 4.8)</p> <p>The [remuneration] committee may need to draw on outside advice. This should combine quality and judgement with independence. The company's management will normally hire outside consultants, if any, but the committee should be consulted about such appointments and should be free to retain its own consultants in case of need. (Commentary on Remuneration Committees, Membership and Qualifications, 4.17)</p> <p><i>See</i> Code, B9 (The amounts received by, and commitments made to, each Director ... should be subject to audit.).</p> | <p>The board should establish formal and transparent arrangements for maintaining an appropriate relationship with the company's auditors. (Principle D.III)</p> <p>The external auditors should ... independently assure the board on the discharge of its responsibilities ... in accordance with professional guidance. (Principle D.IV)</p> | <p>The board should establish formal and transparent arrangements ... for maintaining an appropriate relationship with the company's auditors. (Principle D.3)</p> <p>There should be a procedure agreed by the board for directors in the furtherance of their duties to take independent professional advice, if necessary, at the company's expense. (Code § 1, A.1.3)</p> <p>Remuneration committees should ... have access to professional advice inside and outside the company. (Code § 1, B.2.5)</p> |

| NAPF Corporate Governance Code (United Kingdom) | AUTIF Code (United Kingdom) | Hermes Statement (United Kingdom) | PIRC Shareholder Voting Guidelines (United Kingdom) |
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| 28. Outside Advice | | | |
| <p>The [audit] committee must maintain an appropriate relationship with the company's auditors. This will include reviewing the scope and results of the audit, its cost-effectiveness and the independence and objectivity of the auditors. (§12)</p> <p>Any change of auditors, agreed by the board as part of a periodic planned review, or for any other reason, should be explained and justified to shareholders. (§13)</p> | <p><i>Not covered directly, but see</i> Guidance Note on Key Principle 6 (Companies listed on the London Stock Exchange are required, as a continuing obligation of listing, to make two disclosure statements. Firstly, they must report on how they apply the principles in the Combined Code on Corporate Governance.... Secondly, listed companies are also required to confirm that they comply with the Code provisions or – where they do not – to provide an explanation.).</p> | <p>[Remuneration committees] should take professional advice as necessary. Where independent advisers are appointed, they should be responsible to the remuneration committee and not the company EDs. Consideration should be given to naming the advisers in the board's remuneration report. (APPENDIX 1.1.2)</p> <p>Hermes recommends that the nomination committee be responsible ... for finalizing the candidate specification for all board appointments and for approving the process by which suitable candidates are identified and short-listed, including choosing a third-party advisor where appropriate. (APPENDIX 3.5)</p> | <p>PRINCIPLE: [A]uditors should describe their respective responsibilities for the accounts. (Part 4, Audit and Reporting, p. 13)</p> <p>PRINCIPLE: The auditors should be independent of the company.</p> <p>F. <u>No directors have a significant connection with the auditors....</u></p> <p>G. <u>There are no provisions for indemnification or liability insurance.</u> It is inappropriate for auditors to be indemnified by the company.... Such relationships can affect independent judgment. (Part 4: Audit and Reporting, p. 13)</p> <p>[The remuneration committee] should have access to independent advice. (Part 2: Directors, p. 7)</p> <p>There should be an annual appraisal of the functioning of the board as a whole and the contribution made by all directors individually.... It may be helpful to use an independent agency to perform this appraisal. (Part 2: Directors, p. 7)</p> <p>When considering pay policy, remuneration committees should have access to independent advisers, separate from those used by executives. (Part 3: Directors' Remuneration, p. 8)</p> <p>See Part 4, p. 12 (The Cadbury Committee called the annual audit "one of the cornerstones of corporate governance." It is vital that the audit process is, and is seen to be, objective, rigorous and independent.).</p> <p>See generally Part 4: Audit and Reporting, pp. 12-14.</p> |

| OECD Principles/Millstein Report (International) | ICGN Statement/Global Voting Principles (International) | Euroshareholders Guidelines (Pan-European) | EASD Principles and Recommendations (Pan-European) |
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| 29. Content and Character of Disclosure | | | |
| <p>The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership and governance of the company. (Principle IV)</p> <p>Disclosure should include, but not be limited to, material information on:</p> <ol style="list-style-type: none"> 1. The financial and operating results of the company.... 2. Company objectives.... 3. Major share ownership and voting rights.... 4. Members of the board and key executives, and their remuneration.... 5. Material foreseeable risk factors.... 6. Material issues regarding employees and other stakeholders.... 7. Governance structures and policies.... <p>(OECD Principle IV.A)</p> <p>Capital structures and arrangements that enable certain shareholders to obtain a degree of control disproportionate to their equity ownership should be disclosed. (OECD Principle I.D)</p> <p>Members of the board and managers should be required to disclose any material interests in transactions or matters affecting the corporation. (OECD Principle II.C)</p> <p><i>See</i> Annotation to OECD Principle IV.D at 39 (<i>public filings</i>).</p> <p>Regulators should encourage ongoing improvements in both disclosure techniques and formats. (Millstein Report, Perspective 12)</p> <p>[C]orporations should disclose the extent to which they pursue projects and policies that diverge from the primary corporate objective of generating long-term economic profit so as to enhance shareholder value in the long term. (Millstein Report, Perspective 21)</p> | <p>The overriding objective of the corporation should be to optimise over time the returns to its shareholders. Where other considerations affect this objective, they should be clearly stated and disclosed. (ICGN Statement 1 at 3)</p> <p><i>The ICGN Statement adopts</i> OECD Principle IV.A (The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership, and governance of the company.)</p> <p>Disclosure should include, but not be limited to, material information on:</p> <ol style="list-style-type: none"> 1. The financial and operating results of the company.... 2. Company objectives.... 3. Major share ownership and voting rights.... 4. Members of the board and key executives, and their remuneration.... 5. Material foreseeable risk factors.... 6. Material issues regarding employees and other stakeholders.... 7. Governance structures and policies.... <p><i>See also</i> OECD Principles I.D (<i>re: control disproportionate with equity ownership</i>) and II.C (<i>re: material interests of directors and managers</i>).</p> <p><i>See also</i> ICGN GLOBAL SHARE VOTING PRINCIPLES, 6 (Companies with internationally diversified ownership should ensure that agendas and notices are accessible to shareholders in at least one internationally-accepted language. Companies should ensure that translations are timely, accurate and complete, with the meaning and purpose of resolutions clear.).</p> | <p>Companies should clearly state (in writing) their financial objectives as well as their strategy, and should include these in the annual report. (Recommendation 1)</p> <p>Shareholders should be informed about:</p> <ol style="list-style-type: none"> a) financial objectives; b) strategy; c) the company’s prospects; and d) sensitivity to external circumstances. In addition, companies should state when they intend to reach their objectives. <p>(Commentary on Recommendation 1)</p> <p>Companies should immediately disclose information which can influence the share price, as well as information about those shareholders who pass (upwards or downwards) 5% thresholds. There should be serious penalties in case of non-compliance. (Recommendation 5)</p> <p>Companies should disclose all relevant and important information to the shareholders, but at least the following:</p> <ul style="list-style-type: none"> § clear goals in financial terms and clear corporate strategy; § quarterly results; § sensitive stock-related information, which should be disclosed immediately; § members of the board should be required to disclose their interests in transactions or matters affecting the company. <p>(Commentary on Recommendation 5)</p> <p><i>See</i> Recommendation 8 (In addition to the regular channels, electronic means should be used by a company to provide shareholders with price-sensitive information.).</p> | <p>Without prejudice to disclosures advocated elsewhere in these recommendations, information on the company should at least cover:</p> <ol style="list-style-type: none"> a) its objectives.... b) its accounts.... c) its significant shareholders, if known.... d) its board members and key executives e) material foreseeable risk factors.... f) related party transactions; g) governance structures and policies h) internal controls. <p>(Recommendation VIII.1)</p> <p>Disclosed information should be readily accessible at minimal cost, and available simultaneously to all shareholders. (Recommendation VIII.2)</p> <p><i>See</i> Principle I (Shareholders ... have a right to adequate and timely information.).</p> <p><i>See also</i> Recommendation II.3 (<i>disclosure obligations of custodians</i>).</p> <p><i>See also</i> Recommendation II.4 (Institutional investors acting in a fiduciary capacity for external beneficial owners should state their voting policies.).</p> <p><i>Note:</i> “Disclosure” refers to information printed, electronically distributed or made available through the media to shareholders at large in the form of annual reports, financial statements, prospectuses, announcements, etc. (Preamble at 6)</p> |

| Recommendations of Federation of Companies (Belgium) | Dual Code of the BXS/CBF (Belgium) | The Director's Charter (FDA) (Belgium) | (Reserved) |
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| 29. Content and Character of Disclosure | | | |
| <p>The obligations, the duration of the mandate and the means of remuneration of directors must be announced at the time of their appointment. (Note to 1.6)</p> <p>The responsibilities of the Board of Directors include producing a comprehensive and objective Annual Report on the situation of the company each year. (4.1)</p> <p>This Annual Report and the annual accounts must represent the situation and results of the company and developments under consideration, as clearly as possible and in numerical form. This ... must refer to both successes and failures, in words which are easy to understand. (Note to 4.1)</p> | <p>Information about the relevant interests of directors should be disclosed in the annual report. (Part I: B.2.2)</p> <p>The report and accounts should contain a coherent narrative of the company's financial position, supported by information on the company's performance and prospects.... The need for the report to be readily understood emphasizes that words are as important as figures. (Part I: B.4.1)</p> <p>The directors should report on the company's prospects. (Part I: B.4.5)</p> <p>Information [to be disclosed] on the composition of the board of directors [includes]:</p> <ul style="list-style-type: none"> § List of the directors <i>de facto</i> representing the dominant shareholders, the directors in charge of the daily management, and the directors considered by the company as being independent from the dominant shareholders and the management. § When the function exercised by a director in the company is not his main function, indication of his main function outside the company.... § Mention of the rules, if any, ... governing the appointment of directors and the renewal of their mandates.... § For natural persons representing directors, which are actually legal personae, indication of these persons' capacity in the company which they represent. <p>(Part II: B.1)</p> <p><i>See Topic Heading 31, below.</i></p> | <p>The Director undertakes, if the company is listed on the Stock Exchange, to see to it that the Board strictly observes the regulations concerning the distribution of occasional or periodic information. (p. 6)</p> | |

| Danish Shareholders Ass'n Guidelines (Denmark) | Nørby Report & Recommendations (Denmark) | Chamber of Commerce/Confederation Code (Finland) | Ministry of Trade & Industry Guidelines (Finland) |
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| 29. Content and Character of Disclosure | | | |
| <p>All listed companies should, in the annual report, inform about their strategy and objective financial goals.</p> <p>All listed companies should publish quarterly reports and inform when insiders ([executives], members of the board, and majority shareholders) have been trading shares in the company.</p> <p>News having anything more than marginal influence on the share price should immediately be communicated – including an evaluation of the consequences for the company....</p> <p>Prospects should include budgets. At takeovers, the consequences of a stand-alone alternative should be included.) (V. Information To The Market)</p> | <p>[I]t is necessary to provide shareholders, including potential shareholders and other stakeholders, with information about the company. How they understand and relate to the company depends on the amount of information and the quality of the information published or provided by the company. Openness and transparency are essential conditions for ensuring that the company's shareholders and other stakeholders are able to continuously evaluate and relate to the company and its prospects, and through this, openness and transparency can contribute to a constructive interaction with the company. (III)</p> <p>[I]t is recommended that the company develops procedures which ensure that the company immediately publishes all essential information of importance for how the shareholders and the financial markets evaluate the company and its activities, as well as its business goals, strategies and results, unless publication can be omitted according to the legal rules of the stock exchange. The publication must be carried out in a reliable and adequate manner.</p> <p>It is recommended that published information is both in Danish and in English.... (III.1)</p> <p>In connection with the preparation of the annual report it is recommended that the board decides if it is expedient that the company publishes further elaborating non-financial information, even in instances where this is not required by the Danish Company Accounts Act or any other laws. Such information could be information about the company's</p> <p>§ impact on the external environment.</p> <p>§ development and maintenance of internal knowledge resources.</p> <p>§ ethical and social responsibilities.</p> <p>§ health and safety policies.</p> <p>(III.4)</p> | <p>The company shall explain in the Annual Report and in the Listing Particulars which body elects the Board of Directors and the Managing Director of the company, and when. (English Summary, 4)</p> <p>The personal and interest-group information of the persons nominated as members of the Board of Directors have to be notified, at the latest, at the General Meeting of Shareholders. . . . After the election, the information has to be mentioned in the Annual Report and in the Listing Particulars.</p> <p>The same publication criteria that govern the members of the Board of Directors shall be applied to the members of the Supervisory Board and, after the election, to the Managing Director. If the composition of the Supervisory Board of the company is especially large, the company may omit this information from its Annual Report. In this case, the information shall be kept available at the head office of the company and it shall be sent to anyone requesting it. The Listing Particulars shall also contain the personal and interest-group information of the members of the Supervisory Board.</p> <p>The following items shall be disclosed as personal and interest-group information:</p> <p>§ name and age;</p> <p>§ education and the most central work or other experience;</p> <p>§ main job at the time of nomination; and</p> <p>§ the most central simultaneous tasks or known future tasks.</p> <p>(English Summary, 5)</p> | <p>To get the investors assured of the fact that the operations of the company are economically efficient, information shall be given in the annual report on the accrual of economic value-added and its measurement method in the company.</p> <p>....</p> <p>It is also necessary to put forward in the annual report what are, in the company management's opinion, the risk factors that could prevent the attainment of the objectives set. Likewise, the <i>general features of the risk management systems</i> used by the company should be described.</p> <p>....</p> <p>In the annual report or the relating environmental audit, an account of the measures implemented should be given in order to take account of <i>environmental values</i> in the business of the company. (2.1.2)</p> |

| Viénot I Report (France) | Hellebuyck Commission Recommendations (France) | Viénot II Report (France) | (Reserved) |
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| 29. Content and Character of Disclosure | | | |
| <p>While it is the Chairman's duty to provide the market with a regular flow of information on a day-to-day basis, the board of directors is responsible for presenting annual and half-yearly financial statements, and for informing the market of major financial transactions. In such cases, the board must provide quality information, which is sufficiently reliable and clear to ensure the fair execution of the transactions concerned.</p> <p>With a view to achieving this transparency, the Committee believes that the board should publish its assessment of all transactions concerning the company's securities, even when this is not legally required. (p. 6)</p> | <p>The Commission is in favor of companies publishing two annual reports, one complete, the other in summary form, making company information and, in particular, the proposed resolutions more easily accessible for shareholders who are less expert on the company. Every shareholder should receive the summary report, with the complete report available upon request. These reports should also be available through electronic means, in both French and English. (§ I.B.2)</p> <p>Within the shortest possible delay following the general meeting, the Commission would like to see companies publish an extract of the meeting's minutes informing shareholders, in particular foreign shareholders, of the results of the votes on the resolutions, along with an analysis of those votes.</p> <p>It is recommended that systematically, within 30 days at the latest following the shareholders' meeting, this report be sent (by electronic or other means) to all holders of registered shares and to shareholders present or represented at the meeting. (§ I.B.5)</p> | <p>The Committee notes that major efforts have been made in recent years by many corporations to expedite the publication of half-yearly and annual accounts, and approves this trend as the prompt publication of earnings is an essential factor in providing financial disclosure consistent with the expectations of analysts and shareholders.</p> <p>There remains, nonetheless, too much diversity in the practices of listed corporations with respect to the time required for the publication of accounts. The Committee recommends that listed corporations should take all necessary steps to achieve, as soon as possible, compliance with the following schedule:</p> <ul style="list-style-type: none"> § if the corporation publishes estimated or provisional consolidated annual accounts, they should be published at the latest one month after the close of the financial year, followed by final accounts within three months after the close; § if not, the final accounts should be published within two months after the close of the financial year; § final consolidated half-yearly accounts, for their part, should be published at the latest two and a half months after the end of the first half, if the estimated or provisional accounts are not published sooner. <p>(pp. 18-19)</p> | |

| Berlin Initiative Code (Germany) | German Panel Rules (Germany) | Cromme Commission Code (Germany) | (Reserved) |
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| 29. Content and Character of Disclosure | | | |
| <p>Information on the efficiency of the company ensures the confidence of the stakeholders and is therefore of strategic importance. (Thesis 9)</p> <p>The public corporation does not restrict itself to information for the stockholders and other reference groups [by merely] fulfilling minimum statutory requirements which arise from the appropriate regulations concerning financial reporting and disclosure. Rather, the company establishes an integrated system of external communication which covers ... the legitimate information needs of the various stakeholders of the company. (Code, VI.1.1)</p> <p>The stockholders receive access to all information which has been provided to financial analysts and similar addressees. (Code, VI.1.4)</p> <p>The company reports at regular intervals on, among other things, the company's strategy, and periodically on realized as well as planned development of important managerial ratios in the individual sectors of business. (Code, VI.1.6)</p> <p>The company also makes the existing risks for the present, and for the business activities planned for the future, transparent. (Code, VI.1.7)</p> <p>See Commentary on Thesis 9 (Adequate information on the terms, results and planned developments of the company's activities, for the stockholders and other reference groups, is a pre-condition for reinforcing the trust and, with it, the necessary support of those interested in the company.).</p> | <p>The point 'Disclosure and Transparency' of the OECD Principles is generally covered by law for German companies through the corresponding provisions on the obligation to provide and enclose information (§§ 20-22, 160, 328 German Stock Corporation Act; §§ 15, 25 German Securities Trading Act; §§ 285, 325 ff German Commercial Code; §§ 35, 39 German Antitrust Act; § 24 German Banking Act). (Code, I)</p> <p>The Management Board will publish without delay any new facts arising in the sphere of the Company's activities which are not yet publicly known and, due to their impact on the financial position of the Company or its general course of business, are likely to impact significantly on the price of the Company's listed securities (§ 15 German Securities Act). (Code, II.2.a)</p> <p>The Company shall pursue the principle of equal treatment of all shareholders in the matter of information dissemination. (Code, II.2.b)</p> <p>The regular financial reporting (annual and quarterly reports) will be timely. The quarterly reports shall be published no later than two months after the close of the quarter and shall contain segment reporting as well as the results per share. (Code, II.2.c)</p> <p>As soon as the Company ... becomes ... aware that another party has obtained, exceeds or no longer holds 5, 10, 25, 50 or 75% of the voting rights in the Company, this will immediately be published by the Management Board. (Code, II.2.i)</p> <p>See Code, II.2.d)-j) (<i>Management Board disclosure requirements</i>) and Topic Heading 31, below.</p> | <p>The Management Board submits to the General Meeting the established Annual Financial Statements and the Consolidated Financial Statements. (§II.2.1)</p> <p>The Management Board shall not only provide the reports and documents, including the Annual Report, required by law for the General Meeting, and send them to shareholders upon request, but shall also publish them on the company's Internet site together with the agenda. (§II.3.1)</p> <p>The company shall inform all domestic and foreign financial services providers, shareholders and shareholders' associations, who, in the preceding 12 months, have requested such notification, of the convening of the General Meeting together with the convention documents, upon request, also using electronic channels. (§II.3.2)</p> <p>The Management Board will disclose any new facts which have arisen within the enterprise's field of activity which are not known publicly without delay, if such facts could, owing to their impact on the asset and financial situations or general business development, substantially influence the stock price of the company's registered securities. (§VI.1)</p> <p>The company's treatment of all shareholders in respect of information shall be equal. It shall make all new facts which have been made known to the financial analysts and similar addressees available to the shareholders without delay. (§VI.3)</p> <p>The Consolidated Financial Statements shall be publicly accessible within 90 days of the end of the financial year; interim reports shall be publicly accessible with 45 days of the end of the reporting period. (§VII.1.2)</p> <p>See generally §VI, Transparency and §VII, Reporting and Audit of the Annual Financial Statements.</p> | |

| Mertzanis Report (Greece) | Federation of Greek Industries Principles (Greece) | IAIM Guidelines (Ireland) | Preda Report (Italy) |
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| 29. Content and Character of Disclosure | | | |
| <p><u>The corporate governance framework should ensure the full, timely and detailed disclosure of information on all material matters, including the financial situation, performance, ownership structure and governance of the corporation.</u> (Principle 4)</p> <p>The establishment of transparency involves the disclosure of information on:</p> <ul style="list-style-type: none"> § The financial and operating results of the corporation. § The corporation's ownership structure. § Members of the Board of Directors and management. § Quantitative and qualitative matters concerning employees and other stakeholders in the corporation. § Governance structures and policies. § Corporate targets and prospects. § The execution of unusual and complex transactions, transactions on derivative products and their level of risk. <p>(Recommendation 4.1)</p> <p>All investors should be able to obtain information on the voting rights affiliated with all classes of shares before their purchase of shares. (Recommendation 2.1.1)</p> <p>The Board of Directors should ensure the general shareholder meetings that the internal (independent) auditors are given the required financial and operating autonomy to accomplish their task completely. Internal auditors should be subject to oversight in a satisfactory manner. (Recommendation 4.6)</p> <p>The Internal Audit Committee ... [s]hould disclose its composition in the corporation's annual report. (Recommendation 4.7.5)</p> | <p>Corporate governance aims at full transparency in the overall management of the company, allowing the dissemination of any vital information to all shareholders and thus providing them with the opportunity to participate actively in the company's activities, on the basis of the legislation in force, and to protect and promote their interests in a non-discriminatory and fair manner, within the framework of the company's long-term and balanced development. (§1.3)</p> <p>The Internal Operation Regulation must cover ... procedures for the pre-announcement of important transactions and financial activities of board members or third parties having management tasks, to the extent these are related to the company as well as its important clients or suppliers. (§3.2(d))</p> | <p><i>Not covered directly, but the IAIM Guidelines adopt the Combined Code. See the Combined Code:</i></p> <p>Principle D.1 (The board should present a balanced and understandable assessment of the company's position and prospects.);</p> <p>Principle D.2 (The board should maintain a sound system of internal control to safeguard shareholders' investment and the company's assets.);</p> <p>Principle D.3 (The board should establish formal and transparent arrangements for considering how they should apply the financial reporting and internal control principles and for maintaining an appropriate relationship with the company's auditors.);</p> <p>Code § 1, D.1.1 (The directors should explain their responsibility for preparing the accounts, and there should be a statement by the auditors about their reporting responsibilities.);</p> <p>Code § 1, D.1.2 (The board's responsibility to present a balanced and understandable assessment extends to interim and other price-sensitive public reports and reports to regulators as well as to information required to be presented by statutory requirements.);</p> <p>Code § 1, D.2.1 (The directors should, at least annually, conduct a review of the effectiveness of the group's system of internal control and should report to shareholders that they have done so. The review should cover all controls, including financial, operational and compliance controls and risk management.);</p> <p>Code § 1, D.2.2 (Companies which do not have an internal audit function should from time to time review the need for one.).</p> | <p><i>See Topic Headings 30, 31 and 32, below.</i></p> |

| Peters Report (The Netherlands) | VEB Recommendations (The Netherlands) | SCGOP Handbook and Guidelines (The Netherlands) | Securities Market Comm'n Recommendations (Portugal) |
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| 29. Content and Character of Disclosure | | | |
| <p><i>By the Supervisory Board</i> [T]he chairman should ensure that information is not made available solely to certain groups of shareholders. (Recommendation 2.6)</p> <p>The Supervisory Board should report on the existence of ... committees in the annual report. (Recommendation 3.2)</p> <p><i>By the Management Board</i> The main points of the report [of the Management Board to the Supervisory Board] should be given a permanent place in the annual report. (Recommendation 4.2)</p> <p>In the General Meeting of Shareholders, a thorough exchange of ideas should take place between company executives and investors. Relevant information should therefore be supplied so that, on the basis of soundly-based sector and investment analyses, it is possible to communicate effectively about, and make a critical assessment of, strategy, risks, activities and financial results. (Recommendation 5.2)</p> <p>[T]he [Management Board] should take stock of the influence available to the investors in the company and should report its findings in writing to them. (Recommendation 5.4.3)</p> <p>To enhance the quality of the debate in the General Meeting of Shareholders and bring about a <u>de facto</u> increase in the influence of the investors, it is not only of importance that the [Management Board] provides good quality information in good time, but that the investors can also have recourse to the work done by investment analysts and the press. (Recommendation 5.4.4)</p> | <p>Companies should clearly state in writing the financial objectives and strategy and should outline them in the annual report. (Recommendation 2)</p> <p>Companies should reveal quarterly results and should immediately disclose information that can influence the share price. (Recommendation 3)</p> <p>According to the 'Stock Exchange Regulation' of the Amsterdam Exchanges, companies should immediately disclose key information that can influence the share price. In practice, many companies often do not comply. Quarterly results are crucial to keep investors informed. In a transitional period (one year), interim statements without profit/turnover figures may be optional. (Commentary on Recommendation 3)</p> | <p>Companies whose shares are listed also on stock exchanges outside The Netherlands should make available on their websites any documents they are obliged to make public in those countries. (Guideline 18)</p> | <p>A description of the market behaviour of the shares should be made and issued at least once a year. (Recommendation 3)</p> <p>Information should be disclosed to the public on the dividend policy commonly adopted by the company. (Recommendation 4)</p> <p>Shareholder agreements regarding the exercise of rights in the company or regarding transferability of shares, when relevant to the organization of companies, should be disclosed to the public. (Recommendation 5)</p> <p><i>See Recommendation 6 (The use of new information technologies is encouraged for the disclosure of financial information.).</i></p> |

| Olivencia Report (Spain) | Swedish Shareholders Ass'n Policy (Sweden) | ICSA Code (United Kingdom) | ISC Statement of Best Practice (United Kingdom) |
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| 29. Content and Character of Disclosure | | | |
| <p>The Board of Directors, beyond current regulatory requirements, should be in charge of furnishing markets with quick, accurate and reliable information, particularly in connection with the shareholder structure, substantial changes in governance rules, and especially relevant transactions or those having to do with treasury stock. (Code, Recommendation 19)</p> <p>The duty of loyalty also involves the obligation for directors to report personal circumstances, those of close relatives or even circumstances relating to companies where they may play a significant role. This includes shareholdings, positions and activities performed in other organisations, unionization agreements and, in general terms, any fact, situation or link which might be relevant for their loyal performance as trustees. (Report, 8.5)</p> <p>[T]he Board of Directors would be bound to include in the company's Annual Report information on transactions carried out with significant shareholders ... so that their reach and importance will be known to all. (Report, 8.6)</p> <p>[T]his Committee recommends that the Board of Directors stretch its sense of duty to the point of offering immediate and sufficient information not only on relevant facts that may have a sizeable influence on price formation in the stock market, but also on anything that may: influence the company's ownership structure ...; involve a substantial change of governance rules (this is in addition to what is laid out under 12.2 below); deal with specially relevant linked transactions (transactions within the group and with individuals linked to Board members); or have to do with the company's equity. (Report, 10.1)</p> <p>See Topic Heading 31, below.</p> | <p>To make it easier for shareholders to follow the company's activities, the dates when information will be issued to shareholders during the coming year, as well as the date of the general meeting, should be stated in interim reports, financial statements, the annual report or other timely information sent to shareholders.</p> <p>[N]otice [of shareholders' meetings] should be posted on the company's web site on the Internet.... (Guideline 1.1)</p> <p>For many years there has been a carefully regulated obligation for stock market companies to provide information....</p> <p>The obligation to inform is regulated above all by the law on stock exchange and clearing operations. With the support of this law, the Financial Supervisory Authority (Finansinspektionen) has issued regulations about the content of the duty to inform (FFFS 1995:43). These regulations have formed the foundations for the content of the stock exchange's quotation contracts. Further, the Industry and Commerce Stock Exchange Committee has issued recommendations concerning information in certain situations. OM</p> <p>Stockholmsbörsen publish a handbook on stock market information that should be used by all companies quoted on the stockmarket. (Guideline 4)</p> <p>Laws and bourse contracts regulate the minimum demands on the content and form of the company's information to the market. Registered shareholders have a self-evident right to information from the company. (Guideline 4.2)</p> <p>See Guideline 3.5 (<i>information to be made available to shareholders</i>).</p> <p>See also Guidelines 4.4 (<i>annual and quarterly reports</i>) and 4.6 (<i>prospectuses</i>).</p> | <p><i>Not covered directly, but see</i> Code, §10 (The minutes of meetings should record the decisions taken and provide sufficient background to those decisions. All papers presented at the meeting should be clearly identified in the minutes and retained for reference. Procedures for the approval and circulation of minutes should be established.).</p> | <p><i>Not covered directly, but see</i> Topic Headings 30, 31 & 36, below.</p> |

