



## BANKING AND FINANCE COMMISSION

Corporate governance for Belgian listed companies

December 1998

The Brussels Stock Exchange and the Banking and Finance Commission have issued [recommendations](#) on corporate governance to Belgian listed companies.

These recommendations do not aim to enforce organisational rules on the listed companies. Both the Banking and Finance Commission and the Brussels Stock Exchange are presently 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, than by statutory provisions. However, the general requirements for a stock exchange listing require companies to explain the choices they make regarding their organisation.

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. To achieve the latter, the Belgian recommendations are close to those issued in other countries and the information contained in the annual reports will be comparable from year to year.

Both sets of recommendations contained in this brochure are complementary. The recommendations of the market authority of the Brussels Stock Exchange, drawn up by the [Belgian Commission on Corporate Governance](#), relate to provisions on corporate governance proper. The recommendations of the Banking and Finance Commission relate to the information on corporate governance to be disclosed in the annual report of companies.

The market authority of the Brussels Stock Exchange wishes to express its sincere gratitude to the members of the Belgian Commission on Corporate Governance and particularly to its chairman, Daniel Cardon de Lichtbuer, for the sizeable work and the many hearings that have resulted in these recommendations, based on a very broad consensus. The market authority subscribes these recommendations and will ensure their follow-up and periodical evaluation.

We hope this initiative will enhance the profile of the Belgian companies on the capital markets, whose size is to change radically with the arrival of the euro.

Olivier Lefebvre,  
Chairman of the Management Committee  
BXS

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Chairman  
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<b>I. <i>Recommendations of the market authority of the Brussels Stock Exchange, drawn up by the Belgian Commission on Corporate Governance</i></b>
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### A. OBJECTIVES, APPROACH AND FOLLOW-UP

#### Objectives

1. The success of the Belgian economy depends on the efficiency and growth of Belgian companies. Access to capital markets is one of the essential conditions for corporate success. The growing internationalisation of capital markets and the introduction of the single currency will have profound effects on the size of the market on which Belgian companies seek to raise capital. To operate on a larger market, Belgian companies will need to improve transparency, with respect to their shareholders, and, more particularly, 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.
2. '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 conventions under which the company operates. 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. In the area of corporate governance, the 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 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.
3. The Brussels Stock Exchange seeks to promote improved standards of corporate governance within Belgian companies, chiefly with a view to enhancing their competitiveness on the capital markets. The Exchange takes the view that the powers vested in the various bodies involved in the corporate governance of listed companies should be clearly defined and that the rules on financial reporting should be strengthened.

#### The authors's approach

4. The authors consider that Belgian company law already incorporates the basic concepts required for adequate corporate governance. More specifically, the legislation embodies the principle of 'one share, one vote', the rule that all directors share equal responsibility, the requirement that directors act in the sole interest of the company and the rules on conflicts of interest within the board of directors.

While the authors are aware of the wide diversity of profiles of listed companies in Belgium, they have opted for a single set of recommendations for all listed companies.

Different sets of recommendations would have resulted in reduced flexibility and might have been deleterious to the image of certain categories of companies.

5. The authors consider it preferable not to resort to statutory provisions to enforce corporate governance in Belgium, because a mandatory system could in many cases result in compliance with the letter of the legislation without respect for its spirit. The authors prefer a code of best practice to be arrived at by consensus. This gives greater flexibility, leaves room for improvement and makes allowance for the different rates of progress achieved by companies in this area. Given the wide diversity of Belgian listed companies, this option is favoured.

However, the market authority of the Brussels Stock Exchange considers that without any stimulus for listed companies to improve their corporate governance, changes in corporate behaviour will be too gradual. Therefore, the market authority proposes a so-called "comply or explain" approach. This implies that the behavioural recommendations listed herein, do not become mandatory, but that companies must disclose the specific circumstances or reasons explaining why a situation diverges from these recommendations. The obligation for disclosure on the basis of the "comply or explain" model, will be introduced in the listing requirements of the Brussels Stock Exchange, following the decision of the Belgian government on July 19, 1998.

6. In drawing up the code of best practice, the authors have deliberately chosen to formulate it in terms which are internationally recognisable and have been guided largely by the experience gained in other countries. They have taken into account the reactions gathered after the publication of the preliminary report of the Belgian Commission on Corporate Governance on January 19, 1998.
7. The Commission has based the code of best practice on three principles: transparency, integrity and responsibility.

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.

Integrity demands that the financial reports and other information disseminated by the company present an accurate and complete picture of the company's position.

