

# Corporate Governance Code

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## **INTRODUCTION**

Intense activity has been perceived internationally over the past decade, especially recently, to establish principles of corporate governance aimed at protecting investors, especially small shareholders, creditors and sui generis organisations with legal interests in companies listed in stock exchanges. This need to establish principles of corporate governance has also been evident both in capital markets characterized by multiple ownership status (e.g. in the USA and the UK) as well as in markets characterized by a high concentration of equity capital in the hands of a small number of large shareholders (e.g. countries of continental Europe, Japan).

The aim of the proposed regulations is to strengthen the monitoring role of the Board of Directors, to protect small shareholders, to adopt greater transparency and to provide timely information, as well as to sufficiently safeguard the independence of the Board of Directors in its decision-making. Moreover, the setting down of regulatory indicators with desirable rules for corporate governance and their broad application by both individual and institutional investors in the selection of shares and the drawing up of share portfolios internationally, calls for all listed companies to conform directly with internationally accepted rules of corporate governance.

The proposed recommendations of best practice will become enriched by developments in current Cypriot business practice as well as by international practice.

Listed companies have an obligation to include in their Board of Directors' annual report to shareholders, a report on corporate governance as follows:

The company should state in the first part of the report whether the principles of the Code are being implemented.

The company should confirm in the second part of the report that it complies with the principles of the code and, in the event that it does not, should give explanations as to why not.

## **A. DIRECTORS**

### **A.1 The Board**

**Principle: Every listed company should be governed by an effective Board of Directors, which must guide and control the company.**

#### **Code Provisions**

A.1.1 The Board of Directors should meet regularly at least 6 times a year.

A.1.2 The Board of Directors should have a formal schedule of matters, on which only it should be able to take decisions. This schedule should at least include:

- a) the targets and strategic policy objectives of the company
- b) the annual budget and business plan
- c) important capital transactions as outlined by the Board of Directors
- d) unusual transactions as outlined by the Board of Directors
- e) any mergers, acquisitions and how the greater part of the company's cash is allocated
- f) the establishment of and any changes to the application of the accounting principles
- g) the basic transactions of the company, in which an Executive Director, Chief Executive Officer, Higher Executive Member, Secretary, Auditor, or large shareholder of the company who directly or indirectly owns more than 5% of the shares of a company or voting rights, has directly or indirectly any substantial interest.
- h) The selection, appointment and dismissal of executive management (Chief Executive Director or Managing Director, or

Director General or CEO, or any other title used) of the company.

i) The drawing up of the retirement policy for executive management

A.1.3 The degree of issues not exclusively reserved for the Board's decision-making, as stipulated in paragraph A.1.2 above, should be made known to the company's executive directors.

A.1.4 The Board of Directors must establish a procedure on the basis of which executive management may, if necessary, take the necessary professional advice at the company's expense, in order to best carry out its duties.

A.1.5 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 properly followed and that applicable rules and regulation are complied with. Changing the company secretary must be decided at the level of the Board of Directors.

A.1.6 All directors should exercise independent and unbiased judgment in carrying out their duties.

A.1.7 Each director should receive appropriate training on the first occasion that he/she is appointed to the Board of a listed company, or subsequently if necessary. In addition he has a duty to be informed on the Security and Stock Exchange of Cyprus Law as well as company law, particularly as regards those points relevant to his position.

A.1.8 The Board of Directors should function on the basis of the principle of collective responsibility, and no category of director may absolve itself of responsibility towards another. (Some

directors – executive or non-executive – may perhaps undertake special responsibilities as regards specific issues for which they are accountable to the Board of Directors, which meets in a quorum. Irrespective of these special responsibilities given to certain of its members, the Board as a whole is responsible for carrying out its duties.)

- A.1.9 The Board of Directors must see to it that there is a smooth transfer of power in the higher echelons of the company.

## **A.2. Board Balance**

**Principle: The Board of Directors should include a balance between executive and non-executive directors, as well as independent non-executive directors, such that no individual director or small group of directors may dominate the Board's decision-making and such that no group of directors may outvote any of the other two groups.**

### **Code Provisions**

- A.2.1 The Board of Directors should include a sufficient number of non-executive directors and with sufficient abilities, knowledge and experience, so that their opinions may carry considerable weight in the Board's decision-making. Non-executive directors should comprise no less than a third of the Board.
- A.2.2 The majority of non-executive directors, or at least two, should be independent of management and possibly from any majority shareholders of the company or any shareholders with a majority vote in the company, and should be free of any business or other relationship with the company that may substantially affect their independent and unbiased judgment. At the very least independent non-executive directors:

a) should not have any business relationship, or be closely related to (up to first degree), or have an employer-employee relationship with any other executive director or with any majority shareholder or shareholder with a controlling number of votes that could substantially affect their independent and unbiased judgment.