| Cadbury Report (United Kingdom) | Greenbury Report (United Kingdom) | Hampel Report (United Kingdom) | The Combined Code/Turnbull Report (United Kingdom) |
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| 29. Content and Character of Disclosure | | | |
| <p>It is the board's duty to present a balanced and understandable assessment of the company's position. (Code, 4.1)</p> <p>An open approach to the disclosure of information contributes to the efficient working of the market economy, prompts boards to take effective action and allows shareholders and others to scrutinize companies more thoroughly. (Report, 3.2)</p> <p>What is required of financial reporting is that it should be honest and that it should present a balanced picture of the state of the company's affairs. (Report, 3.3)</p> <p>The lifeblood of markets is information, and barriers to the flow of relevant information represent imperfections in the market. The need to sift and correct the information put out by companies adds cost and uncertainty to the market's pricing function. The more the activities of companies are transparent, the more accurately will their securities be valued. (Report, 4.48)</p> <p>[B]oards should aim for the highest level of disclosure consonant with presenting reports which are understandable and with avoiding damage to their competitive position. (Report, 4.51)</p> <p>The demand for an ever-increasing amount of detail in reports and accounts has to be weighed against the need for them to be understandable by the reasonably informed shareholder. (Report, 4.58)</p> | <p>Most listed companies have already established remuneration committees. Those which have not should establish them now or explain in their next annual report why they have not done so and what alternative arrangements they have made. (Commentary on Remuneration Committees, 4.6)</p> <p>We attach the highest importance to full disclosure of Directors' remuneration as a means of ensuring accountability to shareholders and reassuring the public. Existing disclosure requirements ... are not sufficient. (Commentary on Disclosure, 5.2)</p> <p>Full disclosure does not mean swamping shareholders with a mass of detail in which the essential points risk being lost. The important point is rather that companies and their remuneration committees should adopt a new philosophy of full transparency such that shareholders have access to all the information they may reasonably require to enable them to assess the company's general policy on executive remuneration and the entire remuneration packages of individual Directors. (Commentary on Disclosure, 5.3)</p> <p>The annual remuneration committee report to shareholders should be the main vehicle through which the company discusses and accounts to shareholders for Directors' remuneration. The report should be made on behalf of the Board. It should form a separate section within, or annexed to, the company's annual report and accounts. It should set out both the company's general policy on executive remuneration and the actual remuneration packages, including share options and pension entitlements earned, of the individual Directors by name. The amounts received by, and committed to, each Director should be subject to audit. (Commentary on Disclosure, 5.4)</p> <p><i>See also</i> Topic Heading 30, <i>below</i>.</p> | <p>The board should present a balanced and understandable assessment of the company's position and prospects. (Principle D.I)</p> <p>The external auditors should independently report to shareholders in accordance with statutory and professional requirements and independently assure the board on the discharge of its responsibilities under D-I and D-II above in accordance with professional guidance. (Principle D.IV)</p> | <p>The board should present a balanced and understandable assessment of the company's position and prospects. (Principle D.1)</p> <p>The directors should explain their responsibility for preparing the accounts, and there should be a statement by the auditors about their reporting responsibilities. (Code § 1, D.1.1)</p> <p>The board's responsibility to present a balanced and understandable assessment extends to interim and other price-sensitive public reports and reports to regulators as well as to information required to be presented by statutory requirements. (Code § 1, D.1.2)</p> <p>The directors should, at least annually, conduct a review of the effectiveness of the group's system of internal control and should report to shareholders that they have done so. The review should cover all controls, including financial, operational and compliance controls and risk management. (Code § 1, D.2.1)</p> <p>The board should establish formal and transparent arrangements for considering how they should apply the financial reporting and internal control principles and for maintaining an appropriate relationship with the company's auditors. (Principle D.3)</p> |

| NAPF Corporate Governance Code (United Kingdom) | AUTIF Code (United Kingdom) | Hermes Statement (United Kingdom) | PIRC Shareholder Voting Guidelines (United Kingdom) |
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| 29. Content and Character of Disclosure | | | |
| <p>[T]his document already reflects the changes to the Pensions Act 1995, which ... require trustees to set out their voting policy in their Statements of Investment Principles. Looking ahead, the range of issues, and appropriate recommendations, may be widened further following the Review of Company Law, currently in progress. (Introduction)</p> <p>As well as summarising their voting policies in Statements of Investment Principles (SIPs), pension fund trustees are now required, under Pensions Act regulation, to state in the SIP the extent, if at all, that social, environmental and ethical considerations are taken into account in connection with their investment strategy.</p> <p>Companies should now ensure that they report to shareholders on these developments. (§24)</p> <p><i>See Topic Headings 30-32, below.</i></p> | <p>Where member firms have a policy on wider issues affecting the companies in which they invest, such as attitudes towards environmental or social issues, or on donations to political parties, AUTIF encourages firms to disclose this to investors. (Key Principle 9)</p> <p>Companies listed on the London Stock Exchange are required, as a continuing obligation of listing, to make two disclosure statements. Firstly, they must report on how they apply the principles in the Combined Code on Corporate Governance. The form and content of this report are not prescribed - it is for shareholders to make their own evaluation. Secondly, listed companies are also required to confirm that they comply with the Code provisions or - where they do not - to provide an explanation. Again, it is for shareholders to evaluate such explanations. Copies of the Combined Code may be obtained from the London Stock Exchange. (Guidance Note on Key Principle 6).</p> <p>Member firms may wish to consider including ... in their annual reports to their investors [an] indication of issues which could cause concern. (Guidance Note on Key Principle 7).</p> <p><i>See Key Principle 1 (AUTIF encourages all member firms to adopt a clear and considered policy towards their responsibilities as shareholders.).</i></p> | <p>The Annual Report should:</p> <p>2.1 Include information on SEE [social, environmental and ethical] matters that significantly affect the company's short- and long-term value.</p> <p>2.2 Describe the company's policies and procedures for managing risks to the company's short- and long-term value arising from SEE matters. If the annual report and accounts states that the company has no such policies and procedures, the board should provide reasons for their absence.</p> <p>2.3 Include information about the extent to which the company has complied with its policies and procedures for managing risks arising from SEE matters.</p> <p>2.4 Describe the procedure for verification of SEE disclosures. The verification procedure should be such as to achieve a reasonable level of credibility. (Appendix 4.2)</p> | <p>The company's share structure should be clearly disclosed including the voting rights and other rights attached to each class of shares. (Part 5: Share Capital and Shareholder Relations, p. 15)</p> <p>PRINCIPLE: Non-audit fees [from the outside auditor] should be disclosed and should not potentially affect independence. (Part 4: Audit and Reporting, p. 13)</p> |

| OECD Principles/Millstein Report (International) | ICGN Statement/Global Voting Principles (International) | Euroshareholders Guidelines (Pan-European) | EASD Principles and Recommendations (Pan-European) |
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| 30. Disclosure Regarding Compensation and Director Assessment | | | |
| <p>The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership, and governance of the company. (Principle IV)</p> <p>Disclosure should include, but not be limited to, material information on ... [m]embers of the board and key executives, and their remuneration. (OECD Principle IV.A.4)</p> <p>Companies are generally expected to disclose sufficient information on the remuneration of board members and key executives (either individually or in the aggregate) for investors to properly assess the costs and benefits of remuneration plans and the contribution of incentive schemes, such as stock option schemes, to performance. (OECD Principle IV.A.4 Annotation at 37)</p> | <p><i>The ICGN Statement adopts</i> OECD Principle IV.A.4 (The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership, and governance of the company....</p> <p>Disclosure should include, but not be limited to, material information on ... [m]embers of the board and key executives, and their remuneration.).</p> <p><i>See also</i> OECD Principle IV.A.4 Annotation at 37 (Companies are generally expected to disclose sufficient information on the remuneration of board members and key executives (either individually or in the aggregate) for investors to properly assess the costs and benefits of remuneration plans and the contribution of incentive schemes, such as stock option schemes, to performance.).</p> <p>Remuneration of corporate directors or supervisory board members and key executives should be aligned with the interests of shareholders. Corporations should disclose in each annual report or proxy statement the board's policies on remuneration – and, preferably, the remuneration break up of individual directors and top executives – so that investors can judge whether corporate policies and practices meet that standard. (ICGN Amplified OECD Principle IV at 8)</p> | <p><i>Not covered directly, but see</i> Commentary on Recommendations 10(a) and 10(b) (The principles upon which [directors'] remuneration is based should be published in the annual report.).</p> | <p>Board ... remuneration policies [should be] transparent. (Principle VI)</p> <p>The elements of the remuneration and shareholdings of the top executives should be meaningfully disclosed at least in the aggregate, together with the material elements of their participation in stock options, pension plans or other similar schemes, as well as severance provisions or payments if, in the opinion of the board, these exceed customary norms. (Recommendation VII.5.b)</p> |

| Recommendations of Federation of Companies (Belgium) | Dual Code of the BXS/CBF (Belgium) | The Director's Charter (FDA) (Belgium) | (Reserved) |
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| 30. Disclosure Regarding Compensation and Director Assessment | | | |
| <p>The means of remuneration of directors must be stated in the Annual Report. (1.7)</p> <p>The Annual Report must state the method of remuneration of the directors (fixed amounts, bonuses, variable results-linked part, etc.)</p> <p>Large companies (in the sense of accounting law) are obliged to provide information in the notes to the Annual Accounts on the total remuneration of the directors. (Note to 1.7)</p> | <p>It is recommended to disclose the total amount of the non-executive directors' remuneration separately in the annual report and to specify both the fixed and the variable part of the remuneration. In addition, the principles underlying the calculation of the variable part, if any, should be disclosed. (Part I: B.2.1)</p> <p>It is recommended to disclose the total amount of the executive management's remuneration separately in the annual report and to specify both the fixed and the variable part of the remuneration. In addition, the principles underlying the calculation of the variable part, if any, should be disclosed. (Part I: B.3.1)</p> <p>Information [to be disclosed] on the functioning of the board of directors [includes] the rules and procedures with regard to the determination of total emoluments, annual fees, benefits in kind and share options granted to directors, as well as loans and advances which may have been granted to them. (Part II: B.2)</p> | <p><i>Not covered.</i></p> | |

| Danish Shareholders Ass'n Guidelines (Denmark) | Nørby Report & Recommendations (Denmark) | Chamber of Commerce/Confederation Code (Finland) | Ministry of Trade & Industry Guidelines (Finland) |
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| 30. Disclosure Regarding Compensation and Director Assessment | | | |
| <p>[R]emuneration principles should be published in the annual report. (II. Governance)</p> | <p>It is recommended that the annual report contains the following information about the directors elected by the general meeting:</p> <p>....</p> <p>§ how many shares, options and warrants the director owns in the company and in affiliated companies and the changes in the director's portfolio of the mentioned securities which have taken place during the accounting year.</p> <p>(V.4)</p> <p>We recommend that all important issues regarding performance-related pay based on shares are published in the company's annual report, including who receives it and what the total for the managers and the directors amounts to. Likewise, information about the incentive remuneration based on shares to the individual director or manager should also be published in the company's annual report.</p> <p>(VI.2)</p> <p>Information about the most important contents of the redundancy scheme [for a manager] should be published in the company's annual report. (VI.3)</p> | <p>If a member of the Board of Directors is, in addition to the fee for his membership on the Board of Directors, paid another fee on another basis, the Board of Directors shall always be informed thereof. Information regarding the payment of such fees shall have to be notified in the Annual Report and in the Listing Particulars.</p> <p>The order of making decisions when determining the salaries and privileges of the top management shall be made public in the Annual Report and in the Listing Particulars.</p> <p>The Annual Report and the Listing Particulars shall contain the information on the total amount of salaries and fees paid, as well as the fringe benefits granted, to the members of the Board of Directors and the Supervisory Board, the Managing Director and the Deputy Managing Director for the latest financial period, on the one hand with regard to the Board of Directors and, on the other, the Supervisory Board. In this case, the Managing Director and his Deputy are considered to belong to the Board of Directors. (English Summary, 6)</p> | <p>An account of the <u>bonus scheme</u> is important, since it serves the external investor when assuring that the incentives of the personnel are in line with the objectives of the company management. Therefore it should be stated clearly in the annual report how successful the achievement of the objectives is considered to be in the payment plan. The common <u>guidelines of the personnel strategy</u> should also be described, as well as development of the <u>working conditions</u>. (2.1.2)</p> <p>[T]he annual report should include ...</p> <p>[i]nformation on the principles followed when deciding on the salaries and other bonuses of the company management. In the annual report, it shall be separately mentioned to what extent the members of the Board of Directors are remunerated based on criteria other than Board membership; if no such remuneration is paid, this shall also be stated. (2.2.2)</p> |

| Viénot I Report (France) | Hellebuyck Commission Recommendations (France) | Viénot II Report (France) | (Reserved) |
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| 30. Disclosure Regarding Compensation and Director Assessment | | | |
| <p><i>Not covered.</i></p> | <p>The Commission favors the practice of explaining the reason for and the consequences of the resolutions, in particular those related to appointments, the renewal of Directors' terms, and authority to carry out financial operations. The resumés of these Directors and the number of shares they hold should also be included with the information.</p> <p>The Commission takes the view that the aggregate number and total value of stock options held by the ten most highly paid executives of the company should be included in this information. This also applies to a company's listed and unlisted subsidiaries. (§ I.B.3)</p> <p>The board should deliberate on executive compensation and should publish its amount, method of calculation and the existence, if any, of stock options.</p> <p>The Commission recommends full disclosure regarding the amounts and all forms and calculations of direct, indirect, or deferred compensation of individual executives and directors and the ten most highly compensated persons exercising management functions (including stock options in France or abroad, pension plans, and so forth). (§ II.C.2)</p> | <p>The Committee recommends that ... the Board of Directors of any listed corporation should include in its annual report a specific chapter relating to disclosure to the shareholders of the compensation collected by the corporate officers. (p. 11)</p> <p>The third part [of a proposed chapter in the annual report disclosing compensation] would deal with attendance fees. It would specify the maximum amount permitted by the meeting of shareholders and the amount actually paid to the members of the Board of Directors during the elapsed financial year in relation to the previous year. In addition, the rules for allocation of the fees (Chairman, Directors, fixed portion, variable portion, additional fees for membership of Board committee) would be precisely stated. (p. 12)</p> <p>[T]he Committee considers that any listed corporation, having granted options, ought to draft a related chapter to be included in the section of the annual report dealing with the structure of, and changes in, the corporate capital. (p. 12)</p> <p>The annual report and the notice calling the annual meeting of shareholders, every year, should inform the shareholders, who are legitimately highly interested in the matter, of the number of shares held by each Director in the corporation's stock. (p. 14)</p> <p>The number of shares of stock held by each Director in his or her personal capacity in the corporation concerned should be entered in the annual report and notice calling the meeting of shareholders. (p. 24)</p> <p>See pp. 22-23 (<i>summary of disclosure recommendations</i>).</p> | |

| Berlin Initiative Code (Germany) | German Panel Rules (Germany) | Cromme Commission Code (Germany) | (Reserved) |
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| 30. Disclosure Regarding Compensation and Director Assessment | | | |
| <p><u>Supervisory Board</u> The company also publishes, apart from the total remuneration, the principles of the remuneration system of the members of the Supervisory Board. (Code, IV.7.4)</p> <p><u>Management Board</u> Apart from the emoluments of the Management Board as a whole, the company also discloses the fundamentals of the system for remuneration. In this are included, in particular, the procedure and the standards of comparison for evaluating the performance of the Management Board, as well as the form of any market price-orientated compensation systems. (Code, III.6.4)</p> | <p><u>Supervisory Board</u> The total remuneration [of the Supervisory Board] shall be listed in the Notes to the Company Accounts. (Code, III.1.e)</p> <p>The Notes to the Company Accounts shall contain details of the share ownership (including existing option rights) of the Supervisory Board members and their changes in relation to the previous year. (Code, III.1.f)</p> <p><u>Management Board</u> The structure, total amount, exercise prices and exercise periods, as well as the allocations of share options and similar rights in the reporting period, shall be published in the Notes to the Company Accounts, separately by members of the Management Board and Executive Staff. To ensure compliance with insider laws, suitable precautions like closed periods of time are implemented. (Code, II.3.a)</p> <p>The fixed and variable remuneration elements of the Management Board shall be detailed in the Annual Report. (Code, II.3.b)</p> | <p><u>Supervisory Board</u> The total compensation of the members of the Supervisory Board shall be reported in the Notes of the Consolidated Financial Statements, subdivided according to components. Also payments made by the enterprise to the members of the Supervisory Board or advantages extended for services provided individually, in particular, advisory or agency services shall be listed separately in the Notes to the Consolidated Financial Statements. (§V.4.5)</p> <p><u>Management Board</u> The concrete details of a stock option plan or comparable compensation system shall be disclosed in a suitable form. (§IV.2.3)</p> <p>Compensation of the members of the Management Board shall be reported in the Notes of the Consolidated Financial Statements subdivided according to fixed, performance-related and long-term incentive components. The figures should be individualized. (§IV.2.4)</p> <p>The Consolidated Financial Statements shall contain information on stock option programmes and similar securities-based incentive systems. (§VII.1.3)</p> | |

| Mertzanis Report (Greece) | Federation of Greek Industries Principles (Greece) | IAIM Guidelines (Ireland) | Preda Report (Italy) |
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| 30. Disclosure Regarding Compensation and Director Assessment | | | |
| <p>Total compensation of non-executive members of the Board should be reported separately and with the required justification in the corporation's annual report. (Recommendation 6.1)</p> <p>It is a good practice that the total compensation of management be disclosed and justified in the financial statements of the corporation. (Recommendation 7.1)</p> <p>See Recommendation 7.2 (It is a good practice that a review committee, consisting of the majority of non-executive Board members, be established by the general shareholder meeting, which would review management compensation. The review committee's composition should be disclosed in the corporation's annual report.).</p> | <p><i>Not covered.</i></p> | <p>The IAIM's endorsement of the [Combined] Code extends to its requirements regarding disclosure of directors' remuneration, the area of single greatest difference between the corporate governance regimes of Ireland and the UK. It is the IAIM's strong view that, given the increased globalisation of capital markets, trends towards greater accountability and transparency, and the need to ensure the optimum attractiveness of Irish stocks in a Euro environment, current disclosure practice in this area is unsustainable. The IAIM recommends that the Combined Code's requirements regarding disclosure of directors' remuneration be adopted in their entirety and that the Irish Stock Exchange should amend its Listing Rules accordingly. (Introduction, § 1)</p> <p><i>Note:</i> <i>The Combined Code has been annexed to the listing rules of the Irish Stock Exchange, requiring Irish listed companies to either comply with its recommendations or publicly explain their departure.</i></p> <p>Information on share option schemes should be disclosed so as to comply with the requirements of the Appendix to Abstract 10 of the Urgent Issues Task Force and its successors. In accordance with Schedule B of the Combined Code, full information on LTISs should be disclosed in the Annual Report. (Guideline 4)</p> <p>[P]erformance criteria [for the exercise of share option and other long-term incentive schemes] must be clearly explained upon the scheme's adoption and thereafter in the annual financial statements. (Appendix 1: Performance Criteria)</p> <p><i>See Topic Heading 29, above.</i></p> | <p>Directors' pay is a field ... which calls for adequate disclosure of information and transparency concerning fees and the manner of determining them. (Report, 5.4.2)</p> |

| Peters Report (The Netherlands) | VEB Recommendations (The Netherlands) | SCGOP Handbook and Guidelines (The Netherlands) | Securities Market Comm'n Recommendations (Portugal) |
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| 30. Disclosure Regarding Compensation and Director Assessment | | | |
| <p><u>Supervisory Board</u> The aggregate number of shares, certificates of shares and stock options* held by all the Supervisory Board members should be published each year in the annual report. (Recommendation 2.12)</p> <p><u>Management Board</u> [T]he aggregate sum of the remuneration in the annual report should be split into payments made to serving [Management] board members and those made to former [Management] board members. (Recommendation 4.4)</p> <p>The aggregate number of securities held by all the members of the [Management Board] at the end of the financial year should be included in the annual report and should be subdivided into:</p> <ul style="list-style-type: none"> § shares/certificates of shares; § convertible bonds; § marketable options; § options issued by the company; § together with the most significant conditions relating thereto. <p>(Recommendation 4.5)</p> <p>See Recommendation 4.6 (The stock options granted by the company in a particular financial year to the joint members of the [Management Board] and to other employees should be included in the annual report together with the most significant conditions relating thereto.).</p> <p><i>* I.e., marketable options, not employee stock options. The Committee assumes that, in accordance with Recommendation 2.13, no employee stock options will be granted to Supervisory Board members.</i></p> | <p>Stock option plans should be described in a separate document and should be approved by shareholders. (Recommendation 9)</p> | <p>The company must clearly disclose ... the level of remuneration of the executive and non-executive directors. (Handbook, p. 9)</p> <p>Dilution of earnings per share must be avoided as much as possible in the design of options plans. If this cannot be avoided, the company should strive to be as transparent as possible in explaining dilution aspects. (Guideline 15)</p> <p>Options plans should be reported on in the annual accounts. Should options positions represent an off-balance sheet risk to the company, this risk should be quantified in the annual accounts. (Guideline 16)</p> | <p>Information should be disclosed on the actual functions of each member of the board of directors and executive management of the company, as well as their positions in other companies. (Recommendation 2)</p> |

| Olivencia Report (Spain) | Swedish Shareholders Ass'n Policy (Sweden) | ICSA Code (United Kingdom) | ISC Statement of Best Practice (United Kingdom) |
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| 30. Disclosure Regarding Compensation and Director Assessment | | | |
| <p>[T]he Committee recommends that director remuneration information policies be grounded on a principle of maximum transparency. Applying this principle requires a quick advancement from the current situation to more complete and detailed information on director remunerations. This involves individual information on each one, itemized by headings, whether they be remunerations attached to their director status (fixed earnings, allowances, share of profits, bonuses, incentives, pensions, insurance, payments in kind or others) or remunerations paid by the company for other kinds of legal relations (professional services, line management or executive positions).</p> <p>The Committee recommends that companies targeted by this report that do not choose to immediately apply this maximum transparency principle, but prefer a gradual implementation (or by stages), provide an explanation in their Annual Report. In either case, these companies should provide at least individualized information on the remunerations of all of the directors as such, for each of the items stated above as well as any professional fees. On the other hand, the remuneration of executive directors would be stated for all of them in the aggregate, stating how many directors receive each of the remuneration items. All this information would be included in the Annual Report. (Report, 7.4)</p> | <p>Information should be given in the annual report concerning the principles the company applies when it comes to periods of notice, severance pay, pension and other benefits for the managing director and other key executives. Information should also be given regarding bonus payments and other similar results-based remuneration. The recommendations of the Industry and Commerce Stock Exchange Committee (Naringlivets Borskommitte) concerning benefits to key executives, "Information angående ledande befactningshavares formaner," apply in this respect ... for companies that are registered on the Stockholm Stock Exchange (Stockholm Fondbors).</p> <p>[T]here is a latent exposure risk in regard to costs for changing corporate leadership. These commitments can amount to considerable sums.</p> <p>The shareholders and the market have a legitimate interest in knowing how much the total exposure amounts to. It is the job of the auditors to go through all such contracts. The value of the total remuneration of this nature that the company/group may have to pay out for the managing director and corporate management should be specifically stated in the annual report.</p> <p>In accordance with the rules of the stock exchange contract, the sum of the board members' fees and other remuneration must be stated in the annual accounts, including that which issues from subsidiaries and associated companies. The fee to the chairman of the board and other remuneration, if applicable, should be stated in a separate account. (Guideline 2.4.1)</p> | <p><i>Not covered.</i></p> | <p>The disclosure required in the Annual Report of directors' emoluments and of any compensation payments in respect of loss of office made to directors is considered by institutional shareholders to be an important feature of company legislation.</p> <p>The Companies Act and The International Stock Exchange impose certain requirements governing such payments including the issue of shares and grant of loans, guarantees etc. (p. 4)</p> <p>Those companies which do not have a sufficient body of non-executive directors to form a Compensation Committee should take steps to remedy the situation. In the interim their Annual Report should state the method by which all directors' compensation is determined. (p. 4)</p> <p>A summary of the details of any performance-linked remuneration schemes and of all types of share option and other incentive and profit sharing and bonus schemes should be disclosed in the Annual Report.</p> <p>Details of any ex gratia payments or payments by way of compensation should be disclosed to shareholders in the Annual Report and Accounts.</p> <p>It is in general undesirable that details of any compensation payments or ex gratia payments should be subject to confidentiality agreements or similar arrangements. (p. 5)</p> |

| Cadbury Report (United Kingdom) | Greenbury Report (United Kingdom) | Hampel Report (United Kingdom) | The Combined Code/Turnbull Report (United Kingdom) |
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| 30. Disclosure Regarding Compensation and Director Assessment | | | |
| <p>The overriding principle in respect of board remuneration is that of openness. Shareholders are entitled to a full and clear statement of directors' present and future benefits, and of how they have been determined. We recommend that, in disclosing directors' total emoluments and those of the chairman and highest-paid UK director, separate figures should be given for their salary and performance-related elements, and that the criteria on which performance is measured should be explained. Relevant information about stock options, stock appreciation rights, and pension contributions should also be given. (Report, 4.40)</p> <p><i>Following the issuance of the Greenbury Report in 1995, the London Stock Exchange adopted listing rules requiring that companies listed on the exchange disclose directors' remuneration packages (broken down by director) including salary, bonuses, pensions, and stock option plans. Also, companies must state whether or not they comply with the remuneration committees and policy sections of the Cadbury Report. See London Stock Exchange Listing Rule 12.43 (w) and (x).</i></p> <p><i>See also Topic Heading 15, above.</i></p> | <p>Boards of Directors need to delegate responsibility for determining executive remuneration to a group of people [that] needs to submit a full report to the shareholders each year explaining the company's approach to executive remuneration and providing full disclosure of all elements in the remuneration of individual Directors. (Introduction, 1.14)</p> <p>The remuneration committee Chairman should ... ensure that the company maintains contact as required with its principal shareholders about remuneration in the same way as for other matters. (Code, A8)</p> <p>The remuneration committee should make a report each year to the shareholders on behalf of the Board. The report should form part of, or be annexed to, the company's Annual Report and Accounts. (Code, B1)</p> <p><i>See Code, B2 – B11 (data to be disclosed include remuneration policy, comparisons with other companies, share options, grants, pension entitlements, bonuses, service contracts, shareholdings and long-term incentive schemes).</i></p> <p><i>See also Commentary on Disclosure, 5.1–5.33 (disclosure of remuneration in the event of unsatisfactory performance and/or early termination, and the duration of contracts).</i></p> <p><i>See also Appendix I, Existing Disclosure Requirements.</i></p> <p><i>See also Topic Heading 29, above.</i></p> | <p>Companies should establish a formal and transparent procedure for developing policy on executive remuneration and for fixing the remuneration packages of individual executive directors. (Principle B.II)</p> <p>The company's annual report should contain a statement of remuneration policy and details of the remuneration of each director. (Principle B.III)</p> <p>Directors' remuneration is of legitimate concern to the shareholders. They are entitled to expect that remuneration will be "sufficient to attract and retain the directors needed to run the company successfully" and that "the remuneration of executive directors should link rewards to corporate and individual performance." More generally, now that details of individual directors' remuneration are disclosed, they are liable to have an impact both on the company's reputation and on morale within the company. (Guideline 4.2)</p> | <p>Companies should establish a formal and transparent procedure for developing policy on executive remuneration and for fixing the remuneration packages of individual executive directors. No director should be involved in deciding his or her own remuneration. (Principle B.2)</p> <p>The company's annual report should contain a statement of remuneration policy and details of the remuneration of each director. (Principle B.3)</p> <p>The board should report to the shareholders each year on remuneration. The report should form part of, or be annexed to, the company's annual report and accounts. It should be the main vehicle through which the company reports to shareholders on directors' remuneration. (Code § 1, B.3.1)</p> <p>The report should set out the company's policy on executive directors' remuneration. It should draw attention to factors specific to the company. (Code § 1, B.3.2)</p> <p>In preparing the remuneration report, the board should follow the provisions in Schedule B to this code. (Code § 1, B.3.3)</p> <p>Shareholders should be invited specifically to approve all new long term incentive schemes (as defined in the Listing Rules) save in the circumstances permitted by paragraph 13.13A of the Listing Rules. (Code § 1, B.3.4)</p> <p><i>See SCHEDULE B: PROVISIONS ON WHAT SHOULD BE INCLUDED IN THE REMUNERATION REPORT.</i></p> <p><i>Note: Amendment 12 to the London Stock Exchange Listing Rules, dated June 25, 1998, requires that companies disclose their governance practices in relation to the Combined Code.</i></p> |