Responsibility primarily relates to the board of directors and the shareholders, both of which have to play their role if reporting by the board of directors to the shareholders on the course of business is to be efficient. 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.

## **Follow-up**

8. The authors consider that the recommendations should be re-evaluated after two years, in order to take account of developments in current practice in Belgium and international trends. Current practice evolves as a function of the prevailing social model, the decision-making structures and the development of the capital markets. All these elements need to be taken into account in formulating recommendations for corporate governance.

## **B. THE RECOMMENDATIONS**

### **1. The board of directors**

- 1.1. 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 be capable of monitoring the executive management.
- 1.2. 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, for 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.

- 1.3. 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. 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
- 1.4. 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.

*Non-executive directors are directors who do not perform a management function within the company or its subsidiaries.*

- 1.5. 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.

*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.*

- 1.6. There should be an agreed procedure for directors in the furtherance of their duties to take independent professional advice at the company's expense.
- 1.7. 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.

*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.*

*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.*

- 1.8. 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.*

- 1.9. Finally, the Belgian Commission on Corporate Governance wishes to emphasise that all directors, including those related to the dominant shareholders, are to exercise their duty in an independent manner, in the sole interest of the company. 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.

## **2. Non-executive directors**

- 2.1. 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. The remuneration received by the 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.

It is recommended to disclose the total amount of the non-executives 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.

- 2.2.** 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, 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.*

*It is for the board to decide whether an independent director satisfies the definition of independence given below. In particular, 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.*

*The Belgian Commission on Corporate Governance takes the view that a director may be considered independent if:*

- *he/she is not a member of the executive management or 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 selected on the nomination of 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 the firm of which the company's adviser or consultant is 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.*

- 2.3.** 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.

- 2.4.** 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.

*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.*

*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..*

### **3. Executive management of the company**

- 3.1. 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.

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..

- 3.2. 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.

*The membership of the remuneration committee should be disclosed in the annual report.*

### **4. Reporting and Controls**

- 4.1. It is the board's 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.*

- 4.2. The board should ensure that the auditors have no relationship with the company, whether directly or indirectly, which could influence their judgement.
- 4.3. The Belgian Commission on Corporate Governance recommends that 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.

*The Commission's recommendations on audit committees are as follows:*

- 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.*
- b. *Membership should be confined to the non-executive directors and there should be a majority of independent directors as defined in section 2.2 of these Recommendations.*
- 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.*
- 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 relevant experience to attend meetings, following the procedure laid down in section 1.6. of these Recommendations.*

e. *The membership of the committee should be disclosed in the annual report.*

- 4.4. The board shall see to it that executive management develops and implements the tools necessary to allow appropriate and effective internal control.
- 4.5. The directors should report on the company's prospects.

## **II. Recommendations of the Banking and Finance Commission with regard to the information to be disclosed by Belgian listed companies on the organization of their administration and management**

### **A. INTRODUCTION**

The organization of the administration and management of limited companies (commonly called "corporate governance") is certainly not a new issue, but is particularly under the spotlight at present, especially under pressure of the progressive interpenetration of financial markets.

Belgian companies cannot be insulated from these developments.

At present, the most appropriate way of organizing the administration and management of Belgian companies, at least for those soliciting savings publicly, is the subject of the recommendations of the market authority of the Brussels Stock Exchange, drawn up by the Belgian Commission on Corporate Governance. The Federation of Enterprises of Belgium ("Fédération des Entreprises de Belgique") has equally considered this matter.

Since the Banking and Finance Commission must ensure that listed companies provide sufficient periodic information to their shareholders and to the public in general, it considers it useful, following the example of other foreign authorities, to take an initiative with regard to the information which these companies should provide on the organization of their "corporate governance".

The Commission is aware of the fact that the specific nature of certain situations may be underestimated by taking a too linear approach. It therefore prefers to proceed in the most flexible and progressive way possible, that is, by way of recommendation. In other words, the Commission does not intend to use its legal powers (forming and publishing notices)<sup>1</sup> to guarantee observance of this text.

However, the Commission is of the opinion that the information contained in the recommendations below should enable the market to make a better-founded assessment of the quality of the company's organization and internal functioning. The Board of Directors, which will have to decide on the list of information that will actually be provided, will have to assess the extent and the quality of this list, giving due consideration to the reaction of the market.

The Commission does not intend to further regulate the form and the presentation of the information to be disclosed. Nevertheless, in its opinion, 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.

This issue is constantly evolving. Therefore, certain aspects are not discussed in this document. For instance, the General Meeting is not dealt with. It is evident that the General Meeting must play its proper role in compliance with the rules governing the way in which it is convened and held. The Commission intends to adjust the list below periodically. It will carefully examine all suggestions made in this regard.