| NAPF Corporate Governance Code (United Kingdom) | AUTIF Code (United Kingdom) | Hermes Statement (United Kingdom) | PIRC Shareholder Voting Guidelines (United Kingdom) |
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| 30. Disclosure Regarding Compensation and Director Assessment | | | |
| <p>The remuneration of each individual director, together with the components that form his/her pay package, should be tabulated and explained in a form that can be easily understood by shareholders. (§9(ii))</p> <p>Any rolling contract [of a director] should not exceed one year. If, on first appointment, an initial longer period is deemed essential by the board, this would generally be acceptable provided that shareholders are given an explanation in the annual report. (§9(iii))</p> <p>The report of the remuneration committee should be submitted to shareholders each year for their approval.</p> <p>Long-term incentive schemes must be put to shareholders for approval. Performance hurdles should be set before incentive scheme grants are made.</p> <p>Remuneration committee reports should be relevant to corporate objectives, and communicated in a clear and transparent manner. (§9(iv))</p> | <p><i>Not covered directly, but see</i> Guidance Note on Key Principle 6 (Companies listed on the London Stock Exchange are required, as a continuing obligation of listing, to make two disclosure statements. Firstly, they must report on how they apply the principles in the Combined Code on Corporate Governance.... Secondly, listed companies are also required to confirm that they comply with the Code provisions or – where they do not – to provide an explanation.).</p> | <p>Remuneration committees should explain proposed schemes clearly to shareholders, justifying the structure of the scheme and the relevance of the performance criteria chosen. Schemes should be structured as simply as possible to ensure they can be understood by participants and monitored by shareholders. The link between company performance and executive reward should be clear. The effect of the scheme should be illustrated with examples showing rewards at various performance levels for one of the participants, say, the chief executive. (APPENDIX 1.3.4)</p> <p>Where remuneration committees have authority to vary incentive schemes they should only do so in exceptional circumstances and to ensure that the scheme continues to motivate executives. All changes should be reported and justified to shareholders. (APPENDIX 1.3.7)</p> <p>Companies should confirm continuing shareholder support for a scheme [of executive compensation] during its lifetime, giving shareholders an opportunity to reassess the scheme in light of actual payout levels. (APPENDIX 1.3.8)</p> <p>The annual report should disclose the level of recent grants made under any existing incentive scheme, the performance criteria applied to the grants, and any payouts resulting from grants made in previous years. The actual performance resulting in the vesting of grants should be disclosed and clearly explained. (APPENDIX 1.3.10)</p> | <p>Principle: There should be full and transparent disclosure of directors’ remuneration.</p> <p>A. <u>Remuneration figures are clearly disclosed.</u> In disclosing remuneration, companies should provide figures for each element of each director’s remuneration, with the addition of providing at least two years’ figures for each component, in order to allow trends to be assessed. This should include provision of the transfer value of increases in accrued pension benefits after inflation.</p> <p>B. <u>The performance basis for all incentive schemes is clearly set out.</u> For all annual or longer-term incentive schemes, there should be a full explanation in each annual report including: the performance criteria used, the performance targets, the performance period, the maximum level of awards which may be made and the actual level of awards granted during the year. Performance achieved against the targets used should be disclosed. where relative or comparative performance measures are being used, the company’s performance ranking should be provided each year. For annual schemes, the targets which resulted in any payments during the year should be disclosed. Discretionary or exceptional bonus payments should be fully described and explained.</p> <p>C. <u>Options and share awards are fully valued.</u> Rewards under share-based long-term incentive plans may accrue over time and will depend on the future share price. For share-based incentive schemes, companies should provide a full individual breakdown of all awards which have not yet fully vested or been exercised, together with a fair valuation of the value of such awards using an option pricing model. (Part 3: Directors’ Remuneration, p. 9)</p> <p><i>See Part 3: Directors’ Remuneration, p. 8 (disclosure).</i></p> |

| OECD Principles/Millstein Report (International) | ICGN Statement/Global Voting Principles (International) | Euroshareholders Guidelines (Pan-European) | EASD Principles and Recommendations (Pan-European) |
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| 31. Disclosure Regarding Corporate Governance | | | |
| <p>The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including ... governance of the company. (OECD Principle IV)</p> <p>Disclosure should include, but not be limited to, material information on ... [g]overnance structures and policies. (OECD Principle IV.A.7)</p> <p>Companies are encouraged to report on how they apply relevant corporate governance principles in practice. Disclosure of the governance structures and policies of the company, in particular the division of authority between shareholders, management and board members, is important for the assessment of a company's governance. (OECD Principle IV.A.7 Annotation at 38)</p> <p>See Millstein Report, Perspective 3 (Regulatory intervention in the area of corporate governance is likely to be most effective if limited to:</p> <ul style="list-style-type: none"> § Ensuring the protection of shareholder rights and the enforceability of contracts with resource providers (Fairness); § Requiring timely disclosure of adequate information concerning corporate financial performance (Transparency); § Clarifying governance roles and responsibilities, and supporting voluntary efforts to ensure the alignment of managerial and shareholder interests, as monitored by boards ... having some independent members (Accountability); and § Ensuring corporate compliance with other laws and regulations (Responsibility)). <p>See also Millstein Report, Perspective 23 (Individual corporations, shareholders and other interested parties should continue their efforts to articulate and adopt – voluntarily – corporate governance “best practices” designed to improve board independence and activism, and accountability to shareholders.).</p> | <p><i>The ICGN Statement adopts</i> OECD Principle IV (The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including ... governance of the company.).</p> <p><i>The ICGN Statement adopts</i> OECD Principle IV.A.7 (Disclosure should include, but not be limited to, material information on ... [g]overnance structures and policies.).</p> <p>[C]orporations should disclose ... sufficient information on the identities, core competencies, professional backgrounds, other board memberships, factors affecting independence, and overall qualifications of board members and nominees so as to enable the assessment of the value they add to the company. Information on the appointment procedure should also be disclosed annually. (ICGN Amplified OECD Principle IV at 8)</p> <p>See OECD Principle IV.A.7 Annotation at 38 (Companies are encouraged to report on how they apply relevant corporate governance principles in practice. Disclosure of the governance structures and policies of the company, in particular the division of authority between shareholders, management and board members, is important for the assessment of a company's governance.).</p> <p>See also ICGN GLOBAL SHARE VOTING PRINCIPLES, 10 (There should be appropriate regulation or an effective mechanism to ensure that shareholder meeting agendas are released according to established rules and procedures, and that the correct amount and appropriate content of proxy information is distributed to shareholders.).</p> <p>See also ICGN GLOBAL SHARE VOTING PRINCIPLES, 11 (A relevant body or bodies in each market should pursue implementation of the ICGN share voting principles.).</p> | <p><i>Not covered.</i></p> | <p>Board ... nomination ... policies [should be] transparent. (Principle VI)</p> <p>Conflicts of interest should be avoided [or] disclosed. (Principle IX)</p> <p>Ownership cascades that procure a degree of control disproportionate to individual equity ownership and significant shareholder agreements should be disclosed. (Recommendation III.3)</p> <p>The number of [board] meetings held [annually] should be disclosed. (Recommendation V.5(a)(ii))</p> <p>[N]ames of directors who did not personally attend at least 75% of the meetings should be disclosed. (Recommendation V.5(c))</p> <p>The nomination process and criteria for board and board committee members should be disclosed. (Recommendation VI.2(a))</p> <p>[F]ounders and controlling blockholders may and do consider other objectives to override shareholder return maximalization.... [T]hese must be properly disclosed and explained. (Preamble at 5)</p> <p>[D]eviations from the Recommendations ... and their reasons should be duly disclosed. (Preamble at 6)</p> |

| Recommendations of Federation of Companies (Belgium) | Dual Code of the BXS/CBF (Belgium) | The Director's Charter (FDA) (Belgium) | (Reserved) |
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| 31. Disclosure Regarding Corporate Governance | | | |
| <p>The composition of the [audit] committee is announced in the Annual Report.... (Note to 4.3)</p> <p><i>See 2.1 (A recommendation from [the non-executive directors] is required for ... the standards of conduct which the company imposes on itself.).</i></p> | <p>[The Code] proposes a so-called “comply or explain” approach. (Part I: A.5)</p> <p>[M]embership of the remuneration committee should be disclosed in the annual report. (Part I: B.3.2)</p> <p>[M]embership of the [audit] committee should be disclosed in the annual report. (Part I: B.4.3.e)</p> <p>Information [to be disclosed] on the functioning of the board of directors [includes]:</p> <ul style="list-style-type: none"> § Indications on the most significant types of subjects discussed [in meetings]. § Indication of specific rules, if any, ... governing the decision-making process... § A description of the way in which the board of directors is organised to supervise the daily management.... § A description of the way in which the board of directors is organised to follow the evolution of the activities of subsidiaries and participating interests. § If the board of directors has adopted rules for the exercise of the director's function, this should be mentioned together with a summary of these rules. <p>(Part II; B.2)</p> <p><i>See Part I: A.4 (Belgian company law already incorporates the basic concepts required for adequate corporate governance.).</i></p> <p><i>See also Part II: B.3 (disclosure of information on committees) and B.4 (disclosure of board oversight of management).</i></p> <p><i>See also Topic Heading 29, above.</i></p> | <p><i>Not covered directly, but see p. 5 (The Director undertakes to encourage the Board to adopt a code of good practice.).</i></p> | |

| Danish Shareholders Ass'n Guidelines (Denmark) | Nørby Report & Recommendations (Denmark) | Chamber of Commerce/Confederation Code (Finland) | Ministry of Trade & Industry Guidelines (Finland) |
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| 31. Disclosure Regarding Corporate Governance | | | |
| <p><i>Not covered directly, but see Topic Headings 29 and 30, above.</i></p> | <p>[I]t is important that the companies <u>state</u> to what extent they follow the recommendations. (Introduction)</p> <p>If [voting rights] restrictions are already part of a company's Articles, it is recommended that the board evaluates the expediency of this and accounts for its evaluation of whether a revocation of these restrictions is desirable and possible in the annual report. (I.2)</p> <p>It is recommended that the annual report contains the following information about the directors elected by the general meeting:</p> <p>§ the director's occupation.</p> <p>§ the director's other managerial positions or directorships....</p> <p>(V.4)</p> <p>[Board] meeting frequency should be published in the annual report. (V.5)</p> <p>The annual report should contain information about the age of the individual directors. (V.7)</p> <p>The annual report should state when the director joined the board, if the director has been reelected and when the new election period expires. (V.8)</p> <p>The board must account for why it has chosen to use board committees in the annual report. (V.9)</p> <p>[I]t is recommended that the board states the procedures of the board's self-assessment in the annual report. (V.10)</p> <p><i>See</i> Introduction (The recommendations from OECD operate with several basic values such as <u>openness</u>, <u>transparency</u>, <u>responsibility</u> and <u>equality of treatment</u>. The committee is convinced that these values are universal and essential....).</p> <p><i>See also</i> Topic Heading 18, <i>above</i>.</p> | <p>The company shall explain the main duties of the Supervisory Board in the Annual Report and in the Listing Particulars. (English Summary, 3)</p> <p>The company shall confirm in writing the duties of the administrative bodies and their individual members if they are assigned special duties and areas of responsibility supplementing those in the applicable legislation. The areas of responsibility shall be defined in particular in the case of a full-time Chairman of the Board of Directors or another member of the Board of Directors employed by the company.</p> <p>The duties and areas of responsibility of the administrative bodies and their members have to be explained in the Annual Report and in the Listing Particulars, when they have been assigned special duties supplementing the applicable legislation. With regard to individual members of the Board of Directors, the information has to be given when they are employed by the company. An account shall further be given on the order in which the duties and areas of responsibility of the members of the Board of Directors have been confirmed. (English Summary, 1)</p> <p>The composition of the Committee shall be explained in the Annual Report and in the Listing Particulars of the company. (English Summary, 7)</p> | <p>It is justified to include a presentation of the tasks of the Board of Directors in the annual report of the company. The Annual Report should at least list the tasks that are the Board's responsibility; the functions of the possible Supervisory Board should be mentioned separately. Similarly, if the company follows some corporate governance guidelines, a mention of this should be made in the annual report. The possible internal assignment of tasks of the Board of Directors — including the Committees ... — should be presented. (2.1.2)</p> <p>To allow for the shareholders to be assured of the fact that the company management does not have any conditions that are more advantageous than those depending on the markets in their possible business activity with the company, the annual report should also state that the members of the company management and their immediate circles do not have any related party transactions with the company. (2.2.2)</p> <p>In order to define the owner role of the State, the annual report shall mention the possible commitment of the State to the responsibilities of the company concerned in addition to the share capital investment. As the Finnish Government has not assumed such responsibilities, it is justified to mention this separately, especially in view of foreign investors. (2.3.2)</p> <p><i>See</i> Cover Letter to Civil Servants on the Boards of Directors of state-owned companies from the Ministry of Trade & Industry, 7 November 2000 (The companies' corporate governance schemes must be up-to-date in order to ensure the attractiveness of state-owned companies and associated companies as investment objects, and to enable efficient ownership steering and control of shareholders by the State.).</p> |

| Viénot I Report (France) | Hellebuyck Commission Recommendations (France) | Viénot II Report (France) | (Reserved) |
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| 31. Disclosure Regarding Corporate Governance | | | |
| <p>The Committee considers that each board should periodically review its membership, organization and operations, and keep shareholders informed of conclusions and action taken. (p. 3)</p> <p>In France, board operations remain highly informal, and even where formal procedures have been adopted, the boards concerned have given them little publicity. This has led to some concern as to whether the boards of listed companies carry out their assignments with the necessary thoroughness and efficiency.</p> <p>The Committee believes that each board should inform shareholders of the arrangements made to ensure that its duties are properly performed, and should periodically review the adequacy of its organization and operation. In particular, such arrangements should include more formal procedures for the preparation of meetings. (p. 16)</p> | <p>The Commission recommends that the board regularly evaluate its own degree of openness in terms of its membership, its organisation and its mode of functioning. It should inform shareholders of any measures taken as a result.</p> <p>The Commission further recommends that each year, in the annual report, the board publish the number of its meetings during the year, plus an attendance record, an evaluation of board organisation and functioning, and a detailed resumé and list of directorships of each board member and of candidates to director posts. (§ II.D.3)</p> <p><i>See § I.B</i> (The shareholders' meeting is the occasion when the Board of Directors renders its accounts to the shareholders on the exercise of its duties.).</p> | <p>The French position seems unique in that no other country offers the option between a unitary system (Board of Directors) and a dual system (Supervisory Board and Board of Management) in all corporations, including listed corporations. (p. 5)</p> <p>[I]t is essential that the shareholders and third parties be fully informed of the options and of the allocation of powers selected by the Board.</p> <p>The annual report is the location for the information due to the shareholders, to which the reasons for, and justification of, the options made by the Board should be reported.</p> <p>It ought to be possible to append the rules of operation, having become the basic collection of rules for internal operation, to the by-laws, or at least to disclose them to third parties. Information to the latter relating to the nature of the election made could also be provided by measures such as an entry in the Registry of Commerce and Companies or a mention in the corporate documents. (p. 9)</p> <p>The annual report should specify the number of meetings of the Board of Directors and Board committees held during the elapsed financial year, and provide the shareholders with information as to the Directors' actual attendance at the meetings. (p. 16)</p> <p>The annual report should specify precisely the dates of the initiation and expiry of each director's term, so as to highlight the staggering [of Directors' terms].</p> <p>It should also mention for each Director his or her age, major position, and directorships in other listed corporations (other than group affiliates), and specify the names of all the members of each Board committee. (p. 24)</p> | |

| Berlin Initiative Code (Germany) | German Panel Rules (Germany) | Cromme Commission Code (Germany) | (Reserved) |
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| 31. Disclosure Regarding Corporate Governance | | | |
| <p>Adequate information ... is a pre-condition for reinforcing trust.... This applies not least to information on the chosen form of corporate governance. (Commentary on Thesis 9)</p> <p>Companies with more than 500 employees should formulate guidelines for the management and supervision of the company.... (Code, VII.3)</p> <p><i>See also:</i></p> <p>Thesis 1 ([This Code] strengthens the quality and transparency of the management of German companies.).</p> <p>Thesis 2 ([This Code] must take into account the special context of German companies in a globalised economy.).</p> <p>Thesis 3 (An effective [German Code] has a demonstratively managerial perspective.).</p> <p>Thesis 4 (Rules on corporate governance must be tailored to the particular characteristics of companies, principally their legal forms and owner structures.).</p> <p>Thesis 5 (The Management Board stands at the center point of [these] guidelines.).</p> <p>Commentary on Thesis 5 (Rules for the supervision of the Management Board by the Supervisory Board are certainly of importance, but they must not take centre stage and dominate the understanding of corporate governance. In the final analysis, an excellent company management does not allow itself to be 'checked into.')</p> <p>What is inappropriate in particular is the attempt to want to 'check into' the quality of management by concentrating on ... supervision and the auditor of the company. Instead of such control, or Supervisory Board over-balance, the aim should rather be to establish terms most promising for success of the management of the company. (Code, I.7)</p> | <p>Members of the Management Board must disclose to the Supervisory Board material personal interests in transactions of the Company and Group companies as well as other conflicts of interest. They must also inform their Management Board colleagues. (Code, II.4.b)</p> <p>If a member of the Supervisory Board does not participate personally in more than half of the Board Meetings of any given ficsa1 year, this has to be noted in the Annual Report. (Code, III.1.d)</p> <p>The Supervisory Board members must disclose any conflict of interest to the Chairman of the Supervisory Board or his deputy unless they do not participate for cause in a specific meeting or retire for cause due to a continuing conflict. In the event of serious conflicts of interest, the Chairman of the Supervisory Board or his deputy shall decide to whom the information should be forwarded and whether the member of the Supervisory Board in question shall participate in a specific meeting.</p> <p>In their decisions, the Supervisory Board members must not pursue their own interests or those of associated persons or companies which are in conflict with the interests of the Company or any Group Company. (Code, III.4.a - b)</p> <p><i>See generally</i> Code, II.4 (rules governing conflicts of interest and own-account transactions).</p> | <p>The Management Board and Supervisory Board shall report on the enterprise's Corporate Governance in the Annual Report. This also includes explanation of possible deviations from this Code. (§III.10)</p> <p>If a member of the Supervisory Board did not personally take part in more than half of the meetings of the Supervisory Board in a financial year, this shall be noted in the Report of the Supervisory Board. (§V.4.6)</p> <p>In its report, the Supervisory Board shall inform the General Meeting of any conflicts of interest which have occurred together with their treatment. (§V.5.3)</p> <p><i>See generally</i> §VI, Transparency and §VII, Reporting and Audit of the Annual Financial Statements.</p> | |

| Mertzanis Report (Greece) | Federation of Greek Industries Principles (Greece) | IAIM Guidelines (Ireland) | Preda Report (Italy) |
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| 31. Disclosure Regarding Corporate Governance | | | |
| <p>The corporate governance framework should ensure the shareholders that the operation of the corporation is characterized by fairness and transparency:</p> <p>§ The rules and procedures governing the selection of the members of the Board of Directors, the acquisition of control of a listed corporation and the execution of unusual and complex transactions ... should be fully analysed and disclosed so that investors know their rights and the procedure. The price of these transactions should be transparent and be settled in terms and conditions that protect the rights of the shareholders.</p> <p>§ Capital structures and arrangements that enable certain shareholders to obtain a degree of control disproportionate to their equity ownership should be disclosed. (Recommendations 1.4.1 and 1.4.2)</p> <p>See Recommendation 2.2 (Actions and transactions based on insider information or undertaken for private benefit should be prohibited.).</p> <p>See also Recommendation 2.3 (Members of the Board of Directors and executive managers should be required to disclose information on any private material interest involved in transactions or other matters affecting the corporation.).</p> <p>See also Footnote 2 to Recommendation 4.1.1 (legal stipulations regarding disclosure of corporate information)</p> | <p>[These] principles of corporate governance are voluntary in character, but constitute self-binding commitments of the company.</p> <p>The company must make public, at least through its annual reports, the principles of corporate governance that it applies. (§§7.1 & 7.2)</p> | <p><i>Not covered directly, but the IAIM Guidelines adopt the Combined Code. See the Combined Code:</i></p> <p>§ 1, A.2.1 (The chairman, chief executive officer and senior independent director should be identified in the annual report.);</p> <p>§ 1, A.3.2 (Non-executive directors considered by the board to be independent should be identified in the annual report.);</p> <p>§ 1, A.5.1 (The chairman and members of the nomination committee should be identified in the annual report.);</p> <p>§ 1, B.2.3 (The members of the remuneration committee should be listed each year in the board's remuneration report to shareholders.).</p> <p><i>The Preamble to the Combined Code makes clear that listed companies should be required to disclose how they apply the Principles of Good Governance and whether they are in compliance with the Code of Best Practice Provisions.</i></p> | <p>The Committee recommends that the election of members of the board of directors should take place in accordance with a transparent procedure. (Commentary on Code, 7; see Report, 5.4.1)</p> <p>Where ... the board has delegated powers to the chairman, it shall disclose adequate information in its annual report on the powers delegated. (Code, 4.3; see Commentary on Code, 4; Report, 5.2)</p> <p>[The nominations] committee ... serves the primary purpose of rendering the selection procedure transparent. (Commentary on Code, 7)</p> <p>[T]he Committee recommends that the members of the board of auditors be elected by means of a transparent procedure and that shareholders should receive the information they need to exercise their voting rights in an informed manner. (Commentary on Code, 13; see Report, 5.6)</p> <p>See Report, 6 (The task of verifying the suitability of the choices made [in the Code], and the extent of the Code's application, is entrusted to the institutional <u>fora</u> for the confrontation between companies and the main actors interested in good Corporate Governance: It is therefore to be reserved to shareholders' meetings and encounters with institutional investors.).</p> |

| Peters Report (The Netherlands) | VEB Recommendations The Netherlands | SCGOP Handbook and Guidelines (The Netherlands) | Securities Market Comm'n Recommendations (Portugal) |
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| 31. Disclosure Regarding Corporate Governance | | | |
| <p>The basic outlines of Corporate Governance within the Company should be explained in the annual report. The Company should give a motivated explanation in the annual report of the extent to which it has complied with the recommendations.</p> <p>The profile [of the Supervisory Board] is a public document and should be available for inspection at the company's offices. (Recommendation 2.2)</p> <p>The annual report should state the ages of the individual Supervisory Board members, their occupation, main job, nationality and the main additional posts they hold, to the extent that the latter are of importance for performing the duties of a Supervisory Board member. The report should also state when a member was first appointed and the current term of the appointment. (Recommendation 2.4)</p> <p>The fact that discussion [regarding performance of the Supervisory Board & the Management Board] has been held is to be mentioned in the Supervisory Board's report in the annual report. (Recommendation 3.5)</p> <p>The basic outlines of Corporate Governance within the company should be explained in the annual report. (Recommendation 6.1)</p> <p>The annual accounts audit is one of the cornerstones for sound Corporate Governance. (Recommendation 6.3)</p> | <p><i>Not covered directly, but see Recommendation 10 (If a shareholder's stake in the company passes 33¹/₃ percent, that shareholder should be obliged to bid for the remaining shares under reasonable conditions.).</i></p> <p><i>See also Commentary on Recommendation 10 (The Peters code recommends a threshold of 50 percent, which is considerably higher than in other European countries. In fact, with smaller stakes substantial control is already feasible.).</i></p> | <p>Companies should state which recommendations of the Corporate Governance Commission [i.e., Peters Report] they are not adopting and why. (Guideline 1)</p> <p>A company should only accept a so-called "structure regime" by choice if this decision has been put to (annual) approval of shareholders at the annual meeting. (Guideline 10)</p> <p>The annual report must state whether each supervisory board member is independent from management and any majority shareholders. (Guideline 13(a))</p> <p>Profiles of the supervisory board and its rules and regulations should be made available to shareholders. (Guideline 17)</p> <p>The management structure must ... be transparent.</p> <p>The company must clearly disclose its strategy [and] the decision-making process within the company. (Handbook, p. 9)</p> | <p>[I]t is recommended that listed companies and institutional investors include a mention in their annual reports of the adoption, or degree of adoption, of these recommendations, with the grounds for this adoption. (Introduction)</p> <p>Information should be disclosed on the sharing of powers between the different bodies and departments or divisions of the company, within the framework of the corporate decision process, particularly through flowcharts or functional maps. (Recommendation 1)</p> <p>It is recommended that, for those matters which are central to the configuration of corporate governance, information be disclosed, even if only summarized, on the special procedures of decision, particularly regarding the company's strategic options. (Commentary on Recommendation 1)</p> <p>It is recommended that, within the internal organization of the company, specific regulations be established aimed at regulating situations of conflict of interest between members of the board and the company, as well as the main obligations resulting from duties of diligence, loyalty and confidentiality of the members of the board, particularly regarding the prevention of improper use of business opportunities and company assets. (Recommendation 12)</p> <p>Internal control procedures, besides the possibility of them having a significant impact on the level of corporate efficiency, are ... privileged means to guarantee transparent corporate governance. (Commentary on Recommendation 12)</p> |

| Olivencia Report (Spain) | Swedish Shareholders Ass'n Policy (Sweden) | ICSA Code (United Kingdom) | ISC Staement (United Kingdom) |
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| 31. Disclosure Regarding Corporate Governance | | | |
| <p>The Board of Directors should include in its public annual report some information concerning its governance rules, providing an explanation in connection with any rules deviating from the recommendations of this Committee. (Code, Recommendation 23)</p> <p>It is obvious that corporate governance issues are extremely relevant, as shown by available experience. In general, the experts in this matter – analysts and fund managers – consider that corporate governance standards are quite important when making investing decisions, and surveys carried out confirm this view. Companies must be transparent in order to allow the evaluation of the governance systems by markets. for this reason, we recommend that listed companies provide public information on those topics, making sure that the Compliance Committee, which has the basic task of evaluating the efficiency of the company's control and decision rules and watch over their effective observance, takes part in preparing that information.</p> <p>The objective is that the Board of Directors include information on its governance rules within its annual public documentation. It seems very wise that companies justify their decision to not follow the recommendations of Code of Best Practice issuing from this report. (Report, 12.2)</p> | <p>[Nomination] committee members should be presented in the annual report. (Guideline 1.2.1)</p> <p>[A]udit committee members should be presented in the annual report. (Guideline 1.2.2)</p> | <p><i>Not covered.</i></p> | <p>As a matter of law and Stock Exchange requirements, copies of all directors' service contracts with an unexpired term of 12 months or more must be made available in an accessible place for inspection by shareholders.... The unexpired period of any service contract must be disclosed where a director is being proposed for re-election. (p.4)</p> <p>The composition of the Compensation Committee should be disclosed in the Annual Report. (p. 4)</p> <p>There is no requirement either under the Statutes or under the Listing Agreement that the powers of directors to borrow on behalf of a company should be limited.</p> <p>It is suggested that, as a matter of good practice, there should be a reasonable limit under the Articles of Association on the power of the directors to borrow, which should relate to the borrowings of the group as a whole. It is desirable that the amount permitted under the Borrowing Powers Article should be stated in the Annual Report and Accounts. (p. 5)</p> |