### **B. THE RECOMMENDATIONS**

#### **1. Composition of the Board of Directors**

Information on the composition of the Board of Directors, including, inter alia :

- List of the directors de facto representing the dominant shareholders<sup>2</sup>, 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.
- The dates on which the mandates of the directors expire.
- Mention of the rules, if any, whether statutory or otherwise, governing the appointment of directors and the renewal of their mandates.
- The age limit, if any, to serve on the Board of Directors.
- For natural persons representing directors, which are actually legal personae, indication of these persons' capacity in the company which they represent.

## 2. Functioning of the Board of Directors

Information on the functioning of the Board of Directors, including, inter alia:

- The number of meetings per the year.
- Indications on the most significant types of subjects discussed in the Board of Directors.
- Indication of the specific rules, if any, whether statutory or otherwise, governing the decision-making process of the Board of Directors.
- A description of the way in which the Board of Directors is organized to supervise the daily management<sup>3</sup>, and, more specifically, a typology of the most significant information provided to the Board of Directors by the persons responsible for the daily management. If the Chairman of the Board is entrusted with the company's daily management, indication as to how the Board manages to take account of this situation.
- A description of the way in which the Board of Directors is organized in order 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.
- Information about the rules and procedures with regard to the 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<sup>4</sup>.

## 3. Committees created by the Board of Directors

- A list of the committees, if any, created by the Board of Directors (other than those mentioned in section 4 below), indication of their composition, their powers, their mode of operation and their meeting frequency (e.g. committee of the Board, strategic committee, audit committee, appointments committee, remuneration committee, ...).

## 4. Daily Management

- The list of the directors entrusted with the daily management and of the other significant mandates or functions entrusted to the directors.
- The list of the committees, if any, in charge of the daily management (Management Committee, Executive Committee...).
- The composition of those committees, indication of the capacity of their members (Managing Director, Secretary-General, Director, ...) and their meeting frequency.



- The nature of the powers exercised by these committees and division, if any, of the powers.
- Andere betekenisvolle delegaties aan het dagelijks bestuur.

#### **5. Policy with regard to the appropriation of the results**

- 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.
- If, exceptionally, this policy is departed from, justification for such departure.

#### **6. Relationship with the dominating shareholders**

- 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 their knowledge, there are none) - of any agreements between these shareholders and of the contents of such agreements, and of any committees of shareholders or directors which would have been established irrespective as to 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.

#### **FOOTNOTES**

- 1 Article 6 of the Royal Decree of 3 July 1996 in respect of the obligations concerning periodic information of the issuers whose financial instruments are listed on the first market and the new market of a stock exchange.
- 2 For the purposes of this text, "dominant shareholders" shall be understood to mean the shareholders who exercise a decisive or significant influence on the company.
- 3 For credit institutions which have made use of the possibility provided for by Article 26 of the Law of 22 March 1993 on the legal status and supervision of credit institutions, "daily management" is to be understood as "management", both here and in the rest of the text.
- 4 Information on the total amount of emoluments granted to the directors and on any loans and advances which the company may have granted to them, must already be provided in the notes to the annual and consolidated accounts: the amount of the annual fees is also already mentioned in the appropriation account.

#### **COMPOSITION OF THE BELGIAN COMMISSION ON CORPORATE GOVERNANCE**

The Chairman of the Belgian Commission on Corporate Governance is Daniel Cardon de Lichtbuer, Honorary Chairman of Banque Bruxelles Lambert.

Other members are :

- Luc De Bruyckere, Managing Director, Ter Beke,
- Koen De Ryck, Managing Director, Pragma Consulting,
- Prof. Michel J. De Samblanx, Deputy Director-General of the Institute of Chartered Accountants,
- Prof. Dr. Hilde Laga, Professor, Katholieke Universiteit Leuven,
- Olivier Lefebvre, Chairman of the Executive Committee, Brussels Stock Exchange,
- Betty Pestiaux, Chairwoman of the Ethics Commission, Belgian Association of Financial Analysts,
- Luc Santens, Vice-Chairman of Groep Santens,
- Pierre Scohier, Chairman of the Board of Directors, Cobepa,
- Jeffrey Taylor, Analyst-Fund manager, Perpetual Plc,

- Anne Vleminckx, Vice-Chairwoman of the Executive Committee, Brussels Stock Exchange,
- Herman Verwilt, Chairman, Generale Bank.
- Luc Willame, Managing Director, Glaverbel,
- Prof. Dr. Eddy Wymeersch, Professor, Rijksuniversiteit Gent.