| Cadbury Report (United Kingdom) | Greenbury Report (United Kingdom) | Hampel Report (United Kingdom) | The Combined Code/Turnbull Report (United Kingdom) |
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| 31. Disclosure Regarding Corporate Governance | | | |
| <p>We recommend that listed companies ... should state in the report and accounts whether they comply with the Code and identify and give reasons for any areas of non-compliance. (Report 3.7)</p> <p><i>Note: The London Stock Exchange Listing Rules subsequently came to require that listed companies disclose how they comply with the Principles of the Combined Code of 1998 and whether they comply with its Provisions (“comply or explain”). See §12.43A(a) and (b) (January 1999).</i></p> <p>We envisage, however, that many companies will wish to go beyond the strict terms of the London Stock Exchange rule and make a general statement about the corporate governance of their enterprises, as some leading companies have already done. We welcome such statements and leave it to boards to decide the terms in which they make their statements of compliance. (Report 3.8)</p> | <p>We recommend that all listed companies registered in the UK should comply with the Code to the fullest extent practicable and include a statement about their compliance in the annual reports to shareholders by their remuneration committees or elsewhere in their annual reports and accounts. Any areas of non-compliance should be explained and justified. (Code, 2.3)</p> <p>We further recommend that the London Stock Exchange should introduce the following continuing obligations for listed companies:</p> <p>§ an obligation to include in their annual remuneration committee reports to shareholders or their annual reports a general statement about their compliance with section A of the Code which should also explain and justify any areas of non-compliance;</p> <p>§ a specific obligation to comply with the provisions in section B of the Code which are not already covered by existing obligations, and with provision C10 of the Code, subject to any changes of wording which may be desirable for legal or technical reasons.</p> <p>(Code, 2.4)</p> <p><i>Note: The London Stock Exchange Listing Rules subsequently came to require that listed companies disclose how they comply with the Principles of the Combined Code of 1998 and whether they comply with its Provisions (“comply or explain”). See §12.43A(a) and (b) (January 1999).</i></p> <p>The members of the remuneration committee should be listed each year in the committee’s report to shareholders. When they stand for re-election, the proxy cards should indicate their membership on the committee. (Code, A5)</p> | <p>The board should establish formal and transparent arrangements for maintaining an appropriate relationship with the company’s auditors. (Principle D.III)</p> <p>We draw a distinction between principles of corporate governance and more detailed guidelines like the Cadbury and Greenbury codes. With guidelines, one asks: “How far are they complied with?”; with principles, the right question is: “How are they applied in practice?” [The Committee] recommends that companies should include in their annual report and accounts a narrative statement of how they apply the relevant principles to their particular circumstances. Given that the responsibility for good corporate governance rests with the board of directors, the written description of the way in which the board has applied the principles of corporate governance represents a key part of the process. We do not prescribe the form or content of this statement, which could conveniently be linked with the compliance statement required by the Listing Rules. (Guideline 2.1)</p> <p>See Principle C.III (When evaluating companies’ governance arrangements, particularly those relating to board structure and composition, institutional investors and their advisers should give due weight to all relevant factors drawn to their attention.)</p> | <p>The board should establish formal and transparent arrangements for considering how they should apply the financial reporting and internal control principles and for maintaining an appropriate relationship with the company’s auditors. (Principle D.3)</p> <p>The chairman, chief executive officer and senior independent director should be identified in the annual report. (Code § 1, A.2.1)</p> <p>Non-executive directors considered by the board to be independent ... should be identified in the annual report. (Code § 1, A.3.2)</p> <p>The chairman and members of the nomination committee should be identified in the annual report. (Code § 1, A.5.1)</p> <p>The members of the remuneration committee should be listed each year in the board’s remuneration report to shareholders. (Code § 1, B.2.3)</p> <p>The members of the [audit] committee, a majority of whom should be independent non-executive directors, should be named in the report and accounts. (Code § 1, D.3.1)</p> <p><i>The London Stock Exchange introduced a requirement that listed companies disclose how they apply the Principles of Good Governance and whether they are in compliance with the Code of Best Practice Provisions. See: Listing Rules, §§ 12.43A(a) and (b) (January 1999).</i></p> <p>If the company does not have an internal audit function and the board has not reviewed the need for one, the Listing Rules require the board to disclose these facts. (Turnbull Report, ¶47)</p> |

| NAPF Corporate Governance Code (United Kingdom) | AUTIF Code (United Kingdom) | Hermes Statement (United Kingdom) | PIRC Shareholder Voting Guidelines (United Kingdom) |
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| 31. Disclosure Regarding Corporate Governance | | | |
| <p>The majority of non-executive directors should be independent of management and identified as such in the annual report. (§3)</p> <p>There should be a formal and transparent procedure for the appointment of new directors to the board. (§7)</p> <p>Any change of auditors, agreed by the board as part of a periodic planned review, or for any other reason, should be explained and justified to shareholders. (§13)</p> | <p>AUTIF encourages member firms to identify an individual who may be contacted regarding corporate governance matters. (Principle 1)</p> <p>Regular dialogue will provide opportunities for member firms to explore with companies any concerns they may have about companies' compliance with the Combined Code. (Principle 5)</p> <p>AUTIF recommends that member firms should include in their annual reports to investors, as a minimum, a statement as to whether the firm is following the AUTIF code of good practice or another similar code. (Principle 7)</p> <p>AUTIF encourages all member firms to provide training for relevant staff on corporate governance issues and on communicating the firm's policy on corporate governance to its investors. (Principle 10)</p> <p>The chairman, chief executive and senior independent director should be identified in the annual report. (Guidance Note on Key Principle 6)</p> <p>A.5.1 [of the Combined Code] recommends... [that] the chairman and members [of the nomination committee be] identified in the annual report. The company should provide an explanation if there is no nomination committee. (Guidance Note on Key Principle 6)</p> <p>Member firms may wish to consider including in their annual reports to their investors ...[a] general policy statement on corporate governance. (Guidance Note on Key Principle 7)</p> | <p>Hermes accepts that not all NEDs need to be independent ... and that there can be a role for other NEDs provided that at least three, and a majority, of NEDs satisfy the ... test of independence.... There should be full disclosure in the annual report of any factors to be taken into account in judging an individual's independence. (2.3)</p> <p>Membership of the [nomination] committee should be disclosed in the annual report. (APPENDIX 3.1)</p> <p>The company should disclose in its Annual Report whether:</p> <p>1.1 The formal schedule of matters reserved to the Board takes account of SEE [social, environmental and ethical] matters.</p> <p>1.2 The Board has identified and assessed the significant risks to the company's short- and long-term value arising from SEE matters.</p> <p>1.3 Account is taken of SEE matters in the training of directors.</p> <p>1.4 The Board has received adequate information about SEE matters that may affect the company's short- and long-term value.</p> <p>1.5 The remuneration committee, in designing and implementing performance-related remuneration schemes, has considered the effect on the company's performance of SEE matters. (APPENDIX 4.1)</p> <p><i>See 6.1 (It is inappropriate that any of the return that is rightfully shareholders' should be diverted to political donations. Donations to charities are acceptable within reason.).</i></p> | <p>Disclosure about the directors and the board is critical in enabling shareholders to form a proper judgement when voting. Apart from the areas set out in the Combined Code, particular features on which PIRC considers there should be full disclosure include:</p> <p>§ The cycle of board and committee meetings;</p> <p>§ The availability of the terms of reference for the board and the committees;</p> <p>§ Directors' attendance record at board and committee meetings held during the year;</p> <p>§ Training provided and required for directors ... ;</p> <p>§ Procedures and responsibilities for succession planning;</p> <p>§ Full biographies for all directors.... Any regulatory or statutory breaches of professional conduct should be reported in full;</p> <p>§ The main terms of each director's service contract.... [C]opies of all contracts ... should be available upon request. (Part 2: Directors, p. 4)</p> <p>Committee membership, frequency of meetings and attendance records should be disclosed in annual reports. (Part 2, Directors, p. 5)</p> <p>The annual report is the most important channel of communication between a company and its shareholders and other stakeholders. Corporate governance is an issue of concern to a wider audience than institutional investors since it relates to the exercise of power and the success of business and the wider economy. PIRC considers that corporate governance involves consideration of the range of relationships entered into by companies. Although the prime focus is on the board and accountability to shareholders, directors should identify their key stakeholders, and should report on and be held accountable for the quality of these relationships since they underpin long-term business success. (Part 4: Audit and Reporting, p. 12)</p> <p><i>See Topic Heading 3, above.</i></p> |

| OECD Principles/Millstein Report (International) | ICGN Statement/Global Voting Principles (International) | Euroshareholders Guidelines (Pan-European) | EASD Principles and Recommendations (Pan-European) |
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| 32. Accuracy of Disclosure / Internal Control Systems / Liability | | | |
| <p>The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership, and governance of the company. (OECD Principle IV)</p> <p>Information should be prepared, audited, and disclosed in accordance with high quality standards of accounting, financial and non-financial disclosure. (OECD Principle IV.B)</p> <p>The Principles support development of high quality internationally recognized standards. (OECD Principle IV.B Annotation at 38)</p> <p>An annual audit should be conducted by an independent auditor in order to provide an external and objective assurance on the way in which financial statements have been prepared and presented. (OECD Principle IV.C)</p> <p>Regulators should require that corporations disclose accurate, timely information concerning corporate financial performance. (Millstein Report, Perspective 9)</p> <p>Regulators should cooperate internationally in developing clear, consistent and comparable standards for disclosure. (Millstein Report, Perspective 10)</p> <p>Policy makers and regulators should articulate clearly the legal standards that govern shareholder, director and management authority and accountability, including their fiduciary roles and legal liabilities.... [L]egal standards should be flexible and permissive of evolution. (Millstein Report, Perspective 13)</p> <p><i>See</i> OECD Principle V.D.7 (The board should fulfil certain key functions, including ... [o]verseeing the process of disclosure and communications.).</p> <p><i>See also</i> Topic Headings 28 and 29, above.</p> | <p><i>The ICGN Statement adopts</i> OECD Principle IV (The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership, and governance of the company.).</p> <p><i>See also</i> OECD Principle IV.B (Information should be prepared, audited, and disclosed in accordance with high quality standards of accounting, financial and non-financial disclosure.).</p> <p><i>See also</i> OECD Principle IV.C (An annual audit should be conducted by an independent auditor in order to provide an external and objective assurance on the way in which financial statements have been prepared and presented.).</p> <p>The ICGN holds that corporations should disclose accurate, adequate and timely information, in particular meeting market guidelines where they exist, so as to allow investors to make informed decisions about the acquisition, ownership obligations and rights, and sale of shares. (ICGN Amplified OECD Principle IV at 7)</p> <p><i>See</i> OECD Principle V.D.7 (The board should fulfil certain key functions, including ... [o]verseeing the process of disclosure and communications.).</p> <p><i>See also</i> ICGN GLOBAL SHARE VOTING PRINCIPLES, 10 (There should be appropriate regulation or an effective mechanism to ensure that shareholder meeting agendas are released according to established rules and procedures, and that the correct amount and appropriate content of proxy information is distributed to shareholders.).</p> | <p>Auditors have to be independent and should be elected by the general meeting. (Recommendation 6)</p> <p><i>See</i> Commentary on Recommendation 6 (The annual report and the annual accounts are extremely important for shareholders, since these documents are needed to:</p> <ul style="list-style-type: none"> § judge the evolution of the company's results; § judge the performance of the management; § make investment decisions. <p>Shareholders should therefore be allowed to elect the auditors.).</p> | <p>Relevant, timely, accurate and understandable disclosure should be made of material information necessary for the proper evaluation of the status and the situation of the company. Internal controls should provide for the integrity of corporate data. Independent verification and certification of the existence of appropriate controls and the integrity of data, in particular disclosed information, should be obtained to the fullest extent feasible. (Principle VIII)</p> <p>Disclosed information should be provided according to recognized high-quality international standards. (Recommendation VIII.4)</p> <p>Disclosed information should be substantially audited. (Recommendation VIII.5)</p> <p>The audit should be conducted in accordance with internationally accepted standards. (Recommendation VIII.6)</p> |

| Recommendations of Federation of Companies (Belgium) | Dual Code of the BXS/CBF (Belgium) | The Director's Charter (FDA) (Belgium) | (Reserved) |
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| 32. Accuracy of Disclosure / Internal Control Systems / Liability | | | |
| <p>The Secretary of the Board must ensure that the procedures in relation to the functioning of the Board and the regulations which apply to it are complied with.</p> <p>If there is no Secretary of the Board of Directors, the Board shall take the necessary action so that a person is given the task of monitoring compliance with the procedures in connection with the functioning of the Board and the applicable regulations.</p> <p>In both cases, he can only be replaced by a decision of the Board itself. (1.5)</p> | <p>Integrity demands that the financial reports and other information disseminated by the company present an accurate and complete picture of the company's position.</p> <p>[T]he responsibility of the board of directors chiefly relates to the quality of the information it provides to shareholders. (Part I: A.7)</p> <p>The report and accounts should contain a coherent narrative of the company's financial position, supported by information on the company's performance and prospects. Depending on the nature of the company, it should contain the information needed to enable investors and their investment advisers to form a view of the company's financial position and performance.... Balance requires that setbacks should be dealt with as well as successes. (Part I: B.4.1)</p> | <p>The Director undertakes to verify that correct information is given to shareholders, within the limits compatible with commercial and competitive necessities, concerning the company's strategy in general on all subjects of importance affecting the company, and specifically in times of crisis. (p. 5)</p> <p>The Director undertakes to ensure that the company always respects its legal obligations and regulations; and if the company is listed on the Stock Exchange, that it rigorously observes the regulations of the Stock Exchange. (p. 5)</p> <p>The Director undertakes not to distribute, directly or indirectly, any information that he or she knows to be false or misleading. (p. 7)</p> | |

| Danish Shareholders Ass'n Guidelines (Denmark) | Nørby Report & Recommendations (Denmark) | Chamber of Commerce/Confederation Code (Finland) | Ministry of Trade & Industry Guidelines (Finland) |
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| 32. Accuracy of Disclosure / Internal Control Systems / Liability | | | |
| <p><i>Not covered directly, but see I. The Annual General Meeting (The auditors should be independent of the management, and they should be elected by the shareholders.).</i></p> | <p>The company report must be presented according to the relevant Danish laws, and it is recommended that the board considers applying International Accounting Standards (IAS). Other accepted standards such as US-GAAP can be applied as supplements, if this is relevant in connection with trade conditions or other circumstances with regard to the information requirements of the recipients, including comparability facilitation. (III.3)</p> <p>It is recommended that companies use quarterly reports. (III.5)</p> <p>Efficient risk management is a prerequisite for the board being able to perform the tasks for which it is responsible in the best possible way. Thus it is important that the board ensures that there are appropriate systems for risk management in place and, moreover, ensures that such systems meet the requirements of the company at any time. (VII)</p> <p>The purpose of risk management is:</p> <p>§ to develop and maintain an understanding within the organisation of the company's strategic and operational goals, including identification of the critical success factors.</p> <p>§ to analyse these possibilities and challenges which are connected with the realisation of the above goals and to analyse the risk of these goals not being met.</p> <p>§ to analyse the most important activities of the company in order to identify the risks attached hereto.</p> <p>The risk management system must define the risk and describe how this risk is eliminated, controlled or hedged on a continuous basis. (VII.1)</p> <p><i>See generally VII (risk management).</i></p> | <p><i>Not covered.</i></p> | <p>In the operational presentation [in the annual report], the aim should be to give a comprehensive picture of the instruments whereby the Board of Directors envisages to make the company produce economic value-added. It is important to describe the monitoring system whereby the Board of Directors ensures that the goals that it has set for the company will be met. First of all, <u>a description of the system for monitoring profit targets</u> should be included, <u>i.e.</u>, a report on how and when the implementation is monitored. This is also connected with a description of the activities of the <u>internal auditing</u>: what kind of resources are available and how it is working to ensure that the company's operations comply with the law and to prevent possible abuse cases involving the employees. (2.1.2)</p> <p>Committee work or other preparation of issues without the presence of the members of the Board of Directors belonging to the hired top management does not affect the statutory decision-making and responsibilities of the Board of Directors. Subject to the Finnish Companies Act, all members of the Board of Directors shall answer for the decisions made by the Board of Directors. Therefore the handling referred to above can only be preparatory to the actual decision-making of the Board of Directors, but it cannot substitute the actual decision-making. (2.2.1)</p> |

| Viénot I Report (France) | Hellebuyck Commission Recommendations (France) | Viénot II Report (France) | (Reserved) |
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| 32. Accuracy of Disclosure / Internal Control Systems / Liability | | | |
| <p>While it is the Chairman's duty to provide the market with a regular flow of information on a day-to-day basis, the board of directors is responsible for presenting annual and half-yearly financial statements, and for informing the market of major financial transactions. In such cases, the board must provide quality information, which is sufficiently reliable and clear to ensure the fair execution of the transactions concerned. (p. 6)</p> <p>[T]he board of directors collectively represents all company shareholders.... It must carry out its duties in the interests of the company and, if it fails to do so, its members are jointly and severally liable.</p> <p>Similarly, ... individual board members ... must consider themselves representatives of all shareholders and behave as such, and are personally liable if they fail to do so. (p. 10)</p> <p>Adoption of financial statements is central to the board's supervisory duties as is its obligation to ensure that information provided to markets and shareholders is reliable and clear.</p> <p>Preparatory consideration by a specialized committee, whose membership and powers are made public, offers a guarantee that these duties will be fulfilled with the necessary diligence and impartiality.</p> <p>The Committee recommends that each board should appoint an advisory committee principally charged with ensuring the appropriateness and consistency of accounting policies applied in consolidated and company financial statements, and with verifying that internal procedures for collecting and checking information are such that they guarantee its accuracy.</p> <p>The advisory committee's task is not so much to examine the details of financial statements as to assess the reliability of procedures for their establishment and the validity of decisions taken concerning significant transactions. (pp. 18-19)</p> | <p><i>Not covered.</i></p> | <p>[If French law were amended to allow for the separation of chairman and CEO roles in a unitary board system, and if] the Chairman of the Board of Directors is [thus] devoid of management prerogatives, he or she should be subject to either civil or criminal liability only in respect of misconduct in the performance or in connection with performance of his or her personal duties, exclusive of mismanagement. (p. 8)</p> <p>The election among various [accounting] standards may be momentous for corporations' earnings, according, for instance, to the duration selected for amortization of goodwill, or the duty to amortize intangible assets or not.</p> <p>The financial managers and statutory auditors of corporations are naturally in charge of the technical reviews of this matter. (p. 18)</p> <p>The statutory rules with respect to civil and criminal liability will need to be amended so as to provide for the situation where the Board of Directors elects to separate the positions of chairman and chief executive officer [in a unitary board system], so that the chairman of the Board of Directors, devoid of management prerogatives, could be held liable only as regards misconduct connected with his personal duties. (p. 22)</p> | |

| Berlin Initiative Code (Germany) | German Panel Rules (Germany) | Cromme Commission Code (Germany) | (Reserved) |
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| 32. Accuracy of Disclosure / Internal Control Systems / Liability | | | |
| <p>The purchase and sale of Company shares, options or other share derivatives by members of the Management Board and senior Group executives are subject to special rules. (Code, II.4(h))</p> | <p>The Company shall prepare its Group Accounts and its quarterly reports according to internationally recognized accounting principles. (Code, II.2.d; <i>see</i> Code, I)</p> <p>The Supervisory Board ... stipulates the information and reporting duties of the Management Board. (Code, III.2.d)</p> <p>The [Accounts and Audit] Committee ... evaluates the Auditor's reports, and reports to the Supervisory Board on its assessment of the comments in the audit report, particularly with regard to the future development of the Group. It verifies the Management Board's assumptions on the budget figures for the Group and its business segments. Important other documents issued to shareholders shall be presented before publication to the Committee. (Code, III.3)</p> | <p>The Management Board and Supervisory Board comply with the rules of proper corporate management. If they violate the due care and diligence of a prudent and conscientious Managing Director or Supervisory Board member, they are liable to the company for damages.</p> <p>If the company takes out ... directors and officers' liability insurance ... for the Management Board and Supervisory Board, a suitable deductible shall be agreed. (§III.8)</p> <p>The Management Board ensures that all provisions of law are abided by and works towards their compliance by group companies. (§IV.1.3)</p> <p>The Management Board ensures appropriate risk management and risk controlling in the enterprise. (§IV.1.4)</p> <p>The Management Board shall establish principles and guidelines for the enterprise. (§IV.1.5)</p> <p>The Consolidated Financial Statements and interim reports shall be prepared under observance of internationally recognised accounting principles. For corporate law purposes ..., Annual Financial Statements will be prepared according to national regulations (German Commercial Code).... (§VII.1.1)</p> <p>The Consolidated Financial Statements will be prepared by the Management Board and examined by the auditor and Supervisory Board. (§VII.1.2)</p> <p><i>See generally</i> §VI, Transparency and §VII, Reporting and Audit of the Annual Financial Statements.</p> | |

| Mertzanis Report (Greece) | Federation of Greek Industries Principles (Greece) | IAIM Guidelines (Ireland) | Preda Report (Italy) |
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| 32. Accuracy of Disclosure / Internal Control Systems / Liability | | | |
| <p>Information should be prepared, audited and disclosed according to the prevailing rules of the European Union, and should be in the spirit of the rules of the [OECD]. (Recommendation 4.2)</p> <p>The annual report and the quarterly financial statements should contain consistent reporting of the entire financial situation of the corporation, supplemented by the provision of sufficient information on the corporation's performance and prospects.... [T]he annual report and the quarterly financial statements should contain all necessary information, in comprehensive form, required by investors and their consultants for the formation of a clear profile of the corporation's financial situation and prospects. (Recommendation 4.4)</p> <p>The Board of Directors has the responsibility ... for ... [t]he consistency of disclosed accounting and financial statements, including the report of the (independent) certified accountants, the existence of risk evaluation procedures, supervision, and the degree of compliance of the corporation's activities to existing legislation. (Recommendation 5.3.4)</p> <p><i>See</i> Recommendation 1.2.4 (Shareholders should have the right to ... be sufficiently, timely and properly informed on decisions that need to be made regarding fundamental changes in the corporation. These changes include ... the solution of problems related to designing, reporting and maintaining transparency in the financial statements and profit-sharing policies.).</p> <p><i>See also</i> Recommendation 7.3 (It is a good practice that a financial chief executive officer be appointed as part of the management team.).</p> | <p>The existence of internal regulation for the company's operations is a fundamental principle of corporate governance. Internal operations regulation is constituted by decision of the company's board of directors and aims at assisting the board in the exercise of its duties, with a view to protecting the company's interests. (§3.1)</p> <p>Internal operations regulation must cover ... [t]he structuring of the company's services, their scope, as well as relations of these services among themselves and vis-à-vis management. At a minimum, there must also be services for internal control, shareholder services and company announcements. (§3.2(a))</p> <p><i>See</i> §3.2(b), (c) & (d) (<i>other procedures that internal operations regulation must cover</i>).</p> <p>The organization and operation of internal control is a fundamental condition of corporate governance. Internal control is carried out by a special company service, staffed by at least one person.</p> <p>The internal controller is hierarchically integrated in the management of the company but remains independent in the exercise of his duties.</p> <p>The internal controller is appointed by the company's board of directors.... The company must inform the Capital Market Commission, within ten working days, of any changes to the person or the organization of its internal control. (§§4.1, 4.2 & 4.3)</p> <p>[The internal controller] tracks the application of, and ongoing compliance with, internal operations regulation, the company's statutes, and the general legislation affecting the company (§4.5(a))</p> <p><i>See</i> §§4.4 & 4.5(b), (c) & (d) (<i>internal controller's access to company information and job description</i>).</p> | <p><i>Not covered directly, but the</i> IAIM Guidelines <i>adopt the</i> Combined Code. <i>See</i> the Combined Code, Principle D.2 (The board should maintain a sound system of internal control to safeguard shareholders' investment and the company's assets.)</p> <p><i>See also</i> the Combined Code, § 1, D.2.1 (The directors should, at least annually, conduct a review of the effectiveness of the group's system of internal control and should report to shareholders that they have done so. The review should cover all controls, including financial, operational and compliance controls and risk management.).</p> | <p>The internal control system is charged with the task of checking effective compliance with the operational and administrative internal procedures adopted to guarantee a sound and efficient management and to identify, forestall and limit, as far as possible, financial and operational risks and fraud at the company's expense. (Code, 9.2; <i>see</i> Report, 5.4.3)</p> <p>[The internal control] committee is the formally constituted body able to assess autonomously and independently from both the managing directors on issues concerning the safeguarding of the company's integrity and from the auditing firms on the results set out in the auditors' report and their letter of suggestions. (Commentary on Code, 10)</p> <p><i>See</i> Code, 9.3 (The persons appointed to run the internal control system ... shall report on their activity to the directors delegated to the task, to the internal control committee, and to the members of the board of auditors.)</p> |

| Peters Report (The Netherlands) | VEB Recommendations (The Netherlands) | SCGOP Handbook and Guidelines (The Netherlands) | Securities Market Comm'n Recommendations (Portugal) |
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| 32. Accuracy of Disclosure / Internal Control Systems / Liability | | | |
| <p>At least once a year the Supervisory Board should discuss the strategy and the risks associated with the company and the results of the assessment made by the [Management Board] of the systems of internal control. (Recommendation 3.4)</p> <p>The agenda for the annual General Meeting of Shareholders is organized in such a way that clearly identifiable decisions can be made concerning ... approval of the policy pursued and the release from liability therefor. . . . This means approval of the policy pursued by the [Management Board] and of the supervision carried out by the Supervisory Board, which approval shall likewise imply a release from liability for the [Management Board] and the Supervisory Board. (Recommendation 3.6)</p> <p>As a minimum requirement, the [Management Board] should report to the Supervisory Board on the results of its assessment of the structure and functioning of the internal control systems which are intended to provide reasonable certainty that the financial information is reliable. (Recommendation 4.3)</p> <p>For the benefit of all the investors the quality and specialisation of investment analysis, particularly that of the different sectors, should increase. (Recommendation 5.8)</p> | <i>Not covered.</i> | <p>Shareholders must be given timely access to all relevant financial information in order to judge whether a company's actions are in line with its stated goals. (Handbook, p. 9)</p> | <i>Not covered</i> |

| Olivencia Report (Spain) | Swedish Shareholders Ass'n Policy (Sweden) | ICSA Code (United Kingdom) | ISC Statement of Best Practice (United Kingdom) |
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| 32. Accuracy of Disclosure / Internal Control Systems / Liability | | | |
| <p>Any periodic financial information which is made available to markets (besides the annual accounts) must be produced according to the same principles and professional practices as the annual accounts and must be verified by the Audit Committee prior to its disclosure. (Code, Recommendation 20)</p> <p>The Board of Directors should try to avoid that its accounts be submitted to the General Shareholders' Meeting with reservations and provisos on the audit report. Whenever this is not possible, both the Board of Directors and the auditors should clearly explain to shareholders and markets the nature and scope of those discrepancies. (Code, Recommendation 22)</p> <p>[C]ompanies ... should have an induction program for new directors ... to provide them with advice on their legal duties.... (Report, 5.3)</p> <p>See Report, 3.4 (All [directors] have to take part in the deliberations and collective decisions, and are accountable for them.).</p> | <p>The audit committee should be a sub-committee of the board, and does not exempt the board from responsibility. (Guideline 1.2.2)</p> | <p><i>Not covered directly, but see Code, §5 (As a basic principle, all material contracts, and especially those not in the ordinary course of business, should be referred to the board for decision prior to the commitment of the company.).</i></p> | <p><i>Not covered.</i></p> |

| Cadbury Report (United Kingdom) | Greenbury Report (United Kingdom) | Hampel Report (United Kingdom) | The Combined Code/Turnbull Report (United Kingdom) |
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| 32. Accuracy of Disclosure / Internal Control Systems / Liability | | | |
| <p>The directors should explain their responsibility for preparing the accounts next to a statement by the auditors about their reporting responsibilities. (Code, 4.4)</p> <p>Directors are responsible under s. 221 of the Companies Act 1985 for maintaining adequate accounting records. To meet these responsibilities, directors need in practice to maintain a system of internal control over the financial management of the company, including procedures designed to minimize the risk of fraud. There is, therefore, already an implicit requirement on directors to ensure that a proper system of internal control is in place. (Report, 4.31)</p> <p>Since an effective internal control system is a key aspect of the efficient management of a company, we recommend that the directors should make a statement in the report and accounts on the effectiveness of their system of internal control and that the auditors should report thereon. (Report, 4.32)</p> <p>The cardinal principle of financial reporting is that the view presented should be true and fair. Further principles are that boards should aim for the highest level of disclosure consonant with presenting reports which are understandable and with avoiding damage to their competitive position. They should also aim to ensure the integrity and consistency of their reports and they should meet the spirit as well as the letter of reporting standards. (Report, 4.51)</p> <p>The Committee is convinced that an effective internal control system is an essential part of the efficient management of a company.... A great deal of detailed work is now necessary to develop these proposals, and we recommend that the accounting profession ... should take the lead. (Report, 5.16)</p> <p><i>See APPENDIX 6: AUDITORS' LIABILITY: THE CAPARO CASE.</i></p> | <p><i>Not covered.</i></p> | <p>The board should maintain a sound system of internal control to safeguard shareholders' investment and the company's assets. (Principle D.II)</p> <p>The board should establish formal and transparent arrangements for maintaining an appropriate relationship with the company's auditors. (Principle D.III)</p> <p>Accounting principles and the content of financial statements are regulated by both the law and by accounting standards. The Cadbury committee drew attention to weaknesses which then existed in financial reporting, and endorsed the objectives of the then newly established Financial Reporting Council and the Accounting Standards Board in setting reporting standards. Cadbury also welcomed the actions of the Financial Reporting Review Panel in monitoring compliance. These bodies are making good progress. We note that there are moves towards the international harmonization of accounting standards. However, we do not consider that our remit requires us to review these areas, in which the accounting authorities are closely involved. (Guideline 6.16)</p> <p>In this report we do not propose any change in the role of auditors or their public reporting responsibilities. We feel that best practice should be allowed to develop and evolve. It is clear, however, that while boards often seek greater reassurance about controls and other matters, auditors feel inhibited in going beyond their present functions because of concerns about the present law on professional liability. We consider that account should be taken of these concerns by those setting professional standards and when decisions on changes in the relevant law are taken. (Guideline 6.19)</p> <p><i>See generally PART 6, ACCOUNTABILITY AND AUDIT.</i></p> | <p>The board should maintain a sound system of internal control to safeguard shareholders' investment and the company's assets. (Principle D.2)</p> <p>The directors should, at least annually, conduct a review of the effectiveness of the group's system of internal control and should report to shareholders that they have done so. The review should cover all controls, including financial, operational and compliance controls and risk management. (Code § 1, D.2.1)</p> <p>Effective financial controls, including the maintenance of proper accounting records, are an important element of internal control. They help ensure that the company is not unnecessarily exposed to avoidable financial risks and that financial information used within the business and for publication is reliable. They also contribute to the safeguarding of assets, including the prevention and detection of fraud. (Turnbull Report, ¶12)</p> <p>The board of directors is responsible for the company's system of internal control.... It is the role of management to implement board policies on risk and control. (Turnbull Report, ¶¶16, 18)</p> <p>An internal control system encompasses the policies, processes, tasks, behaviours and other aspects of a company that, taken together, facilitate its effective and efficient operation.... This includes the safe-guarding of assets from inappropriate use or from loss and fraud, and ensuring that liabilities are identified and managed. (Turnbull Report, ¶20)</p> <p>[I]nternal controls considered by the board should include all types of controls, including those of an operational and compliance nature, as well as internal financial controls. (Turnbull Report, ¶28)</p> <p><i>See the Turnbull Report, passim.</i></p> |

| NAPF Corporate Governance Code (United Kingdom) | AUTIF Code (United Kingdom) | Hermes Statement (United Kingdom) | PIRC Shareholder Voting Guidelines (United Kingdom) |
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| 32. Accuracy of Disclosure / Internal Control Systems / Liability | | | |
| <p>Good quality accounts are essential if investors are to understand where the company is today and where it is going. The board should present a balanced and understandable assessment of the company's position and prospects.</p> <p>The board should ensure that the management establishes and maintains a sound system of internal control to safeguard shareholders' investments and the company's assets. (§11)</p> <p>There should be full disclosure of any non-audit fees charged by a related company of the auditors in the annual report and accounts. (§13)</p> <p><i>See</i> §14 (The NAPF has noted and, in principle, supports the proposals in INTERNAL CONTROL: GUIDANCE FOR DIRECTORS ON THE COMBINED CODE formulated by a working party of the Institute of Chartered Accountants in England & Wales, chaired by Nigel Turnbull. The requirements have been incorporated into the Combined Code and companies must comply for accounting periods ending on or after 23 December 1999.).</p> <p><i>See also</i> §22 (The NAPF supports the issue of shares provided, where there is a proposed disapplication of pre-emption rights, these are within the current guidance of the Pre-emption Group.).</p> <p><i>See also</i> §23 (Companies are permitted to make market purchases of their own ordinary shares. Provided the requirements of the Companies Act, Listing Rules and relevant shareholder guidance are met, the NAPF will support share repurchases.).</p> | <p>AUTIF encourages member firms, as part of their dialogue with the companies in which they invest and when scrutinizing the annual reports and accounts, to pay particular attention to the companies' compliance with the Combined Code in ... financial reporting principles. (Guidance Notes on Key Principle 5)</p> <p>Accountability and Audit</p> <p>§ Principle D.2 states that the board should maintain a sound system of internal control to safeguard shareholders' investment and the company's assets. Code Provision D.2.1 recommends an annual review by the directors of the company's effectiveness of internal controls, with a report to shareholders. This review should cover financial, operational and compliance controls and risk management.</p> <p>§ Guidance for directors on the implementation of these recommendations was set out in the report of the Internal Control Working Party of the Institute of Chartered Accountants in England and Wales (the Turnbull Committee). The Stock Exchange considers that compliance with the Turnbull guidance will constitute compliance with the relevant provisions of the Combined Code.</p> <p>(Guidance Note on Key Principle 6)</p> | <p>Not covered.</p> | <p>[T]he legal position [is] that all directors are equally responsible for the board's actions and all are equally accountable to the shareholders. (Part 2, Directors, p. 4)</p> <p>In reporting on their risk control policies and processes, we consider that directors should go beyond the basic requirements and identify the significant areas of risk and how the company manages these. (Part 4: Audit and Reporting, p. 12)</p> |

| OECD Principles/Millstein Report (International) | ICGN Statement/Global Voting Principles (International) | Euroshareholders Guidelines (Pan-European) | EASD Principles and Recommendations (Pan-European) |
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| 33. Shareholder Voting Practices (Cumulative & Confidential Voting, Broker Non-Votes, One Share/One Vote) | | | |
| <p>The corporate governance framework should ensure the equitable treatment of all shareholders, including minority and foreign shareholders. All shareholders should have the opportunity to obtain effective redress for violation of their rights.</p> <p>A. All shareholders of the same class should be treated equally.</p> <ol style="list-style-type: none"> 1. Within any class, all shareholders should have the same voting rights. All investors should be able to obtain information about the voting rights attached to all classes of shares before they purchase. Any changes in voting rights should be subject to shareholder vote. 2. Votes should be cast by custodians or nominees in a manner agreed upon with the beneficial owner of the shares. 3. Processes and procedures for general shareholder meetings should allow for equitable treatment of all shareholders.... <p>B. Insider trading and abusive self-dealing should be prohibited.</p> <p>(OECD Principle II, A & B)</p> <p>Some companies issue preferred (or preference) shares which have a preference in respect of receipt of the profits of the firm but which normally have no voting rights. Companies may also issue participation certificates or shares without voting rights which would presumably trade at different prices than shares with voting rights. All of these structures may be effective in distributing risk and reward in ways that are thought to be in the best interest of the company and to cost-efficient financing. The Principles do not take a position on the concept of “one share/one vote.” (OECD Principle II.A.1 Annotation at 30)</p> | <p>[D]ivergence from a ‘one share/one vote’ standard, which gives certain shareholders power disproportionate to their equity ownership, is undesirable. Any such divergence should be both disclosed and justified. (ICGN Amplified OECD Principle I at 7)</p> <p><i>The ICGN Statement adopts OECD Principle II (The corporate governance framework should ensure the equitable treatment of all shareholders, including minority and foreign shareholders.)</i></p> <p>[B]oards should treat all the corporation’s shareholders equitably and should ensure that the rights of all investors, “including minority and foreign shareholders,” are protected. (ICGN Amplified OECD Principle II at 7)</p> <p><i>See ICGN GLOBAL SHARE VOTING PRINCIPLES, 1 (The same voting rights should attach to shares regardless of how much equity a shareholder holds, or how geographically distant a shareholder may be from the company. Votes should be cast only according to instructions by the owner or the owner’s agent.)</i></p> <p><i>See also ICGN GLOBAL SHARE VOTING PRINCIPLES, 4 (Companies should set the voting deadline for mailed ballots as close to the meeting as is practical, with the emphasis on ease of share voting. At the same time, custodians, voting agents and depository institutions ... should move their own voting deadlines as close as practical to company deadline date.)</i></p> <p><i>See also ICGN GLOBAL SHARE VOTING PRINCIPLES, 5 (Shareholders should be able to vote at companies they own without facing the cost and inconvenience of having their shares blocked from trading or deposited in a designated institution for a period of time.)</i></p> <p><i>See also ICGN GLOBAL SHARE VOTING PRINCIPLES, 9 ([S]hare voting systems should be designed to minimize costs....).</i></p> | <p>The principle of “one share, one vote” is the basis of the right to vote. Shareholders should have the right to vote at general meetings in proportion to the issued shareholder capital. In line with this principle, certification (The Netherlands) should be terminated because it deprives the investor of his voting right and transfers influence to a trust office which lies within the company’s own sphere of influence. Nor should companies issue shares with disproportionate voting rights, intended to influence the balance of power within the annual general meeting (AGM). (Commentary on Recommendation 2)</p> | <p>Deviations from “one-share-one-vote” should be avoided and, where they exist, must be disclosed. (Principle III)</p> <p>Deviations from “one-share-one-vote” brought about by mechanisms that induce voting rights disproportionate to cash-flow rights, such as multiple vote shares, voting caps, the use of multiple legal devices, the use of cross-holdings, as well as overly complicated statutory provisions are discouraged. If they exist, they</p> <ol style="list-style-type: none"> a) must not apply within a single class of shares; b) must be simple and easy to understand; c) must be disclosed and explained. <p>(Recommendation III.2)</p> <p>The principles favour “one-share-one-vote” because it provides all shareholders with a greater incentive to participate in the decision-making process, furthering more closely the interests of the company as a whole. (Preamble at 5)</p> <p><i>See Principle II (Shareholder voting should be encouraged and collective action problems should be solved through appropriate mechanisms.)</i></p> |

| Recommendations of Federation of Companies (Belgium) | Dual Code of the BXS/CBF (Belgium) | The Director's Charter (FDA) (Belgium) | (Reserved) |
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| 33. Shareholder Voting Practices (Cumulative & Confidential Voting, Broker Non-Votes, One Share/One Vote) | | | |
| <i>Not covered.</i> | Belgian company law already incorporates ... the principle of "one share/one vote." (Part I: A.4) | <i>Not covered.</i> | |

| Danish Shareholders Ass'n Guidelines (Denmark) | Nørby Report & Recommendations (Denmark) | Chamber of Commerce/Confederation Code (Finland) | Ministry of Trade & Industry Guidelines (Finland) |
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| 33. Shareholder Voting Practices (Cumulative & Confidential Voting, Broker Non-Votes, One Share/One Vote) | | | |
| <p>Limitations on voting rights should be limited to a minimum in importance and time – shareholders should have easy access to vote <u>in absentia</u>, and shares with disproportional voting rights should be abandoned. (I. The Annual General Meeting)</p> | <p>It is not recommended to include provisions which contain voting rights differentiation, restrict the number of votes which the individual shareholder can cast, or which restrict the number of shares which the individual shareholder may own in the company.</p> <p>If these restrictions are already part of a company's Articles, it is recommended that the board evaluates the expediency of this [arrangement]. (I.2)</p> | <p>Proposals to the General Meeting of Shareholders regarding the election of the members of the Board of Directors and the Supervisory Board . . . shall be made public, at the latest, at the General Meeting of the Shareholders when the proposal is supported by at least 20% of all the votes in the company. (English Summary, 4)</p> | <p>Participation of the shareholders in the shareholders' meetings shall be secured as far as possible; [thus], the position of other shareholders in addition to that of the State-owner is taken into account in relation to the weight of their holdings. (2.3.1)</p> <p><i>See generally</i> 2.3 (Participation of the shareholders in the shareholders' meetings and the role of the State-owner).</p> |

| Viénot I Report (France) | Hellebuyck Commission Recommendations (France) | Viénot II Report (France) | (Reserved) |
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| 33. Shareholder Voting Practices (Cumulative & Confidential Voting, Broker Non-Votes, One Share/One Vote) | | | |
| <i>Not covered.</i> | <p>In the Commission’s view, it is particularly important that asset management firms develop General Meeting voting guidelines including voting criteria for resolutions.... (§ I)</p> <p>The Commission would like to see that, when a company solicits [blank] proxies, it specifies its voting intentions....</p> <p>The Commission is likewise favorable to a standardization of voting forms.... (§ I.C.1)</p> <p>AFG-ASFFI is generally not in favor of issuing shares without voting rights. (§ I.C.2)</p> <p>Being in favor of the principle “one share, one vote,” the Commission takes the view that [the practice of double voting rights as a way to reward the loyalty of certain shareholders should be] abandoned. ... The Commission is also against limitations on voting rights as well as “loyalty premium” dividend payments.... (§ I.C.3)</p> <p>As a practical matter, the Commission is in favor of electronic voting and would like to see that the most reliable and rapid system be used, while ensuring the shareholder the greatest degree of confidentiality. (§ I.C.6)</p> | <p>[T]he Committee recommends that corporations cease in future to submit to the extraordinary meeting of their shareholders a resolution expressly permitting the use of delegations of authority to increase the capital after a take-over bid has been made. (p. 19)</p> | |

| Berlin Initiative Code (Germany) | German Panel Rules (Germany) | Cromme Commission Code (Germany) | (Reserved) |
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| 33. Shareholder Voting Practices (Cumulative & Confidential Voting, Broker Non-Votes, One Share/One Vote) | | | |
| <i>Not covered directly, but see Topic Headings 34 and 35, below.</i> | [There is a] full voting right for each ordinary share (§ 12 German Stock Corporation Act). (Code, I) <i>See Topic Heading 34, below.</i> | In principle, each share carries one vote. There are no shares with multiple voting rights, preferential voting rights (golden shares) or maximum voting rights. (§II.1.2) | |

| Mertzanis Report (Greece) | Federation of Greek Industries Principles (Greece) | IAIM Guidelines (Ireland) | Preda Report (Italy) |
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| 33. Shareholder Voting Practices (Cumulative & Confidential Voting, Broker Non-Votes, One Share/One Vote) | | | |
| <p>Basic shareholder rights include the right to ... cast a vote for each share, regardless of class. (Recommendation 1.1.7)</p> <p>Shareholders should be able to vote in person or through a representative, and equal effect should be given to votes whether cast in person or through a representative. (Recommendation 1.3.3)</p> <p>Multiple voting procedures and the issuance of non-voting privileged shares should be discouraged. (Recommendation 1.6)</p> <p>All shareholders of the same class should be treated equally: within any class, all shareholders should have the same voting rights.... Any changes in voting rights between or within classes should be subject to shareholder vote. (Recommendation 2.1.1)</p> <p>Votes through a representative should be cast after consultation with the legal owner of the shares. (Recommendation 2.1.2)</p> <p>The procedures of the corporation should make it simple and inexpensive to cast votes. (Recommendation 2.1.3)</p> | <p><i>Not covered.</i></p> | <p><i>Not covered directly, but the IAIM Guidelines adopt the Combined Code. See the Combined Code § 2, E.1.3 (Institutional shareholders should take steps to ensure that their voting intentions are being translated into practice.).</i></p> | <p><i>Not covered.</i></p> |

| Peters Report (The Netherlands) | VEB Recommendations (The Netherlands) | SCGOP Handbook and Guidelines (The Netherlands) | Securities Market Comm'n Recommendations (Portugal) |
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| 33. Shareholder Voting Practices (Cumulative & Confidential Voting, Broker Non-Votes, One Share/One Vote) | | | |
| <p>The general principle should be that proportionality exist between capital contribution and influence. The maxim “one share/one vote” is the customary way of expressing this principle. (Recommendation 5.1)</p> <p>[M]easures such as priority shares and certification may be justified [in certain circumstances]. (Recommendation 5.1.1)</p> <p>The board of the trust office will in general have to take account of the opinions of the holders of certificates of shares and, if necessary, adjust its voting behaviour accordingly at the General Meeting of Shareholders. (Recommendation 5.6.1)</p> <p>Regarding priority shares issued to protect the company’s interests, the Committee proposes that, in situations where approval has to be given in advance, the holder of priority shares should not stand in the way of the decisions called for by the investors in the General Meeting of Shareholders.... (Recommendation 5.6.2)</p> <p>[P]rotective preference shares should under normal circumstances not be issued. The voting right on protective preference shares should be exercised with due regard for the function of the shares. (Recommendation 5.6.3)</p> | <p><i>Not covered.</i></p> | <p>A practical system of proxy voting should be introduced to allow institutional investors to vote at the shareholders’ meetings of all the companies in which they have shares. (Guideline 4)</p> <p>If the [annual shareholders’] meeting suffers from absenteeism, ... the company might want to certify its shares. For this reason, the trust office of the company should be independent. When it comes to voting, its management must act in the interests of holders of certificates, or depository receipts. The trust office should in principle cooperate when asked to convert certificates. (Guideline 6(a))</p> <p>If in addition to the trust office there are other shareholders, and if the trust office wishes to vote differently from the majority of those other shareholders, the trust office must justify its standpoint. The trust office therefore must not exercise its voting right before other shareholders have done so. (Guideline 6(d))</p> <p>The introduction of a practical and efficient proxy voting system and proxy solicitation will enable the practice of limiting voting rights to be abolished. (Guideline 8)</p> <p>The board should take pains to prevent an unbalanced relationship arising between the capital providers and voting right influence as a result of the issuance of preference shares. (Guideline 9)</p> <p><i>See Topic Heading 34, below.</i></p> | <p><i>Not covered directly, but see Topic Heading 34, below.</i></p> |

| Olivencia Report (Spain) | Swedish Shareholders Ass'n Policy (Sweden) | ICSA Code (United Kingdom) | ISC Statement of Best Practice (United Kingdom) |
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| 33. Shareholder Voting Practices (Cumulative & Confidential Voting, Broker Non-Votes, One Share/One Vote) | | | |
| [A] rule of abstention ... would oblige significant shareholders not to vote in board decisions regarding which they have a direct or indirect interest (for instance, defensive measures against hostile takeover bids). (Report, 8.6) | The Shareholders' Association would like to see a development of new possibilities for shareholders to vote at the general meeting from a distance, for example, via the Internet. (Guideline 4.3) | <i>Not covered.</i> | <i>Not covered.</i> |

| Cadbury Report (United Kingdom) | Greenbury Report (United Kingdom) | Hampel Report (United Kingdom) | The Combined Code/Turnbull Report (United Kingdom) |
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| 33. Shareholder Voting Practices (Cumulative & Confidential Voting, Broker Non-Votes, One Share/One Vote) | | | |
| <p>Institutional investors should make positive use of their voting rights, unless they have good reason for doing otherwise. They should register their votes whenever possible on a regular basis. (Report, 6.11.2)</p> <p>The Institutional Shareholders' Committee's advice to its members to use their voting rights positively is important in the context of corporate governance. Voting rights can be regarded as an asset, and the use or otherwise of those rights by institutional shareholders is a subject of legitimate interest to those on whose behalf they invest. We recommend that institutional investors should disclose their policies on the use of voting rights. (Report, 6.12)</p> | <p><i>Not covered.</i></p> | <p>Institutional shareholders have a responsibility to make considered use of their votes. (Principle C.I)</p> <p>[S]ome [institutional investors] now take a more active interest in corporate governance. They can do this by voting on resolutions in General Meetings, and informally through contact with the company. (Guideline 5.3)</p> <p>The right to vote is an important part of the asset represented by a share, and in our view an institution has a responsibility to the client to make considered use of it. (Guideline 5.7)</p> <p><i>See</i> Guideline 5.9. (It has been suggested that institutions should make public their voting records, both in the aggregate, in terms of the proportion of resolutions on which votes were cast or non-discretionary proxies lodged, and in terms of the numbers of votes cast and proxies lodged on individual resolutions. Institutional investors should, in our view, take steps to ensure that their voting intentions are being translated into practice; publishing figures showing the proportion of voting opportunities taken would be one way of doing this. We therefore recommend that institutions should, on request, make available to their clients information on the proportion of resolutions on which votes were cast and non-discretionary proxies lodged.).</p> | <p>Institutional shareholders have a responsibility to make considered use of their votes. (Principle E.1)</p> <p>Institutional shareholders should take steps to ensure that their voting intentions are being translated into practice. (Code § 2, E.1.3)</p> |

| NAPF Corporate Governance Code (United Kingdom) | AUTIF Code (United Kingdom) | Hermes Statement (United Kingdom) | PIRC Shareholder Voting Guidelines (United Kingdom) |
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| 33. Shareholder Voting Practices (Cumulative & Confidential Voting, Broker Non-Votes, One Share/One Vote) | | | |
| <p><i>Not covered directly, but see</i> Introduction (There is a clear Government expectation that shareholders, particularly institutional investors, will exercise their corporate governance rights, including voting. The NAPF supports this stance and encourages pension funds, in their capacity as major investors in the UK economy, to make use of the power derived from those voting rights.).</p> | <p>AUTIF ... encourages member firms to exercise actively the voting rights represented by the shares they manage on behalf of their investors. (Principle 2)</p> <p>AUTIF recommends that member firms agree, in writing, and keep under regular review with trustees, depositaries and custodians the practical arrangements for circulating company resolutions of meetings and for exercising votes in accordance with standing or special instructions. (Principle 3)</p> <p>AUTIF encourages members firms to establish appropriate systems of internal audit of voting activity. Firms may wish to include in the annual report a statement that such an internal audit system is in place. (Principle 4)</p> <p>Where member firms already subscribe to the recommended practice of another representative body (for example, ABI or NAPF), including the possible use of a voting advisory service, AUTIF encourages member firms to communicate this to investors. (Principle 8)</p> <p>Member firms should review regularly any standing or special instructions on voting. Responsible shareholders should, where possible, discuss with company representatives any issues on which they are unlikely to be able to support the board.</p> <p>Member firms should agree, preferably in writing, and review regularly with trustees or depositaries, the voting process, <i>i.e.</i>, the practical arrangements for transmission of company resolutions, meeting notices, proxy votes, etc. (Guidance Notes on Principles 2 and 3)</p> <p>Member firms may wish to consider including ... in their annual reports to their investors ... [a] general statement as to voting practice. (p. 7)</p> <p><i>See</i> Guidance Notes on Principles 2 and 3 (<i>electronic voting</i>).</p> | <p>Hermes welcomes the introduction of electronic proxy voting and encourages companies to adopt this as soon as practicable. (3.2)</p> <p>A split-share capital structure often disadvantages the majority of shareholders. Hermes will not support the issue of shares with reduced or no voting rights, and is likely to withhold support for other capital-raising exercises by companies with such capital structures. Support for a company with an unequal capital structure would be qualified in the event of it becoming a takeover target. (4.1)</p> <p><i>See</i> Code of Conduct 4 (Hermes will lodge proxies at AGMs and EGMs in accordance with the principles outlined in this document.).</p> | <p>PRINCIPLE: All ordinary shares should have equal rights.</p> <p>G. Each ordinary share has equal voting rights....</p> <p>H. There is no controlling shareholder....</p> <p>I. No persons have the right to designate directors to the board. (Part 5: Share Capital and Shareholder Relations, p. 17)</p> <p>PRINCIPLE: Voting by shareholders should be democratic and transparent.</p> <p>J. All voting is conducted by poll on the basis of one share/one vote....</p> <p>K. The levels of proxy votes are disclosed on request. (Part 5: Share Capital and Shareholder Relations, p. 17)</p> <p>PIRC's views ... closely follow those of the Cadbury Committee which argued: "Voting rights can be regarded as an asset, and the use or otherwise of those rights by institutional shareholders is a subject of legitimate interest to those on whose behalf they invest. We recommend institutional investors should disclose their policies on the use of voting rights." (Part 1: Introduction, p. 2)</p> <p>Shareholders who have the same financial commitment to the company should have the same rights. Dual share structures with different voting rights are disadvantageous to many shareholders and should be reformed. (Part 5: Share Capital and Shareholder Relations, p. 15)</p> <p><i>See</i> Part 5: Share Capital and Shareholder Relations, pp. 15-16 (<i>safeguards for shareholders in companies where there is a controlling shareholder; share buy-backs and share issue authorities</i>).</p> <p><i>See also</i> APPENDIX: Standard Voting Outcomes, pp. 22-24 (<i>a guide to PIRC's usual approach to the provision of voting advice</i>).</p> |

| OECD Principles/Millstein Report (International) | ICGN Statement/Global Voting Principles (International) | Euroshareholders Guidelines (Pan-European) | EASD Principles and Recommendations (Pan-European) |
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| 34. Shareholder Voting Powers | | | |
| <p>The corporate governance framework should protect shareholders' rights.</p> <p>A. Basic shareholder rights include the right to:</p> <ol style="list-style-type: none"> 1) secure methods of ownership registration; 2) convey or transfer shares; 3) obtain relevant information on the corporation on a timely and regular basis; 4) participate and vote in general shareholder meetings; 5) elect members of the board; and 6) share in the profits of the corporation. <p>B. Shareholders have the right to participate in, and to be sufficiently informed on, decisions concerning fundamental corporate changes.</p> <p>C. Shareholders should have the opportunity to participate effectively and vote in general shareholder meetings and should be informed of the rules, including voting procedures, that govern general shareholder meetings.... Shareholders should be able to vote in person or in absentia, and equal effect should be given to votes whether cast in person or in absentia. (OECD Principle I, A, B & C)</p> <p>The corporate governance framework should ensure the equitable treatment of all shareholders, including minority and foreign shareholders. All shareholders should have the opportunity to obtain effective redress for violation of their rights. (OECD Principle II)</p> <p>Policy makers and regulators should protect and enforce shareholders' rights to vote. (Millstein Report, Perspective 14)</p> | <p><i>The ICGN Statement adopts OECD Principle I, including A.4)-5) (The corporate governance framework should protect shareholders' rights. Basic shareholder rights include the right to ... vote in general shareholder meetings....).</i></p> <p>Major strategic modifications to the core business(es) of a corporation should not be made without prior shareholder approval.... Equally, major corporate changes which in substance or effect materially dilute the equity or erode the economic interests or share ownership rights of existing shareholders should not be made without prior shareholder approval.... (ICGN Amplified OECD Principle I at 6)</p> <p>The ICGN underlines both the OECD assertion that "equal effect should be given to votes whether cast in person or <u>in absentia</u>" and the Annotation's statement that "as a matter of transparency, meeting procedures should ensure that votes are properly counted and recorded, and that a timely announcement of the outcome be made." (ICGN Amplified OECD Principle I at 6)</p> <p>Corporate governance issues ... should be pursued by dialogue and, where appropriate, with government and regulatory representatives ... to resolve disputes, if possible, through negotiation, mediation or arbitration. Where those means fail, more forceful actions should be possible.... [I]nvestors should have the right to sponsor resolutions or convene extraordinary meetings. (ICGN Statement 10 at 5)</p> <p><i>See ICGN GLOBAL SHARE VOTING PRINCIPLES, 8 (All votes should be counted regardless of whether they are received by proxy or other means, or cast by hand or voice at the meeting, and the results should be declared. Companies should ensure that a process exists by which shareholders can ascertain that their votes were correctly and officially cast....).</i></p> | <p>Major decisions which have a fundamental effect upon the nature, size, structure and risk profile of the company, and decisions which have significant consequences for the position of the shareholder within the corporation, should be subject to shareholders' approval or should be decided by the AGM. (Recommendation 2)</p> <p>Shareholders shall have the right to elect members of at least one board and shall also be able to file a resolution for dismissal. Prior to the election, shareholders should be able to suggest candidate members to the board. (Recommendation 9)</p> <p>Shareholders should have significant influence over major changes in the company. (Commentary on Recommendation 2)</p> <p>The following items should be subject to shareholder approval.</p> <ul style="list-style-type: none"> § Mergers and takeovers.... § Distribution of profits.... § Stock option schemes.... § Share buy-back programmes.... § Capital increases connected with the exemption of pre-emptive rights of the existing shareholders. <p>(Commentary on Recommendation 2)</p> | <p>Controlling shareholders should give due consideration to the interests of minority shareholders. Minority shareholders should not unreasonably restrain corporate action. (Principle IV)</p> <p>Steps should be taken to promote shareholder rights ... and shareholders should be given possibilities to seek redress for violation of their rights. (Recommendation I.3)</p> <p>[V]ideo-conferencing and electronic voting are encouraged. (Recommendation II.1)</p> <p>In Europe, ... three stylized paths of selling ownership and control on stock markets can be distinguished:</p> <ol style="list-style-type: none"> 1. Cash-flow rights and voting rights are widely dispersed; the market for both is liquid and control is relinquished. 2. Cash-flow rights are widely dispersed and the initial shareholder uses a legal instrument to retain or lock in control ... ; the market for cash-flow rights is liquid but control cannot be contested. 3. Few of the cash-flow rights and voting rights are sold; trading is illiquid since the stock lacks a broad shareholder base. <p>(Preamble at 3-4)</p> <p><i>See Preamble at 4 (discussion of governance problems that arise in each of these situations).</i></p> |

| Recommendations of Federation of Companies (Belgium) | Dual Code of the BXS/CBF (Belgium) | The Director's Charter (FDA) (Belgium) | (Reserved) |
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| 34. Shareholder Voting Powers | | | |
| <i>Not covered directly, but see Topic Heading 33, above, and Topic Heading 35, below.</i> | <i>Not covered directly, but see Topic Heading 33, above, and Topic Heading 35, below.</i> | <i>Not covered.</i> | |

| Danish Shareholders Ass'n Guidelines (Denmark) | Nørby Report & Recommendations (Denmark) | Chamber of Commerce/Confederation Code (Finland) | Ministry of Trade & Industry Guidelines (Finland) |
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| 34. Shareholder Voting Powers | | | |
| <p>Limitations on voting rights should be limited to a minimum in importance and time – shareholders should have easy access to vote <u>in absentia</u>, and shares with disproportional voting rights should be abandoned. (I. The Annual General Meeting)</p> | <p>[G]ood corporate governance depends on appropriate frameworks which encourage the shareholders to enter into a dialogue with the management of the company and each other. This can be encouraged ... by creating proportionality between capital investments and the voting rights of all the shares in the company. (I)</p> <p>It is not recommended to include provisions which contain voting rights differentiation, restrict the number of votes which the individual shareholder can cast, or which restrict the number of shares which the individual shareholder may own in the company.</p> <p>If these restrictions are already part of a company's Articles, it is recommended that the board evaluates the expediency of this [arrangement]. (I.2)</p> <p><i>See I (As owners of the company, the shareholders can actively exercise their rights and use their influence resulting in the management protecting the interests of the shareholders as best as possible, and ensuring efficient deployment of the company's funds both in the short as well as the long term.).</i></p> | <p><i>Not covered.</i></p> | <p><i>Not covered directly, but see 2.3 (Participation of the shareholders in the shareholders' meetings and the role of the State-owner).</i></p> |

| Viénot I Report (France) | Hellebuyck Commission Recommendations (France) | Viénot II Report (France) | (Reserved) |
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| 34. Shareholder Voting Powers | | | |
| <i>Not covered.</i> | <p>The General Shareholders' Meeting is the pre-eminent occasion for the shareholder to exercise his company rights. (§ I)</p> <p>[T]he code of ethics governing portfolio managers ... holds them to exercising the voting rights associated with the securities they manage, and requires them to be able to justify their actions in this regard.... (§ I)</p> <p>The Commission recommends that companies remind their shareholders of their right to submit resolutions to the general shareholders' meeting and to raise questions; in each case, the conditions needing to be met to exercise this right should be indicated. In this regard, it would be fitting to remind shareholders of the possibility of joining together to reach the minimum amount of capital necessary to propose a resolution. (§ I.B.4)</p> <p>[T]he Commission would like to see that the rights of holders of preferred shares (excluding their participation in the general meeting) be respected based on the amount of capital they control in the company. (§ I.C.2)</p> <p>AFG-ASFFI is generally not in favor of issuing shares without voting rights. (§ I.C.2)</p> <p>The Commission is in favor of reducing or even eliminating [the blocking of shares five days prior to the General Meeting] so that any shareholder may exercise his voting rights. (§ I.C.5)</p> <p>[T]he Commission is in favor of the "record date" system [<u>in lieu</u> of the blocking system], as it seems to meet the concerns of portfolio managers. (§ I.C.5)</p> | <i>Not covered.</i> | |

| Berlin Initiative Code (Germany) | German Panel Rules (Germany) | Cromme Commission Code (Germany) | (Reserved) |
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| 34. Shareholder Voting Powers | | | |
| <p>All stockholders have the same powers of influence over the public corporation according to their holding in the company. The precept of equal treatment within the limits of the extent of the participation also applies in particular against institutional investors on the one side and private small stockholders on the other. (Code, V.1.1)</p> <p><i>See Code, V.1.3</i> (Depositary banks have a particular responsibility for safeguarding the interests of stockholders. They must keep clear of possible conflicts of interest.... Proper representation of the rights of the stockholders is also a duty of the protection associations.).</p> | <p>[T]he following OECD points are covered by mandatory law (§ 23 German Stock Corporation Act):</p> <ul style="list-style-type: none"> § full voting right for each ordinary share (§ 12 German Stock Corporation Act) § no impediments with regard to ownership or registration (§ 67 German Stock Corporation Act) § transferability of shares at any time (§ 68 German Stock Corporation Act) § participation, proxy and exercise of voting rights at General Meetings (§ 134 German Stock Corporation Act) § election of members of the Supervisory Board (§ 101) § participation in company profits (§ 58 German Stock Corporation Act). <p>(Code, I)</p> <p>An authorization to increase the share capital with exclusion of shareholder participation rights in order to pursue either an acquisition or a share placement near the prevailing market price will only be exercised by the Management Board if the share capital increase does not exceed 10% (20% for acquisitions) of the then existing share capital. In this calculation, the re-utilization of any repurchased shares will be included. (Code, I)</p> <p>In the case of repurchase of its own shares according to § 71, subparagraph 1, No. 8 German Stock Corporation Act, the Company shall observe the principle of equal treatment of all shareholders. (Code, I)</p> | <p>Shareholders exercise their rights at the General Meeting and vote there. (§II.1.1)</p> <p>In issuing new shares, shareholders, in principle, have pre-emptive rights corresponding to their share of the equity capital. (§II.2.2)</p> <p>The company shall make arrangements to facilitate shareholders' personal exercising of their voting rights. Also, the company shall assist the shareholders in the use of proxies. The Management Board shall arrange the appointment of a representative to exercise shareholders' voting rights in accordance with instructions. This representative should also be available for contact during the General Meeting. (§II.3.3)</p> <p><i>See §VI.2</i> (As soon as the company becomes aware of the fact that an individual acquires, exceeds or falls short of 5, 10, 25, 50 or 75% of the voting rights in the company by means of a purchase, sale or any other manner, it will be disclosed by the Management Board without delay.).</p> | |

| Mertzanis Report (Greece) | Federation of Greek Industries Principles (Greece) | IAIM Guidelines (Ireland) | Preda Report (Italy) |
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| 34. Shareholder Voting Powers | | | |
| <p><u>The corporate governance framework should protect shareholder rights.</u> (Principle 1)</p> <p><u>The corporate governance framework should ensure the equitable treatment of all shareholders, including minority and foreign shareholders. All shareholders should have the opportunity to obtain an effective redress for violation of their rights.</u> (Principle 2)</p> <p>Basic shareholder rights include the right to ... vote in general shareholder meetings [and protection of] the rights of minority shareholders in a manner that establishes their representation and their ability to exercise control of managers. (Recommendations 1.1.4, 1.1.6)</p> <p>Shareholders should have the right to participate equitably and efficiently in the general shareholder meetings and be sufficiently, timely and properly informed on the decisions that need to be made regarding fundamental changes in the corporation. These changes include ... the adoption of voting procedures compatible with the market's prevailing exchange ethics as regards voting influence and the concentration of corporate ownership. (Recommendation 1.2.8)</p> <p>The Shareholders of the corporation should have the opportunity to actively participate and vote in the general Shareholder meeting and be fully and timely informed about the rules and procedures of voting. (Reccomendation 1.3)</p> <p>All shareholders of the same class should be treated equally: within any class, all shareholders should have the same voting rights.... Any changes in voting rights between or within classes should be subject to shareholder vote. (Recommendation 2.1.1)</p> | <p><i>Not covered directly, but see Topic Heading 35, below.</i></p> | <p>Shareholders must have the opportunity to vote on share option and LTISs upon initial scheme adoption, on the material amendment of such schemes and on any changes to performance criteria. (Guideline 3)</p> <p>[S]hareholders must be afforded the opportunity to approve the selected performance criteria [to be used as the basis on which share options and other LTISs are exercisable], or amendments thereto. (Appendix 1: Performance Criteria)</p> <p><i>The IAIM Guidelines adopt the Combined Code. See the Combined Code:</i></p> <p>Principle E.1 (Institutional shareholders have a responsibility to make considered use of their votes.);</p> <p>Code § 2, E.1.2 (Institutional shareholders should, on request, make available to their clients information on the proportion of resolutions on which votes were cast and non-discretionary proxies lodged.).</p> | <p>In the event of a significant change in the market value of the company, the composition and/ or the number of shareholders, the directors shall assess whether proposals should be submitted to the shareholders' meeting to amend the by-laws as regards the majorities required for the approval of resolutions to adopt the measures and exercise the rights provided to protect minority interests. (Code, 12.5)</p> <p>The Committee believes that, in a correct system of Corporate Governance, the interests of the generality of shareholders must all be put on the same footing and equally protected and safeguarded.</p> <p>The Committee is convinced that the interests of the majority and minority shareholders must confront each other in the election of the governing bodies; subsequently, the governing bodies, and hence also the members of the board of auditors, must work exclusively in the interest of the company and to create value for the generality of shareholders. (Commentary on Code, 13; see Report, 5.6)</p> <p><i>See Topic Heading 35, below.</i></p> |

| Peters Report (The Netherlands) | VEB Recommendations (The Netherlands) | SCGOP Handbook and Guidelines (The Netherlands) | Securities Market Comm'n Recommendations (Portugal) |
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| 34. Shareholder Voting Powers | | | |
| <p>In principle, Dutch company law grants considerable powers to shareholders. At the same time, however, it offers possibilities which are frequently applied for these powers to be substantially curtailed in the companies' articles of association, for example, by stipulating that the cooperation of the priority shareholder(s) is required for the adoption of resolutions in the General Meeting of Shareholders. (Recommendation 5.2)</p> <p>Those who exercise powers on behalf of the real providers of risk capital should, during the decision-making process at the General Meeting of Shareholders, be aware at all times that the said powers are in principle vested in those providers of risk capital. This creates an obligation for them to attach particular importance to the interests of the investors when exercising these powers. (Recommendation 5.2)</p> <p>Although the Committee realizes that, under the circumstances mentioned above, the continuity of decision-making and the protection against hostile takeovers may justify a departure from the principle that the investor should be able to exercise a degree of influence which is proportionate to the capital contribution, the Committee believes that this should never lead to the investors being deprived of exerting a real influence. (Recommendation 5.4.1; cf. 5.4.4, 5.7)</p> <p>[T]he Supervisory Board and the [Management Board], if an initiative for decision-making is needed in the General Meeting of Shareholders, should not stand in the way of decisions called for by the investors in the General Meeting of Shareholders, unless a substantial company interest rules against such. (Recommendation 5.6.4)</p> | <p>Certification should be terminated (a) or depository receipt holders (certificateholders) should be given a proxy, whereas the trust office only votes in case of takeover threats (b). (Recommendation 4)</p> <p>Certification in its present state deprives the investor of his voting right and transfer to a trust office that lies within the company's range of influence. The recommendations of the Peters committee (proxy, minority in the trust office) still lead to a weaker position of the investor than when certification is absent. A proxy could be a solution in case the trust office <u>does not</u> take part in a vote. (Commentary on Recommendation 4)</p> <p>To prevent dilution of voting rights, financial preference shares should not be issued at a discount to the price of ordinary shares. (Recommendation 5)</p> <p>Issues of preference shares with a large discount dilute the influence of other investors, provides protection and gives financial institutions disproportional influence. (Commentary on Recommendation 5)</p> <p>See Recommendation 10 (If a shareholder's stake in the company passes $33\frac{1}{3}$ percent, that shareholder should be obliged to bid for the remaining shares under reasonable conditions.).</p> <p>See also Commentary on Recommendation 10 (The Peters code recommends a threshold of 50 percent, which is considerably higher than in other European countries. In fact, with smaller stakes substantial control is already feasible.).</p> | <p>Companies should introduce a "record date" system so that the period of share deposition does not prevent shareholders from exercising their voting rights. (Guideline 3)</p> <p>The trust office should in principle issue voting rights to certificateholders upon request. In the case where no voting rights are issued, the trust must accept voting instructions. If the trust office has issued no voting rights and received no voting instructions for shares in its jurisdiction, the trust office must decide how to vote following its own judgment. (Guideline 6(b))</p> <p>The management of the trust office should report to certificateholders on its actions. If the trust office makes use of voting rights linked to shares, it must explain at the shareholders' meeting how this action is in the interests of certificateholders. (Guideline 6(c))</p> <p>Due to a change in the law, everyone who owns shares on the so-called date of registration – often seven days before the planned meeting – has the right to vote. Investors who want to vote therefore no longer have to block their shares for a few days, which was the case in the past. (Handbook, p. 23)</p> <p>See Handbook, p. 12 (Management of share voting rights is an important element of investment policy and on a par with the management of financial rights linked to share ownership.).</p> <p>See also Handbook, p. 14 (Practice shows an active use of shareholder rights can deliver higher investment returns.... [S]uppression of shareholder rights has been shown to have a negative influence on performance.).</p> <p>See also Topic Heading 33, above.</p> | <p>The active exercise of voting rights should be stimulated, whether directly (postal) or by representation. (Recommendation 8)</p> <p>Institutional investors should take into consideration their own responsibilities for diligent, efficient and critical use of the rights conferred by the securities of which they are holders, or whose management has been entrusted to them, in particular as regards information and voting rights. (Recommendation 10)</p> <p>See Commentary on Recommendation 5 (Voting agreements and other shareholder agreements to contest takeover bids are considered shareholder agreements [and should therefore be disclosed].).</p> <p>See also Recommendation 11 (Institutional investors should disclose information on the practice followed regarding the exercise of voting rights on securities whose management has been entrusted to them.).</p> |

| Olivencia Report (Spain) | Swedish Shareholders Ass'n Policy (Sweden) | ICSA Code (United Kingdom) | ISC Statement of Best Practice (United Kingdom) |
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| 34. Shareholder Voting Powers | | | |
| <p>Measures aimed at making the system of voting by proxy more transparent, and emphasizing communication between the company and its shareholders, especially institutional investors, should be passed. (Code, Recommendation 18)</p> <p>All shareholders are, as a whole, the owners of the company, but the different roles of each of the groups of shareholders require that moderation or counterweight steps are passed so that none of the groups assumes power at the expense of the interests of other groups. (Introduction, 2)</p> <p>[The Committee suggests that there be] a rule of powers, according to which the Board of Directors should formally keep to itself knowledge of any direct or indirect transactions between the company and a significant shareholder, in order that it may not be passed unless the most appropriate delegated Committee issues a favourable opinion. Said Committee will evaluate the transaction from the standpoint of equal consideration for all shareholders and equal market conditions. (Report, 8.6)</p> <p>Regarding the use of non-public information, the Committee is aware of a degree of concern in the market on the unequal distribution of information among shareholders and on significant shareholders accessing confidential information. The Board of Directors should watch over such situations in order to decide whether there are any anomalies or leakages that someone would be held accountable for. In any event, it might be appropriate to consider extending to significant shareholders the obligation of keeping certain information confidential and not using inside information to their advantage. (Report, 8.6)</p> | <p>[I]t has become increasingly common to propose at the general meeting that the board be given the authority to decide on new share issues, thus waiving the shareholders' preferential rights as stated in the Swedish Companies Act (Aktiebolagslagen), Chapter Four, paragraph 14. Departure from the shareholders' preferential rights is an encroachment on the rights of shareholders, and it is therefore necessary that the shareholders be given detailed information concerning the authorization in the notice of the meeting. The Shareholders' Association considers that the notice should clearly state what ... new issues the board, with the support of the authorization, can decide on, [what they] are to be used for, who shall be allowed to subscribe, the main subscription conditions, [and] how great a dilution of the shareholders' ownership the new issue could lead to. A dilution greater than 10% should not occur. (Guideline 1.1)</p> <p>An important part of owner responsibility is the larger owners' solicitude for the company and its minority shareholders. Larger institutional investors are above all interested in the shares as a capital investment. This is a reason for the lack of interest shown in some cases in exercising the voting rights coupled with the shares. Larger owners have a responsibility that goes beyond the obligation to vote. Controlling shareholders are in duty bound to heed the interests of minority shareholders before they sell their shares and leave other shareholders with a new principal owner. In a number of cases, a change in controlling ownership has brought with it losses for the minority. To come to terms with this situation, many countries have introduced an obligation regarding offers. (Guideline 5)</p> | <i>Not covered.</i> | <i>Not covered.</i> |

| Cadbury Report (United Kingdom) | Greenbury Report (United Kingdom) | Hampel Report (United Kingdom) | The Combined Code/Turnbull Report (United Kingdom) |
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| 34. Shareholder Voting Powers | | | |
| <p><i>Not covered directly, but see</i> Report, 6.6 (Shareholders have delegated many of their responsibilities as owners to the directors who act as their stewards. It is for the shareholders to call the directors to book if they appear to be failing in their stewardship, and they should use this power. While they cannot be involved in the direction and management of their company, they can insist on a high standard of corporate governance, and good governance is an essential test of the directors' stewardship. The accountability of boards to shareholders, will, therefore, be strengthened if shareholders require their companies to comply with the Code.).</p> | <p><i>Not covered.</i></p> | <p>[S]hareholders should be invited specifically to approve all new long-term incentive plans ... which potentially commit shareholders' funds over more than one year, or dilute the equity. (Guideline 4.20)</p> <p>[S]hareholders should have an opportunity to vote separately on each substantially separate proposal. (Guideline 5.17)</p> <p>[P]rivate investors [can] hold shares through nominees. This deprives the investors concerned of the right to vote and to receive company information, unless some special arrangement is made. A number of companies have established their own "in-house" nominee and use it to restore rights to private shareholders. We commend this. (Guideline 5.25)</p> | <p>Institutional shareholders should be ready, where practicable, to enter into a dialogue with companies based on the mutual understanding of objectives. (Principle E.2)</p> |

| NAPF Corporate Governance Code (United Kingdom) | AUTIF Code (United Kingdom) | Hermes Statement (United Kingdom) | PIRC Shareholder Voting Guidelines (United Kingdom) |
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| 34. Shareholder Voting Powers | | | |
| <p>There is a clear Government expectation that shareholders, particularly institutional investors, will exercise their corporate governance rights, including voting. The NAPF supports this stance and encourages pension funds, in their capacity as major investors in the UK economy, to make use of the power derived from those voting rights. (Introduction)</p> <p>The approval of the appointment of directors to the board is, arguably, the most important routine responsibility placed upon a company's shareholders. (§2)</p> <p>The names of directors submitted for election or re-election should be accompanied by sufficient biographical details to enable shareholders to take an informed decision on their election. (§8)</p> <p>Resolutions should cover separate issues and should not be "bundled". (§10)</p> | <p>AUTIF supports pre-emption rights for existing shareholders in the event of an issue of new share capital. Member firms should discuss with the company any proposal to depart from this policy. (Guidance Note to Key Principle 6)</p> <p>Other methods of communicating with investors on the subject of voting policy which member firms may wish to consider include:</p> <ul style="list-style-type: none"> § pre-sale communications such as scheme particulars, key features documents or other marketing material; § half yearly reports or other reports at regular intervals; § as frequently as is appropriate on the firm's website; § and of course at the request of investors. <p>(Guidance Note on Key Principle 7)</p> <p><i>See</i> Key Principle 3 (AUTIF recommends that member firms agree, in writing, and keep under regular review with trustees, depositaries and custodians the practical arrangements for circulating company resolutions of meetings and for exercising votes in accordance with standing or special instructions.).</p> <p><i>See also</i> Key Principle 5 (AUTIF welcomes Principle E.2 of the Combined Code, which states that shareholders should be ready, where practicable, to enter into a dialogue with companies based on mutual understanding of objectives.</p> <p>AUTIF therefore encourages member firms to develop and maintain a dialogue with the companies in which they invest. This dialogue is likely to be most effective if it includes, where practicable, regular meetings with company representatives.).</p> | <p>Existing shareholders should be offered right of first refusal when a company issues shares exceeding 5% of the existing shares in issue. Only in exceptional circumstances would Hermes approve the waiver of clients' preemption rights. (5.1)</p> <p>Performance-related remuneration is ... an area of company policy in which shareholders have a valid role. (APPENDIX 1.1.1)</p> <p><i>See</i> 1.1 (Shareholders and their agents have responsibilities as owners to exercise stewardship of companies.).</p> | <p>PRINCIPLE: Shareholders should have proper notice of resolutions and be able to vote on all substantive issues.</p> <p>A. Notice of the AGM was sent at least 20 working days before the meeting....</p> <p>B. Resolutions on substantially separate issues are put to the AGM....</p> <p>C. A resolution on the report and accounts is proposed....</p> <p>D. Dividend is put to the vote.... (Part 5: Share Capital and Shareholder Relations, p. 16)</p> <p>PRINCIPLE: Shareholders should have adequate information on all directors and resolutions.</p> <p>E. Sufficient biographical information on all directors is disclosed....</p> <p>F. All resolutions are explained.... (Part 5: Share Capital and Shareholder Relations, p. 17)</p> <p>[On two-tiered boards,] shareholders should have the right to elect directors [of the supervisory board] and hold them accountable through regular election. Shareholders should also have the power to remove those individuals exercising the powers of the company or charged with overseeing executive management. This applies to stakeholder representatives and also to alternate directors who are not elected. (Part 2: Directors, p. 4)</p> <p><i>See</i> Part 6: Other Voting Issues, p. 18 (amending the Memorandum and Articles of Association, on which the exercise of shareholders' rights is based).</p> |

| OECD Principles/Millstein Report (International) | ICGN Statement/Global Voting Principles (International) | Euroshareholders Guidelines (Pan-European) | EASD Principles and Recommendations (Pan-European) |
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| 35. Shareholder Meetings / Proxy Proposals | | | |
| <p>Shareholders should have the opportunity to participate effectively and vote in general shareholder meetings and should be informed of the rules, including voting procedures, that govern general shareholder meetings:</p> <ol style="list-style-type: none"> 1. Shareholders should be furnished with sufficient and timely information concerning the date, location and agenda of general meetings, as well as full and timely information regarding the issues to be decided at the meeting. 2. Opportunity should be provided for shareholders to ask questions of the board and to place items on the agenda at general meetings, subject to reasonable limitations. 3. Shareholders should be able to vote in person or <u>in absentia</u>, and equal effect should be given to votes whether cast in person or <u>in absentia</u>. <p>(OECD Principle I.C)</p> <p>Processes and procedures for general shareholder meetings should allow for equitable treatment of all shareholders. Company procedures should not make it unduly difficult or expensive to cast votes. (OECD Principle II.A.3)</p> <p>The Principles recommend that voting by proxy be generally accepted. Moreover, the objective of broadening shareholder participation suggests that companies consider favourably the enlarged use of technology in voting. (OECD Principle I.C.3 Annotation at 26)</p> <p>Proposals to change the voting rights of different classes of shares are normally submitted for approval at general shareholders meetings by a specified majority of voting shares in the affected categories. (OECD Principle II.A.1 Annotation at 30)</p> | <p><i>The ICGN Statement adopts OECD Principle I.C (Shareholders should have the opportunity to participate effectively and vote in general shareholder meetings and should be informed of the rules, including voting procedures, that govern general shareholder meetings:</i></p> <ol style="list-style-type: none"> 1. Shareholders should be furnished with sufficient and timely information concerning the date, location and agenda of general meetings.... 2. Opportunity should be provided for shareholders to ask questions of the board and to place items on the agenda.... 3. Shareholders should be able to vote in person or <u>in absentia</u>....). <p><i>See ICGN Amplified OECD Principle I at 6 (ICGN supports initiatives to expand voting options to include the secure use of telecommunication and other electronic channels.)</i></p> <p><i>See also ICGN GLOBAL SHARE VOTING PRINCIPLES, 2 (Company law, corporate articles and/or voluntary coordination among companies should allow firms to structure their reporting calendar and notice distribution so as to give priority to creating a reasonable time for shareholders to receive meeting agendas, consider voting items, make arrangements to attend the meeting if they so desire, and vote in time for the ballot to count. The notice should be clear as to the actual date and location of the meeting and it should be distributed as widely as possible so as to reach investors.)</i></p> <p><i>See also ICGN GLOBAL SHARE VOTING PRINCIPLES, 3 (Meeting agendas should be presented in such a way that shareholders can understand and ascertain which items are to be voted. Companies should faithfully present the principal purpose of each resolution.)</i></p> <p><i>See also ICGN GLOBAL SHARE VOTING PRINCIPLES, 7 (Procedures should be ... simplified and updated with a view to enfranchising and facilitating share voting by investors.)</i></p> | <p>Major decisions which have a fundamental effect upon the nature, size, structure and risk profile of the company, and decisions which have significant consequences for the position of the shareholder within the corporation, should be subject to shareholders' approval or should be decided by the AGM. (Recommendation 2)</p> <p>Shareholders should be able to vote in person or <u>in absentia</u>.... [A]n efficient proxy voting system should be established. (Commentary on Recommendation 2)</p> <p>Auditors ... should be elected by the general meeting. (Recommendation 6)</p> <p>Shareholders should be able to place items on the agenda of the AGM. (Recommendation 7)</p> <p>[I]nformation concerning the agenda or other matters pertaining to a general meeting should be published in good time. At the general meeting, a company has the obligation to answer all questions put, unless this would seriously damage its interests. (Commentary on Recommendation 7)</p> <p>The minutes [of the AGM] should be: § taken by an appointed secretary, and § checked by an independent person or organisation.</p> <p>The minutes should be made available to shareholders as soon as possible, and should be properly distributed before the next meeting. The debate at the general meeting should be recorded on tape and the recording made available to the shareholders in the event of any disagreement. (Commentary on Recommendation 7)</p> <p>In both the one-tier and the two-tier system, at least some of the members of the board – or of one of the two boards – should be elected by the AGM. (Commentary on Recommendation 9)</p> | <p>Basic shareholder rights include ... participating and voting in shareholder meetings, in particular to decide on fundamental changes in the company or in shareholders' rights. (Recommendation I.1.c)</p> <p>Shareholders should have timely and practical access to information on the rules and voting procedures relating to meetings. Substantially different subjects should be voted on separately.</p> <p>Shareholders should receive sufficient notice and information on meeting location, date, agenda and issues to be discussed, with the ability to request items to be placed on the agenda and to ask questions....</p> <p>The Chairman should be present at shareholders' meetings to answer questions or to refer them to appropriate members of the board (such as committee chairmen) or management, who should also hold themselves available for that purpose.</p> <p>After shareholders' meetings, shareholders should have prompt and practical access to information on the substance of the discussion and the results of the vote. (Recommendation I.2)</p> <p>A quorum of board members should be entitled to call a meeting. (Recommendation V.5.d,iii)</p> <p><i>See Recommendation II.2 (Voting by Proxy).</i></p> <p><i>See also Recommendation IV.1 (minority shareholders' interests).</i></p> <p><i>See also Preamble at 5 ([T]he committee has endorsed ... the ability to vote by proxy.)</i></p> |

| Recommendations of Federation of Companies (Belgium) | Dual Code of the BXS/CBF (Belgium) | The Director's Charter (FDA) (Belgium) | (Reserved) |
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| 35. Shareholder Meetings / Proxy Proposals | | | |
| <p>According to Belgian law, the General Meeting appoints all directors, whether they are executive or not.</p> <p>For non-executive directors, however, this appointment must take place on a proposal from the Board of Directors. (Note to 2.3)</p> <p>[T]he Chairman of the [audit] committee replies to the questions which are asked at the General Meeting about the activities of the committee. (Note to 4.3)</p> <p>The Board of Directors has the task of producing the Annual Accounts and presenting them to the General Meeting. (4.4)</p> <p>This recommendation corresponds to a requirement of company law. (Note to 4.4)</p> | <p>[T]he general meeting of shareholders is responsible for appointing the members of the board of directors and the auditors. The board of directors is responsible for ... reporting to the shareholders on the performance of its duties. (Part I: A.2)</p> <p>It is the board's duty to present a clear and accurate evaluation of the company's situation to the general meeting of shareholders. (Part I: B.4.1)</p> <p><i>See Part II: B.5 (Information [to be disclosed] on the functioning of the board of directors [includes] information on the policy applied by the board of directors in its proposals to the General Meeting with regard to the appropriation and, especially, the distribution of the results.).</i></p> | <p><i>Not covered.</i></p> | |

| Danish Shareholders Ass'n Guidelines (Denmark) | Nørby Report & Recommendations (Denmark) | Chamber of Commerce/Confederation Code (Finland) | Ministry of Trade & Industry Guidelines (Finland) |
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| 35. Shareholder Meetings / Proxy Proposals | | | |
| <p>Invitations should be sent out at least 3 weeks in advance and enclose an agenda with detailed proposals and recommended decisions to be taken. All strategic decisions of a fundamental importance to the company should be approved at a shareholders meeting....</p> <p>Statements from minority board members or shareholders should be registered in the minutes. (I. The Annual General Meeting)</p> | <p>[G]ood corporate governance depends on appropriate frameworks which encourage the shareholders to enter into a dialogue with the management of the company and each other. This can be encouraged through a strengthening of the AGM's role as a forum for communication and decisions.... (I)</p> <p>It is recommended that the AGM is called with sufficient notice so that the shareholders are able to prepare for the meeting and decide on the issues which will be dealt with at the AGM. The notice of meeting, including the agenda, should be drawn up in such a way that the shareholders are provided with a satisfactory picture of the matters included in the points of the agenda. Authorisations given to a company's directors should be limited to one particular AGM and should, as far as possible, include the position of the shareholder regarding each point on the agenda. (I.3)</p> <p>[W]ithout the acceptance of the AGM, or on its own, the board should refrain from countering a takeover bid by reaching decisions which in reality prevent the shareholders from deciding on the takeover bid. (I.4)</p> <p>It is recommended that the board enclose a description of the nominated candidates' background in the notice of the AGM when the election of the directors is on the agenda. (V.1)</p> | <p>Proposals to the General Meeting of Shareholders regarding the election of the members of the Board of Directors and the Supervisory Board that have come to the knowledge of the Board of Directors of the company shall be made public, at the latest, at the General Meeting of the Shareholders when the proposal is supported by at least 20% of all the votes in the company and the person nominated has given his consent for the task. . . .</p> <p>Requests to resign as well as refusals for new candidacy known to the company shall be [disclosed], at the latest, at the General Meeting of the Shareholders. (English Summary, 4)</p> | <p>Participation of the shareholders in the shareholders' meetings shall be secured as far as possible; [thus], the position of other shareholders in addition to that of the State-owner is taken into account, in relation to the weight of their holdings.</p> <p>In a listed company, this means that the regulations on pre-registration for and on the balancing date of the shareholders' meeting shall be as flexible as possible, according to company law and legislation on book-entry security currently in force. (2.3.1)</p> <p><i>See 2</i> (The Ministry of Trade and Industry draws the attention of civil servants on the Board of Directors especially to ... participation of the shareholders in the shareholders' meetings and the State-owner's role.).</p> |

| Viénot I Report (France) | Hellebuyck Commission Recommendations (France) | Viénot II Report (France) | (Reserved) |
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| 35. Shareholder Meetings / Proxy Proposals | | | |
| <p>[T]he board of directors is collectively answerable to the General Meeting of Shareholders for the fulfillment of its duties.... [It] informs the shareholders' meeting through its annual report and the financial statements which it adopts. (p. 5)</p> <p>[T]he board must respect the rights of the General Meeting of Shareholders when it envisages a transaction which is of a nature to affect, <i>de jure</i> or <i>de facto</i>, the company's [purposes]. (p. 6)</p> <p>[[It is the Committee's opinion that the board should also ask the general meeting of shareholders to consider any divestment representing a preponderant portion of the company's assets or activities.] (p. 6)</p> <p>The Committee recommends that all boards should set up special committees [and] inform the Annual General Meeting of Shareholders of the existence of these committees and of the number of meetings they have held in the course of the year. (p. 18)</p> <p>[T]he Committee considers it highly desirable for directors to attend general meetings of shareholders. (p. 21)</p> | <p>The General Shareholders' Meeting is the pre-eminent occasion for the shareholder to exercise his company rights. This meeting is therefore a decisive element in a company's corporate governance. (§ I)</p> <p>The Commission would like to see the time period for calling the general meeting extended beyond 15 days so that documents and information, which on occasion may be complex, can be delivered to the shareholders sufficiently in advance of the meeting for them to review their contents. (§ I.A.1)</p> <p>The presence of the maximum number of shareholders at shareholders' meetings contributes to the interest of the discussion. Their participation should be encouraged. (§ I.A.2)</p> <p>The shareholders' meeting is the occasion when the Board of Directors renders its accounts to the shareholders on the exercise of its duties. The directors' presence is therefore essential. (§ I.B)</p> <p>The Commission recommends that companies draw up and distribute a guide for shareholders' participation in the general meeting. (§ I.B.1)</p> <p>Through the Shareholders' Meeting, the board should inform shareholders of the existence of [standing] committees and the frequency of their meetings. (§ II.B.2)</p> | <p><i>Not covered.</i></p> | |

| Berlin Initiative Code (Germany) | German Panel Rules (Germany) | Cromme Commission Code (Germany) | (Reserved) |
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| 35. Shareholder Meetings / Proxy Proposals | | | |
| <p>The annual general meeting as the organ of the stockholders decides mandatorily in certain basic questions as well as when so demanded by the Management Board. It elects the members of the Supervisory Board insofar as they may be appointed by the stockholders – depending on the co-determination situation – either completely, or as to two-thirds, or as to one half. (Code, I.5)</p> <p>The annual general meeting also appoints the auditor. (Code, I.5)</p> <p>Properly understood checks and balances in company management are expressed by the fact that the Management Board ... presents fundamental issues, subject to certain preconditions, to the annual general meeting for final decision. (Code, II.3.1)</p> <p>After approval by the Supervisory Board has been given, the Management Board lets the annual general meeting decide in cases expressly provided for by statute, or if the fundamental structural and managerial measures affect the core membership rights of stockholders. (Code, II.3.5)</p> <p>Stockholders exercise their influence at the annual general meeting. (Code, V.1.2)</p> <p>The Management Board, the Supervisory Board and the auditor participate in the annual general meeting. (Code, V.1.4)</p> <p>The stockholders alone decide whether to accept or reject offers of acquisition. (Code, V.1.6)</p> | <p>As part of its regular communication efforts, the dates of major regular publications (such as annual and quarterly reports, General Meetings) shall be published in a ‘Financial Calendar’ sufficiently in advance (at least one year).</p> <p>The information published by the company shall also be available via the ‘Internet’. This includes the invitation to General Meetings, their agenda as well as shareholder initiatives and management comments hereto, as well as voting results of such meetings. If possible, all publications are provided in the English language. (Code, II.2.a)</p> | <p>Shareholders exercise their rights at the General Meeting and vote there. (§II.1.1)</p> <p>The Management Board submits to the General Meeting the established Annual Financial Statements and the Consolidated Financial Statements. The General Meeting resolves on the appropriation of net income and on ratification of the acts of management of the Management Board and of the Supervisory Board, elects the shareholders’ representatives to the Supervisory Board and, as a rule, the auditor. (§II.2.1)</p> <p>[T]he General Meeting resolves on the Articles of Association, the object of the company, amendments to the Articles of Association and essential corporate measures such as ... inter-company agreements and transformations, the issuing of new shares and ... convertible bonds and bonds with warrants, and the authorization to purchase own shares. (§II.2.1)</p> <p>Each shareholder is entitled to participate in the General Meeting, to take the floor on matters on the agenda and submit materially relevant questions and proposals. (§II.2.3)</p> <p>Shareholder minorities are entitled to demand convention of a General Meeting and extension of the agenda. (§II.3.1)</p> <p>The company shall inform all domestic and foreign financial services providers, shareholders and shareholders’ associations, who, in the preceding 12 months, have requested such notification, of the convening of the General Meeting together with the convention documents.... (§II.3.2)</p> <p>The company should make it possible for shareholders to follow the General Meeting using modern communication media (Internet). (§II.3.4)</p> <p><i>See generally</i> §II, Shareholders and the General Meeting.</p> | |

| Mertzanis Report (Greece) | Federation of Greek Industries Principles (Greece) | IAIM Guidelines (Ireland) | Preda Report (Italy) |
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| 35. Shareholder Meetings / Proxy Proposals | | | |
| <p>[T]he general shareholder meeting has the responsibility of appointing the Directors to the Board, the external and internal auditors, and approving the corporation's general strategy. (Introduction)</p> <p>All functions of the ... general shareholder meetings should aim at the enhancement of the entire performance of the corporation within an adequately supervised and informed environment. It is important to ... empower the authority of the general shareholder meeting and establish the rights of the minority shareholders. (Introduction)</p> <p>Shareholders should have the right to participate equitably and efficiently in the general shareholder meetings and be sufficiently, timely and properly informed on the decisions that need to be made regarding fundamental changes in the corporation. (Recommendation 1.2; <i>for a list of proposed changes to the corporation about which shareholders should be duly informed, see Recommendation 1.2</i>)</p> <p>Procedures for general shareholder meetings should ensure the equitable treatment of all shareholders. (Recommendation 2.1.3)</p> <p>The Board of Directors should present to the general shareholder meeting a clear and credible evaluation of the existing situation and the prospects of the corporation. (Recommendation 4.4)</p> <p><i>See Recommendation 1.3 (participation and voting at shareholders' meetings).</i></p> | <p>[The internal controller] is present in the general assembly's meetings. (§4.45(c))</p> <p>In the event of a share capital increase through cash contributions, the company's board of directors presents a written report to the general assembly of shareholders, providing the general directions of the company's investment program, an indicative timeline for its implementation, as well as a report on the use of capital paid in since the last capital increase, provided that this took place not more than three years prior to that date. The relevant decision of the general assembly must include the above elements, as well as the content of the report. (§6.1)</p> <p>Where the decision on the share capital increase is taken by the board of directors pursuant to the provisions of Art. 13(1) of Law 2190/1920, all elements referred to in the previous paragraph must be mentioned in the board's minutes. (§6.2)</p> <p>Important deviations in the use of paid-in capital as compared to the expected use set forth in the information reports and the decisions of the general assembly or those of the board pursuant to paras. 1 and 2 of the present article, may be validly decided by a two-thirds majority of the board's members. The board must inform the general assembly, at the first meeting following this decision, of the new intended use of the capital, as well as of the reason for the deviation from the originally intended use. (§6.3)</p> | <p><i>Not covered directly, but the IAIM Guidelines adopt the Combined Code. See the Combined Code:</i></p> <p>Principle C.2 (Boards should use the AGM to communicate with private investors and encourage their participation.);</p> <p>Code § 1, B.3.5 (The board's annual remuneration report to shareholders need not be a standard item of agenda for AGMs. But the board should consider each year whether the circumstances are such that the AGM should be invited to approve the policy set out in the report and should minute their conclusions.);</p> <p>Code § 1, C.2.2 (Companies should propose a separate resolution at the AGM on each substantially separate issue.);</p> <p>Code § 1, C.2.3 (The chairman of the board should arrange for the chairmen of the audit, remuneration and nomination committees to be available to answer questions at the AGM.);</p> <p>Code § 1, C.2.4 (Companies should arrange for the Notice of the AGM and related papers to be sent to shareholders at least 20 working days before the meeting.);</p> <p>Code § 1, C.2.1 (Companies should count all proxy votes and, except where a poll is called, should indicate the level of proxies lodged on each resolution, and the balance for and against the resolution, after it has been dealt with on a show of hands.);</p> <p>Code § 2, E.1.2 (Institutional shareholders should, on request, make available to their clients information on the proportion of resolutions on which votes were cast and non-discretionary proxies lodged.).</p> | <p>The directors shall encourage and facilitate the broadest possible participation of shareholders in shareholders' meetings. (Code, 12.1; <i>see Report, 5.5</i>)</p> <p>As a general rule, all the directors shall attend shareholders' meetings. (Code, 12.2; <i>see Report, 5.5</i>)</p> <p>Shareholders' meetings shall also be an opportunity to provide shareholders with information on the company. (Code, 12.3; <i>see Report, 5.5</i>)</p> <p>The board of directors shall propose for the shareholders' approval a set of rules to ensure the orderly and effective conduct of the company's ordinary and extraordinary shareholders' meetings, while guaranteeing the right of each shareholder to speak on the matters on the agenda. (Code, 12.4)</p> <p>In the event of a significant change in the market value of the company, the composition and/ or the number of shareholders, the directors shall assess whether proposals should be submitted to the shareholders' meeting to amend the by-laws as regards the majorities required for the approval of resolutions to adopt the measures and exercise the rights provided to protect minority interests. (Code, 12.5)</p> |

| Peters Report (The Netherlands) | VEB Recommendations (The Netherlands) | SCGOP Handbook and Guidelines (The Netherlands) | Securities Market Comm'n Recommendations (Portugal) |
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| 35. Shareholder Meetings / Proxy Proposals | | | |
| <p>[I]f the shareholders, especially the institutional investors and other major shareholders, are actually present at the General Meeting of Shareholders and make their views heard, this will lead to higher attendance rates and to a considerable improvement in the quality of the General Meeting of Shareholders. (Recommendation 5.1)</p> <p>[E]ach company's General Meeting is the forum to which the [Management Board] and the Supervisory Board report and to which they are accountable for their performance. The agenda items should include the company strategy, policy – financial and otherwise – and the business results. (Recommendation 5.2)</p> <p>In the General Meeting of Shareholders a thorough exchange of ideas should take place between company executives and investors. Relevant information should therefore be supplied. (Recommendation 5.2)</p> <p>The basic principle is that the [Management Board] and the Supervisory Board should have the confidence of the shareholders' meeting. (Recommendation 5.3)</p> <p>[A]n effective proxy solicitation system without prohibitive costs would improve the representative nature of the General Meeting of Shareholders. The Committee is aware that a study group is preparing a proposal for the implementation of proxy solicitation. (Recommendation 5.4.4)</p> <p>An efficient proxy solicitation system should be established ... [and] entrusted to a neutral body that draws up and publishes the conditions for admission. (Recommendation 5.9)</p> <p><i>See Recommendation 5.7 (conditions required for shareholders to add items to the agenda)</i></p> | <p>Substantial changes of business activities, risk profile, size and structure should be approved by the shareholders meeting. (Recommendation 6)</p> <p>A shareholder does not have the intention to participate in the management of the company, but should have influence on very substantial changes. This may concern major takeovers (Akzo Nobel), mergers (P&O Nedlloyd), amendments to the articles of association and substantial changes of business activities (risk profile). (Commentary on Recommendation 6)</p> <p>Stock option plans should be described in a separate document and should be approved by shareholders. (Recommendation 9)</p> <p><i>See Recommendation 4 (Certification should be terminated (a) or depository receipt holders (certificateholders) should be given a proxy, whereas the trust office only votes in case of takeover threats (b)).</i></p> <p><i>See also Commentary on Recommendation 4 (Certification in its present state deprives the investor of his voting right and transfer to a trust office that lies within the company's range of influence. The recommendations of the Peters committee (proxy, minority in the trust office) still lead to a weaker position of the investor than when certification is absent. A proxy could be a solution in case the trust office <u>does not</u> take part in a vote.).</i></p> | <p>To improve the role of annual shareholders meetings as a forum for discussion between the board and capital providers, the right to submit agenda topics should be enjoyed by shareholders and certificateholders and not just management. (Guideline 2)</p> <p>A practical system of proxy voting should be introduced to allow institutional investors to vote at the shareholders' meetings of all the companies in which they have shares. (Guideline 4)</p> <p>Major decisions should be approved at the annual general meeting of shareholders. This demonstrates how the interest of shareholders is weighted in relation to other interests, and also in relation to the interests of any majority shareholders. (Guideline 5)</p> <p>If the [annual shareholders'] meeting suffers from absenteeism, ... the company might want to certify its shares. (Guideline 6(a))</p> <p>If the trust office makes use of voting rights linked to shares, it must explain at the shareholders' meeting how this action is in the interests of certificateholders. (Guideline 6(c))</p> <p>The introduction of a practical and efficient proxy voting system and proxy solicitation will enable the practice of limiting voting rights to be abolished. (Guideline 8)</p> <p>The board of a company should not issue (certificates of) preference shares without having first justified the planned issue and related financial advantages at the shareholders' meeting. (Guideline 9)</p> <p>Shareholders at the general meeting must approve option scheme plans in advance. (Guideline 14)</p> <p>The annual general meeting of shareholders (AGM) is the formal forum for discussion between the managing board of a company and its shareholders. (Handbook, p. 21)</p> | <p>The principles of good practice and transparency which should inform corporate governance recommend that the procedures related to requests for proxy voting at General Meetings should be developed. In particular, it is fundamental that shareholders be provided not only with the information necessary to take a correct decision regarding the stipulation of voting instructions, but also that the grounds explaining how the representatives should vote be clear, especially in the event of a lack of instructions from the shareholder represented. (Recommendation 9)</p> <p><i>See Recommendation 6 (The use of new information technologies is encouraged for the disclosure of ... preparatory documents for General Meetings.).</i></p> <p><i>See also Commentary on Recommendation 8 (The generic regulations set out in the Portuguese Companies Act ... on the exercise of voting rights leave room for companies, in their own statutes, to establish measures to stimulate the exercise of this right, in order to combat the frequent absence of shareholders at General Meetings. In line with this philosophy, the new Securities Code ... has confirmed the principle of admissibility of postal votes at General Meetings of publicly-held companies, and developed the system of representation of shareholders by proxy, a sign of a legislative development that should be accompanied in practice by companies.).</i></p> |

| Olivencia Report (Spain) | Swedish Shareholders Ass'n Policy (Sweden) | ICSA Code (United Kingdom) | ISC Statement of Best Practice (United Kingdom) |
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| 35. Shareholder Meetings / Proxy Proposals | | | |
| <p>Measures aimed at making the system of voting by proxy more transparent ... should be passed. (Code, Recommendation 18)</p> <p>The Board of Directors should try to avoid that its accounts be submitted to the General Shareholders' Meeting with reservations and provisos on the audit report. Whenever this is not possible, both the Board of Directors and the auditors should clearly explain to shareholders and markets the nature and scope of those discrepancies. (Code, Recommendation 22)</p> <p>[T]his Committee cannot ignore an undeniable fact—the effectiveness of the General Shareholders' Meeting of listed companies as an instrument of control and decision is subject to many structural limitations. Experience shows, in fact, that most ordinary shareholders neglect General Shareholders' Meeting tasks....</p> <p>To a great extent, the reform movement driving this report, with the purpose of boosting the Board as a supervising body, takes rise from the proven lack of disciplinary efficiency of the General Shareholders' Meeting. Against this backdrop, this Committee harbours doubts on the effectiveness of certain policies directed towards the reactivation of the General Shareholders' Meeting by fostering participation of shareholders (creating shareholder committees, seeing to it that meetings urged by shareholders are called, resorting to attendance premia, etc.). This does not mean, however, that any action directed to increase the efficiency of shareholder control should be rejected. In fact, the Committee considers that this is a field where a lot can still be done. (Report, 9.1)</p> | <p>The company's top decision-making organ is the general meeting, where the owners together decide on important questions for the company. The general meeting elects the board, which is responsible for the administration of the company's affairs. The shareholders' main opportunity to exert influence over the company is the right to ask questions, to get answers, and to vote at the general meeting on questions that concern decisions about the company's results, choice of board and auditors, their remuneration, and inspection of the board's administration. (Guideline 1)</p> <p>The notice of the general meeting should contain a full and numbered agenda and, as far as possible, proposals that are to be decided upon. In special matters, for example directed placements, the background to the proposals should be accounted for in detail. (Guideline 1.1)</p> <p>[T]he general meeting should take the initiative for setting up nomination, audit and remuneration committees. (Guideline 1.2)</p> <p>The notice of a general meeting where the board is to be elected should include the names of people the committee intends to propose and information about them. (Guideline 1.2.1)</p> <p>The general meeting must be given a clear account of all remuneration from the company to the board of directors. (Guideline 1.2.1)</p> <p>The general meeting is the company's highest organ and decides on a number of important questions. (Guideline 2)</p> <p>The Shareholders' Association considers in addition that it is desirable in [takeover bid] situations to call the shareholders to a general meeting where the board explains what their attitude to the offer is based on, and allows the opportunity for discussion concerning the bid. (Guideline 5.1)</p> | <p>The company secretary should be responsible to the chairman for the proper administration of the meetings of the company.... (Code, §9)</p> | <p>A director must be elected by the Company in General Meeting unless provision is made otherwise. The directors may appoint additional directors if the Articles so provide and any change in the directorate must be notified to the International Stock Exchange immediately. Such an appointment terminates at the next Annual General Meeting when the director would normally be eligible for election at that meeting. (p.2)</p> <p>Service contracts may not be entered into for a period in excess of five years without the consent of the company in general meeting. (p. 4)</p> |

| Cadbury Report (United Kingdom) | Greenbury Report (United Kingdom) | Hampel Report (United Kingdom) | The Combined Code/Turnbull Report (United Kingdom) |
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| 35. Shareholder Meetings / Proxy Proposals | | | |
| <p>[T]he chairman of the [remuneration] committee should be available to respond to any concerns of shareholders at the Annual General Meeting. (Report, 4.44)</p> <p>The Annual General Meeting provides the opportunity for shareholders to make their views on such matters as directors' benefits known to their boards.... [S]hareholders can play a more practical governance role by aiming to influence board policies in this way than by seeking to make the details of board decisions subject to their vote. (Report, 4.45)</p> <p>[S]hareholders can make their views known to the boards of the companies in which they have invested by communicating with them directly and through their attendance at general meetings. (Report, 6.5)</p> <p>Reports and accounts are presented to shareholders at the Annual General Meeting. ... In particular, the Annual General Meeting gives all shareholders ... direct and public access to their boards. (Report, 6.7)</p> <p>[T]he chairman of the [audit] committee should be available ... at the AGM. (APPENDIX 4, 6(f))</p> | <p>The committee's annual report to shareholders should not be a standard item of agenda for AGMs. But the committee should consider each year whether the circumstances are such that the AGM should be invited to approve the policy set out in their report and should minute their conclusions. (Code, A9)</p> <p>The remuneration committee Chairman should attend the company's Annual General Meeting (AGM) to answer shareholders' questions about Directors' remuneration.... (Code, A8)</p> <p>Shareholders should be invited specifically to approve all new long-term incentive schemes (including share option schemes) whether payable in cash or shares in which Directors or senior executives will participate which potentially commit shareholders' funds over more than one year or dilute the equity. (Code, B12)</p> <p>Any new long-term incentive schemes which are proposed should preferably replace existing schemes or at least form part of a well-considered overall plan, incorporating existing schemes, which should be approved as a whole by shareholders. (C7)</p> <p>Where Directors stand for re-election, the proxy cards should indicate their specific duties, including membership on the remuneration or other committees. (Commentary on Remuneration Committees, Membership and Qualifications, 4.12)</p> <p><i>See</i> Commentary on Disclosure, Shareholder Communications and Approval, 5.26 – 5.33, <i>including</i>: 5.33. Shareholders should be invited to approve all long-term incentive schemes available to Directors and senior executives, whether payable in cash or shares, and not just share option schemes.</p> | <p>Companies should use the AGM to communicate with private investors and encourage their participation. (Principle C.IV)</p> <p>The AGM is often the only opportunity for the small shareholder to be fully briefed on the company's activities and to question senior managers on both operation and governance matters. (Guideline 5.13)</p> <p>[T]he chairman of the audit committee [should] be available to answer questions at the AGM. (Guideline 5.19)</p> <p>[D]irectors must lay before the AGM the annual accounts and the directors' report.... Most boards propose a resolution relating to the report and accounts.... We recommend this as best practice, which allows a general discussion of the performance and prospects of the business, and provides an opportunity for the shareholders in effect to give – or withhold – approval of the directors' policies and conduct of the company. (Guideline 5.20)</p> <p>Notice of the AGM and accompanying documents should be circulated at least 20 working days in advance of the meeting.... (Guideline 5.21)</p> | <p>Boards should use the AGM to communicate with private investors and encourage their participation. (Principle C.2)</p> <p>The board's annual remuneration report to shareholders need not be a standard item of agenda for AGMs. But the board should consider each year whether the circumstances are such that the AGM should be invited to approve the policy set out in the report and should minute their conclusions. (Code § 1, B.3.5)</p> <p>Companies should count all proxy votes and, except where a poll is called, should indicate the level of proxies lodged on each resolution, and the balance for and against the resolution, after it has been dealt with on a show of hands. (Code § 1, C.2.1)</p> <p>Companies should propose a separate resolution at the AGM on each substantially separate issue, and should in particular propose a resolution at the AGM relating to the report and accounts. (Code § 1, C.2.2)</p> <p>The chairman of the board should arrange for the chairmen of the audit, remuneration and nomination committees to be available to answer questions at the AGM. (Code § 1, C.2.3)</p> <p>Companies should arrange for the Notice of the AGM and related papers to be sent to shareholders at least 20 working days before the meeting. (Code § 1, C.2.4)</p> |

| NAPF Corporate Governance Code (United Kingdom) | AUTIF Code (United Kingdom) | Hermes Statement (United Kingdom) | PIRC Shareholder Voting Guidelines (United Kingdom) |
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| 35. Shareholder Meetings / Proxy Proposals | | | |
| <p>All directors must be put forward for election by shareholders at the first AGM after their appointment. (§8)</p> <p>The report of the remuneration committee should be submitted to shareholders each year for their approval.</p> <p>Long-term incentive schemes must be put to shareholders for approval. (§9(iv))</p> <p>The results of all proxy votes should be published during or shortly after the AGM....</p> <p>Notice of the AGM and related papers should be sent to shareholders at least 20 working days before the meeting. (§10)</p> <p>The NAPF would not normally support the policy of making UK political donations. However, companies wishing to make such donations should seek shareholder approval at general meetings.... [S]uch resolutions, once passed, should be voted on by shareholders at least every three years. (§15)</p> <p>A resolution to adopt the report and accounts must be presented at the AGM. (§17)</p> <p>As a company’s memorandum and articles protect the interests of shareholders, any proposed changes should be fully explained and clearly drafted. Significant, non-routine changes should not be “bundled” into a single resolution. (§18)</p> <p>Where a final dividend is proposed, shareholder approval must be sought. (§19)</p> <p>In accordance with company law, companies must secure share holder approval to offer scrip dividend programmes.</p> <p>Shareholders should not be forced to accept a scrip dividend. Cash should always be offered as a choice. (§21)</p> <p>In accordance with company law, companies must secure shareholder approval to be able to issue new shares. (§22)</p> | <p><i>Not covered directly, but see</i> Guidance Note on Key Principle 6 (Companies listed on the London Stock Exchange are required, as a continuing obligation of listing, to make two disclosure statements. Firstly, they must report on how they apply the principles in the Combined Code on Corporate Governance.... Secondly, listed companies are also required to confirm that they comply with the Code provisions or – where they do not – to provide an explanation.).</p> | <p>Hermes encourages companies to put the board’s remuneration report to a vote at the AGM, particularly where significant changes are made to policy or controversial issues arise during the year. (1.4 and APPENDIX 1.1.2)</p> <p>Hermes believes that a separate resolution seeking approval of the annual report and accounts should be tabled at all AGMs. (3.1)</p> <p>Hermes will lodge proxies at AGMs and EGMs in accordance with the principles outlined in this document. (Code of Conduct 4)</p> | <p>PRINCIPLE: Shareholders should have proper notice of resolutions and be able to vote on all substantive issues.</p> <p>A. Notice of the AGM was sent at least 20 working days before the meeting....</p> <p>B. Resolutions on substantially separate issues are put to the AGM....</p> <p>C. A resolution on the report and accounts is proposed....</p> <p>D. Dividend is put to the vote. (Part 5: Share Capital and Shareholder Relations, p. 16)</p> <p>PRINCIPLE: Shareholders should have adequate information on all directors and resolutions.</p> <p>E. Sufficient biographical information on all directors is disclosed....</p> <p>F. All resolutions are explained. (Part 5: Share Capital and Shareholder Relations, p. 17)</p> <p>PRINCIPLE: Shareholders should have the opportunity to vote on remuneration issues.</p> <p>G. The remuneration committee report or pay policy is put to the vote....</p> <p>H. All new share or incentive schemes over one year are put to the vote. (Part 3: Directors’ Remuneration, p. 10)</p> <p>Voting on the appointment of the directors is the most important routine issue for shareholders to consider at general meetings. (Part 2, Directors, p. 4)</p> <p>[S]cheme rules [of directors’ remuneration] should be available on request as well as being on display at the AGM. (Part 3: Directors’ Remuneration, p. 8)</p> <p><i>See</i> Part 5, Share Capital and Shareholder Relations, p. 15 (<i>AGM procedures and voting</i>).</p> <p><i>See also</i> Part 6: Other Voting Issues, pp. 18-19 (<i>shareholder resolutions, EGMs</i>).</p> |

| OECD Principles/Millstein Report (International) | ICGN Statement/Global Voting Principles (International) | Euroshareholders Guidelines (Pan-European) | EASD Principles and Recommendations (Pan-European) |
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| 36. Anti-Takeover Devices | | | |
| <p>Shareholders have the right to participate in, and to be sufficiently informed on ... extraordinary transactions that in effect result in the sale of the company. (OECD Principle I.B)</p> <p>Markets for corporate control should be allowed to function in an efficient and transparent manner.</p> <p>1. The rules and procedures governing the acquisition of corporate control in the capital markets, and extraordinary transactions such as mergers, and sales of substantial portions of corporate assets, should be clearly articulated and disclosed so that investors understand their rights and recourse. Transactions should occur at transparent prices and under fair conditions that protect the rights of all shareholders according to their class.</p> <p>2. Anti-takeover devices should not be used to shield management from accountability. (Principle I.E)</p> <p>In some countries, companies employ anti-takeover devices. However, both investors and stock exchanges have expressed concern over the possibility that widespread use of anti-takeover devices may be a serious impediment to the functioning of the market for corporate control. In some instances, takeover defenses can simply be devices to shield management from shareholder monitoring. (OECD Principle I.E.2 Annotation at 28)</p> <p>[Independent board members] can play an important role in ... changes of corporate control. (OECD Principle V.E Annotation at 41-42)</p> | <p><i>The ICGN Statement adopts</i> OECD Principle I.B (Shareholders have the right to participate in, and to be sufficiently informed on ... extraordinary transactions that in effect result in the sale of the company.).</p> <p><i>See also</i> OECD Principle I.E (Markets for corporate control should be allowed to function in an efficient and transparent manner.</p> <p>1. The rules and procedures governing the acquisition of corporate control in the capital markets, and extraordinary transactions such as mergers and sales of substantial portions of corporate assets, should be clearly articulated and disclosed....</p> <p>2. Anti-takeover devices should not be used to shield management from accountability.).</p> <p><i>See also</i> OECD Principle I.E.2 Annotation at 28 (In some countries, companies employ anti-takeover devices. However, both investors and stock exchanges have expressed concern over the possibility that widespread use of anti-takeover devices may be a serious impediment to the functioning of the market for corporate control. In some instances, takeover defenses can simply be devices to shield management from shareholder monitoring.).</p> <p><i>See also</i> OECD Principle V.E Annotation at 41-42 ([Independent board members] can play an important role in ... changes of corporate control.).</p> | <p>Anti-takeover defenses or other measures which restrict the influence of shareholders should be avoided. (Recommendation 3)</p> <p>Widespread use of anti-takeover devices are a serious impediment to the functioning of the corporate control market and can be used to shield the management from shareholder monitoring. In order to achieve the efficient and transparent functioning of the corporate control market, effective regulation is necessary. (Commentary on Recommendation 3)</p> <p>The process of mergers and takeovers should be regulated and compliance with these regulations should be supervised. (Recommendation 4(a))</p> <p><i>See also</i> Recommendation 4(b) (If a shareholder's stake in the company passes a certain threshold, that shareholder should be obliged to make an offer for the remaining shares under reasonable conditions, <i>i.e.</i>, at least the price that was paid for the control of the company.).</p> <p><i>See also</i> Commentary on Recommendations 4(a) & 4(b) (In order to protect the interests of minority shareholders, there should exist an obligation for a dominant shareholder to bid for the remaining shares under reasonable conditions. This should become effective when a shareholder's stake passes a certain threshold. This threshold should be at least 25% and not be higher than 33.33%, at which level a shareholder can be considered to have a controlling interest.).</p> | <p>The market for corporate control should be allowed to function in an efficient and transparent manner. Takeover barriers should not shield management, the board and influential shareholders from accountability. (Principle X)</p> <p>Anti-takeover devices</p> <p>a) Companies should not adopt statutory anti-takeover devices unless they are in the best interest of the company;</p> <p>b) The existence of anti-takeover devices must be disclosed and justified in an appropriate statement to shareholders. (Recommendation X.2)</p> <p>[F]ounders and controlling blockholders may and do consider other objectives to override shareholder return maximalization, such as social, economic and environmental contributions.... To ensure that these other aims can be pursued over time, some companies seek immunity from measures such as takeover bids that would increase the value of the company by eliminating such overriding objectives.... [T]hese must be properly disclosed and explained. (Preamble at 5)</p> <p><i>See</i> Preamble at 5 (To overcome the coordination and monitoring problems that can arise when ownership and voting rights are dispersed, the committee has endorsed ... the possibility of conducting contested takeovers.).</p> |

| Recommendations of Federation of Companies (Belgium) | Dual Code of the BXS/CBF (Belgium) | The Director's Charter (FDA) (Belgium) | (Reserved) |
|---|---------------------------------------|---|------------|
| 36. Anti-Takeover Devices | | | |
| <i>Not covered.</i> | <i>Not covered.</i> | <i>Not covered.</i> | |

| Danish Shareholders Ass'n Guidelines (Denmark) | Nørby Report & Recommendations (Denmark) | Chamber of Commerce/Confederation Code (Finland) | Ministry of Trade & Industry Guidelines (Finland) |
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| 36. Anti-Takeover Devices | | | |
| <p><i>Not covered directly, but see IV. Public Takeover Bids (Takeover bids should always, whenever possible, include a share trading alternative – and shareholders obtaining more than 33% of the votes in a listed company should be obliged to bid for the remaining shares at identical conditions.</i></p> <p><i>The listing of the taken-over company should remain in force for the longest possible period of time.</i></p> <p><i>The forced sale of shares should be carried out as quickly as possible.).</i></p> <p><i>See also V. Information To The Market (At takeovers, the consequences of a stand-alone alternative should be included.).</i></p> | <p><i>In the event of attempted takeovers, it is recommended that the shareholders are given the opportunity to decide if they wish to surrender their shares in the company on the conditions offered. Therefore, without the acceptance of the AGM, or on its own, the board should refrain from countering a takeover bid by reaching decisions which in reality prevent the shareholders from deciding on the takeover bid. The decisions which are advised against include implementing capital increases or allowing the company to buy its own shares based on a previously announced authority for instance. (I.4)</i></p> | <p><i>Not covered.</i></p> | <p><i>Not covered.</i></p> |

| Viénot I Report (France) | Hellebuyck Commission Recommendations (France) | Viénot II Report (France) | (Reserved) |
|----------------------------------|--|--|------------|
| 36. Anti-Takeover Devices | | | |
| <i>Not covered.</i> | Considering the interests of the minority shareholders, AFG-ASFFI is generally not in favor of anti-takeover measures. (§ I.C.4) | <p>The Committee has reviewed a resolution by a meeting of shareholders, the legitimacy of which has given rise to recurring discussion, to wit, permission granted to the Board of Directors to use delegations of authority to increase capital after a takeover bid has been made.</p> <p>In 1989, the legislature laid down a principle of suspension of those delegations at such a time, subject to one exception: the extraordinary meeting of shareholders may expressly permit the Board of Directors, for a term not exceeding one year, to make use after a takeover bid has been made of the delegations of authority granted to it by the meeting of shareholders for a capital increase with or without preemptive subscription rights, provided that the capital increase is open (not restricted)...</p> <p>Since then, most listed companies have submitted to their meeting of shareholders every year a resolution for this purpose. In recent years, approval by the shareholders of this resolution, to which many institutional investors object as a “poison pill,” has been increasingly lukewarm.</p> <p>Accordingly, the Committee recommends that corporations cease in future to submit to the extraordinary meeting of their shareholders a resolution expressly permitting the use of delegations of authority to increase the capital after a takeover bid has been made. (p. 19)</p> | |

| Berlin Initiative Code (Germany) | German Panel Rules (Germany) | Cromme Commission Code (Germany) | (Reserved) |
|---|---|--|------------|
| 36. Anti-Takeover Devices | | | |
| <p>The stockholders alone decide whether to accept or reject offers of acquisition. The Management Board and the Supervisory Board are obliged to present the chances and risks of the offers in a balanced manner. The chief measure for evaluation in this is the presumed development in the prosperity of the company on an acquisition or with independence. Securing the independence of the company is not normally a material aim of the company. (Code, V.1.6)</p> | <p><i>Not covered directly, but see Code, I (Until the enactment of the German Takeover Law, the voluntary Takeover Code of the Capital Markets Expert Commission of the German Ministry of Finance applies.)</i></p> | <p>In the event of a takeover offer, the Management Board and Supervisory Board of the target company must submit a statement of their reasoned position so that shareholders can decide on the offer with knowledge of the situation.</p> <p>After the announcement of a takeover offer, the Management Board may not execute any actions outside of the ordinary course of business that could prevent the success of the offer unless the Management Board has been authorized by the General Meeting to do so or the Supervisory Board has given its approval. In making their decisions, the Management Board and Supervisory Board are bound to act in the best interests of the shareholders and of the enterprise.</p> <p>In appropriate cases the Management Board should convene an extraordinary General Meeting at which shareholders are advised of and discuss the takeover offer and, possibly, decide on corporate actions. (§III.7)</p> <p><i>See §II.2.1 ([T]he General Meeting resolves ... inter-company agreements and transformations...).</i></p> | |

| Mertzanis Report (Greece) | Federation of Greek Industries Principles (Greece) | IAIM Guidelines (Ireland) | Preda Report (Italy) |
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| 36. Anti-Takeover Devices | | | |
| <p>Devices that limit or prevent merger and acquisition activity should be adopted only when they are considered to be in the interest of the corporation and its shareholders. (Recommendation 1.4.3)</p> <p>The corporate governance framework should discourage the use of devices that prevent merger and acquisition activity. However, any such use should take place only in the interest of the shareholders. (Recommendation 5.13)</p> <p><i>See</i> Recommendation 1.2.3 (Shareholders should have the right to participate equitably and efficiently in the general shareholder meetings and be sufficiently, timely and properly informed on the decisions that need to be made regarding fundamental changes in the corporation. These changes include ... the approval of unusual and complex capital transactions, such as mergers, acquisitions and sales of the corporation's assets.).</p> <p><i>See also</i> Recommendation 5.8 (The Board of Directors should establish rules governing the procedures for special transactions, such as mergers, acquisitions and other import capital transactions in the corporation.).</p> | <i>Not covered.</i> | <p>An ESOP or employee share ownership trust should not be used as an anti-takeover device. (Guideline 21)</p> <p><i>See</i> Guideline 17 (In the event of a takeover of the grantor company, options may be exercised within 6 months of the offer being declared unconditional in all respects, lapse or be converted into options of the offeror company where that alternative is available.).</p> | <i>Not covered.</i> |

| Peters Report (The Netherlands) | VEB Recommendations (The Netherlands) | SCGOP Handbook and Guidelines (The Netherlands) | Securities Market Comm'n Recommendations (Portugal) |
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| 36. Anti-Takeover Devices | | | |
| <p>In the situation where the company becomes the target of a hostile takeover bid by a party attempting to acquire control over it, the company's management should be allowed the time to provide adequate protection for the interests to which the hostile takeover bid relates. Protective measures can, within certain limits, be accepted in these circumstances. Anti-takeover regulations do not fall within the remit of the Committee and it awaits the proposed legislation on this subject. (Recommendation 5.1.2)</p> <p>Although the Committee realizes that under the circumstances mentioned above the continuity of decision-making and the protection against hostile takeovers may justify a departure from the principle that the investor should be able to exercise a degree of influence which is proportionate to the capital contribution, the Committee believes that this should never lead to the investors being deprived of exerting a real influence. (Recommendation 5.4.1)</p> <p>The Committee believes that protective preference shares should under normal circumstances not be issued. The voting right on protective preference shares should be exercised with due regard for the function of the shares. The holder of these shares should be reticent in using the voting rights attached to these shares when decisions are being taken that do not concern the protection of the company against an unfriendly acquisition of control. (Recommendation 5.6.3)</p> | <p>Certification should be terminated (a) or depository receipt holders (certificateholders) should be given a proxy, whereas the trust office only votes in case of takeover threats (b). (Recommendation 4)</p> <p><i>See</i> Commentary on Recommendation 6 (A shareholder ... should have influence on very substantial changes. This may concern major takeovers [or] mergers....).</p> | <p>Anti-takeover defenses can only be used in the event of a takeover to override the right of say of the providers of capital. This is in order to grant the executive board a pre-set period of time in which to weigh carefully the arguments for and against. The use of more than one anti-takeover device should be avoided. (Guideline 7)</p> <p>The board of a company should not issue (certificates of) preference shares without having first justified the planned issue and related financial advantages at the shareholders' meeting. The board should take pains to prevent an unbalanced relationship arising between the capital providers and voting right influence as a result of the issuance of preference shares. Preference shares that cannot be freely traded must be seen as anti-takeover preference shares. (Guideline 9)</p> <p>To prevent an issue of ordinary shares from being used as an anti-takeover device, companies should limit the period during which the authority to issue shares is granted to 18 months. In addition, the number of non-preference shares issued should not exceed 10 percent of existing outstanding shares. (Guideline 11)</p> <p>Companies should not issue options on ordinary or anti-takeover preference shares that have a life longer than the period for which the authority to issue these shares has been granted. (Guideline 12)</p> <p>Anti-takeover defenses can be useful for guaranteeing the continuity of a company in exceptional situations. Anti-takeover defenses must however not be used to give management the opportunity to go against the advice of the majority of shareholders for long periods of time. (Handbook, p. 9)</p> | <p>Measures adopted to prevent the success of takeover bids should respect the interests of the company and its shareholders. Measures considered contrary to these interests include defensive clauses intended to cause an automatic erosion in company assets in the event of transfer of control or change of composition in the board, detrimental to the free transferability of shares and the free assessment by shareholders of the performance of members of the board. (Recommendation 13)</p> <p>Efficiency of the shareholder control market is based essentially on the right to transferability of shares, on the unwaivable possibility granted to the shareholder to assess the situation of the company and on the responsibility of its leaders for the results obtained. These principles require a distinction to be made between benign defensive measures and those that harm the rights and expectations of shareholders and the market in general. For this reason, it is important to condemn the adoption of certain defensive measures which, seeking at all costs to contain the success of takeover bids without the agreement of the board, end up damaging the interests of partners and the company. (Commentary on Recommendation 13)</p> |

| Olivencia Report (Spain) | Swedish Shareholders Ass'n Policy (Sweden) | ICSA Code (United Kingdom) | ISC Statement of Best Practice (United Kingdom) |
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| 36. Anti-Takeover Devices | | | |
| <p>[A] rule of abstention ... would oblige significant shareholders not to vote in board decisions regarding which they have a direct or indirect interest (for instance, defensive measures against hostile takeover bids). (Report, 8.6)</p> <p>[I]n the event of including a proposal to introduce defensive measures against hostile takeover bids, it should be stated that the Board of Directors is in a conflicting situation. (Report, 9.2)</p> | <p><i>See</i> Guideline 5, Public Takeover Bids, <i>including the following:</i></p> <p>Guideline 5.1 (When a quoted company bids for another company, the offer ought, in view of the tax consequences, to contain an exchange alternative, <i>i.e.</i>, that settlement is paid out in shares in either the purchasing company or the new company, and a pure cash offer.</p> <p>The Shareholders' Association feels that, in the case of a bid in which the principal owner directly or indirectly participates, higher demands should be placed on objective evaluation than those currently stipulated. Independent opinions should be obtained to give the shareholders a complete and comprehensive foundation on which to base their decision.</p> <p>The Shareholders' Association considers in addition that it is desirable in these situations to call the shareholders to a general meeting where the board explains what their attitude to the offer is based on, and allows the opportunity for discussion concerning the bid.)</p> <p>Guideline 5.2 (The Swedish Companies Act does not include any offer obligation. Prevailing international conditions, work on EU directives and Swedish experience all argue in favour of such an obligation being introduced in Sweden.).</p> <p>Guideline 5.3 (It is expedient and probably necessary for the functioning of the stock market that the compulsory purchase of minority shares be possible.).</p> | <p><i>Not covered.</i></p> | <p>Management Buy-Outs</p> <p>Considerable concern has been expressed at the inadequacy of information given to shareholders, particularly when compared with the knowledge of the business held by the management buy-out team, and also of the need to have competent independent advice. The advent of a takeover or a management buy-out imposes obligations on management to make all relevant information available and the Takeover Code imposes quite stringent obligations in bid situations. Given the potential for conflicts of interest, ... [i]t is suggested that, as a matter of good practice, these further provisions should be observed:</p> <p>(a) The directors must use their best endeavours to ensure that there is made available to shareholders sufficient information to enable them properly to assess the value of the company or other assets which it is proposed to sell.</p> <p>(b) Ideally, the Board should appoint a separate committee consisting wholly or mainly of non-executive directors with direct access to independent advisers. The independent advisers should have access to all information necessary to enable them to give a fully informed opinion as to the merits of the offer. The committee should be responsible for a separate statement to shareholders, giving the views both of itself and of the independent advisers on the bid.</p> <p>(c) The consortium should not have access to the company's usual professional advisers, since that would aggravate the conflict of interest.</p> <p>(p. 6)</p> <p><i>See</i> pp. 2-3 ([T]he importance of non-executive directors has become evident, particularly ... in circumstances where there is potential for conflict of interest such as management buy-outs.).</p> |

| Cadbury Report (United Kingdom) | Greenbury Report (United Kingdom) | Hampel Report (United Kingdom) | The Combined Code/Turnbull Report (United Kingdom) |
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| 36. Anti-Takeover Devices | | | |
| <p><i>Not covered directly, but see Report, 4.6 (An important aspect of effective corporate governance is the recognition that the specific interests of the executive management and the wider interests of the company may at times diverge, for example, over takeovers.... Independent non-directors, whose interests are less directly affected, are well-placed to help to resolve such situations.)</i></p> | <p><i>Not covered.</i></p> | <p><i>Not covered.</i></p> | <p><i>Not covered.</i></p> |

| NAPF Corporate Governance Code (United Kingdom) | AUTIF Code (United Kingdom) | Hermes Statement (United Kingdom) | PIRC Shareholder Voting Guidelines (United Kingdom) |
|--|--------------------------------|--|---|
| 36. Anti-Takeover Devices | | | |
| <i>Not covered.</i> | <i>Not covered.</i> | <p>Takeovers are an important part of an efficient and competitive corporate environment but do not always add to shareholder value, particularly for the bidding company. Hermes' predisposition in a hostile bid is to support existing management, but this support is conditional. It does not apply where confidence has been lost in management nor, for example, where synergistic or strategic benefits clearly justify a bid premium. Unreasonable or unjustifiably expensive defense tactics will not be supported. (7.1)</p> <p>Contracts [between the company and executive directors] with a clause that increases compensation paid for early termination in the event of a takeover are not supported. (APPENDIX 1.2.1)</p> <p>Hermes will normally support incumbent management in hostile takeover situations, but the support is conditional (as explained in paragraph 7.1, above). Hermes generally prefers change from within rather than hostile bids. (Code of Conduct 3)</p> | <p><i>Not covered directly, but see Part 5: Share Capital and Shareholder Relations, p. 15 (Takeover Code Waivers.</i> Share buy-backs and other capital changes can have the effect of increasing the stake of controlling shareholders. In such circumstances, companies may seek waivers from the Takeover Code requirement that a controlling shareholder should make an offer to all shareholders if their holding increases. Resolutions seeking such a waiver should always be voted on by a poll. The controlling shareholders' intentions, should a share repurchase go ahead, should be stated. Waivers should not be approved if there is the potential that a controlling shareholder's stake could increase beyond 50%).</p> |

APPENDIX

PARTIAL LISTING OF CORPORATE GOVERNANCE GUIDELINES AND CODES OF BEST PRACTICE THROUGHOUT THE WORLD

INTERNATIONAL ORGANIZATIONS

- § APEC-PECC, Guidelines for Good Corporate Governance Practice (September 18, 2001). <www.pecc.net>
- § European Association of Securities Dealers (“EASD”), Corporate Governance: Principles and Recommendations (May 2000). <www.easd.com/recommendations>
- § The European Shareholders Group (“Euroshareholders”), Euroshareholders Corporate Governance Guidelines (February 2000). <www.dcg.dk/publications/2000>*
- § Hermes Investment Management Ltd., International Corporate Governance Principles (December 13, 1999). <www.hermes.co.uk>*
- § Commonwealth Association for Corporate Governance (“CACG”), CACG Guidelines: Principles for Corporate Governance in the Commonwealth (November 1999). <www.cbc.to>
- § International Corporate Governance Network (“ICGN”), Statement on Global Corporate Governance Principles (July 1999). <www.icgn.org>*
- § Organization for Economic Cooperation and Development (“OECD”) Ad Hoc Task Force on Corporate Governance, OECD Principles of Corporate Governance (May 1999). <www.oecd.org/daf/governance/principles.htm>
- § ICGN, Global Share Voting Principles (July 1998). <www.icgn.org>*
- § OECD Business Sector Advisory Group on Corporate Governance, Corporate Governance: Improving Competitiveness and Access to Capital in Global Markets, Report to the OECD (Millstein Report) (April 1998). <www.oecd.org>
- § European Bank for Reconstruction and Development (“EBRD”), Sound Business Standards and Corporate Practices: A Set of Guidelines (September 1997). <www.ebrd.com>
- § Centre for European Policy Studies (“CEPS”), Corporate Governance in Europe – Recommendations (June 1995). <www.ecgn.org>

ARGENTINA

- § Report on Capital Market Transparency and Reform for Best Corporate Governance Practices (the Villegas Report) (June 2001). <vscaffino@nicholsonycano.com.ar>

AUSTRALIA

- § Investment & Financial Services Association (“IFSA”), formerly Australian Investment Managers Association (“AIMA”), Corporate Governance: A Guide for Investment Managers and Corporations (3d ed., July 1999). <www.ifsa.com.au>*
- § Working Group representing Australian Institute of Company Directors, Australian Society of Certified Practising Accountants, Business Council of Australia, Law Council of Australia, The Institute of Chartered Accountants in Australia & The Securities Institute of Australia, Corporate Practices and Conduct (Bosch Report) (3d ed., 1995). <www.ecgn.org>

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- § Fondation des Administrateurs (“FDA”), The Directors’ Charter (January 2000). French and English: <www.ecgi.org>
- § Brussels Stock Exchange/Banking & Finance Commission, Corporate Governance for Belgian Listed Companies (a “Dual Code” combining the Cardon Report and the Banking & Finance Commission Recommendations) (December 1998). <www.cbf.be/pe/pec/en_ec01.htm>
- § Federation of Belgian Companies (VBO/FEB), Corporate Governance – Recommendations (January 1998). Dutch, French and English: <www.vbo-feb.be>

* Investor viewpoint.

** Combined viewpoint of investors, academics and private business sector representatives.

BRAZIL

§ Instituto Brasileiro de Governança Corporativa (“IBGC”), formerly Instituto Brasileiro de Conselheiros Administração (“IBCA”), Code of Best Practice of Corporate Governance (May 8, 1999, revised April 9, 2001). <www.ibgc.org.br>

CANADA

- § Joint Committee on Corporate Governance, Beyond Compliance: Building a Governance Culture (Saucier Report) (November 2001). <www.jointcomgov.com>
- § Institute of Corporate Directors & Toronto Stock Exchange, Report on Corporate Governance, 1999 – Five Years to the Dey (1999). <www.ecgn.org>
- § Pension Investment Association of Canada (“PIAC”), Corporate Governance Standards (September 1993; revised March 1997, updated June 1998). <www.piacweb.org>*
- § Toronto Stock Exchange Commission on Corporate Disclosure, Responsible Corporate Disclosure: A Search for Balance (March 1997). <marketdata@tse.com>
- § Toronto Stock Exchange Committee on Corporate Governance in Canada, “Where Were The Directors?”: Guidelines For Improved Corporate Governance in Canada (Dey Report) (December 1994). <www.ecgn.org>

CHINA

§ China Securities Regulatory Commission, Corporate Governance Code and Standards for Chinese Listed Companies (draft, June 11, 2001). Available upon request at <tonglu@public.east.cn.net>. English translation available upon request from <gpw@davisglobal.com>

CZECH REPUBLIC

- § Czech Securities Commission (Komise pro Cenne Papiro), Draft Corporate Governance Code Based on the OECD Principles (September 2000).
- § Czech Institute of Directors, Corporate Governance Code of Practice (draft, August 2000).

DENMARK

- § The Nørby Commission, Recommendations for Good Corporate Governance in Denmark (December 6, 2001). <www.corporategovernance.dk>
- § Danish Shareholders Association, Guidelines on Good Management of a Listed Company (Corporate Governance) (draft, February 29, 2000). <www.shareholders.dk>*

FINLAND

- § Ministry of Trade and Industry, Guidelines for Handling Corporate Governance Issues in State-Owned Companies and Associated Companies (November 7, 2000). <www.vn.fi/ktm/eng/newsktm_etu.htm>
- § Central Chamber of Commerce/Confederation of Finnish Industry and Employers, Corporate Governance Code for Public Limited Companies (February 10, 1997).

FRANCE

- § Association Française de la Gestion Financière – Association des Sociétés et Fonds Français d’Investissement (“AFG-ASFFI”), Recommendations on Corporate Governance (Hellebuyck Commission Recommendations) (June 9, 1998, revised September 2001) English translation (1998) by AFG-ASFFI; English translation of 2001 version not yet available. <www.afg-asffi.com>*
- § Association Française des Entreprises Privées (AFEP) & Mouvement des Entreprises de France (MEDEF), Report of the Committee on Corporate Governance (Viénot II) (July 1999). <www.ecgn.org> (French and English).
- § Stock Exchange Operations Commission, Regulation No. 98-01 – 98-10 (March 1999). English translation available at <publications@cob.fr>
- § Conseil National du Patronat Français (“CNPF”) & Association Française des Entreprises Privées (“AFEP”), The Boards of Directors of Listed Companies in France (Viénot I) (July 10, 1995). <www.ecgn.org> (French only). English translation by CNPF & AFEP.
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