b) should not have any other substantial relationship with the company which of its nature may affect their independent and unbiased judgment, and in particular should not be a provider of goods and services, which by their nature substantially affect their independent and unbiased judgment, nor should they belong to a member of a company which provides consulting services to the company in question. (It should be clarified that in the case of banks or other financial institutions, transactions between non-executive directors and the company, which are carried out in the usual run of business of that company, under the usual trade conditions and with transparency, are not considered to affect the independence or otherwise of non-executive directors).

c) should not be an executive managing director or executive director of a company directly or indirectly connected with the company in question, or of any subsidiary company, presently or in the past 12 months.

A.2.3 Non-executive directors who are considered to be independent, as outlined above, should be identified in the annual report. The Chairman and Chief Executive Officer should also be identified in the annual report.

A.2.4 There should be a clear division of responsibility in the positions of Chairman of the Board of Directors and Chief Executive

Officer. In the event that these positions are not separate, this should be justified in part two of the report.

### **A.3 Supply of Information**

**Principle: The Board of Directors should receive timely, reliable and detailed information to allow it to carry out its duties.**

#### **Code Provisions**

A.3.1 Management has the responsibility to provide the Board with timely, reliable, and detailed information particularly as regards factors that have altered, or have the potential to alter, the prospects or finances of the company. In the event that such information is insufficient, directors should make further enquiries. The Chairman should ensure that all directors are suitably informed on issues that arise during Board meetings.

A.3.2 All directors should receive timely information in writing on meetings of the Board and should have at their disposal all relevant documents in due time for the meeting in order for them to have sufficient time to study them. In addition all directors should be informed in good time of any extraordinary meetings.

A.3.3 The Chairman of the Board of Directors is responsible for the proper running of the Board and should ensure that all the issues on the agenda are sufficiently supported by relevant information.

A.3.4 The minutes of a meeting of the Board of Directors should be circulated as soon as possible after a meeting and certainly before the next meeting. These minutes should contain detailed decisions taken, and should be at the disposal of all directors.

#### **A. 4 Appointments to the Board**

**Principle: There should be a formal and transparent procedure for the appointment of new directors. The Board of Directors should be made up of suitable and competent individuals able to participate on the Board of Directors of the company.**

#### **Code Provisions**

A.4.1 A Nominations Committee should be set up in order to make recommendations to the Board on all new appointments to the Board of Directors. A majority of the members of this committee should be non-executive directors, and its Chairman should be either the Chairman of the Board of Directors or a non-executive director. The Chairman and members of the Nominations Committee should be identified in the annual report.

A. 4.2 The nomination of a suitable and competent person should also take into account, apart from that person's knowledge and experience, his/her honesty and integrity.

#### **A. 5 Re-election**

**Principle: All directors should be required to submit themselves for re-election at regular intervals and at least every three years.**

#### **Code Provisions**

A. 5.1 Subject to the provisions of the Company Law governing the dismissal of directors and their obligation to submit to re-election, non-executive directors should be appointed for a specific term and their re-election should not be automatic.

A.5.2 All directors should be subject to election by shareholders at the first opportunity after their appointment, and to re-election thereafter at regular intervals not greater than three years. The names of directors who are up for election or re-election should be accompanied by sufficient biographical information so as to enable shareholders to make informed decisions as regards their election.

## **B. DIRECTORS' REMUNERATION**

### **B.1 Procedure**

**Principle:** Companies should introduce official and transparent procedures for the development of policy as regards the remuneration of executive directors as well as the level of remuneration of each individual director. No director should be involved in the decision-making process concerning his/her own remuneration.

### **Code Provisions**

- B.1.1 In order to avoid possible conflicts of interest, the Board of Directors should set up a Remunerations Committee made up exclusively of non-executive directors and which will submit recommendations to the Board, in accordance with pre-agreed terms of reference, on the framework and level of remuneration of executive directors, thereby establishing on behalf of the Board of Directors specific remuneration packages for each executive director, including their pension rights and any compensation payments.
- B.1.2 The majority of the members of the Remunerations Committee should be independent of management and free of any business or other relationship that could substantially affect their independent and unbiased judgment.
- B.1.3 The names of the members of the Remuneration Committee should be published each year in the remuneration report that the Board of Directors submits to shareholders (B.3.1. below).
- B.1.4 Directors' remuneration, in their capacity as members of a Committee of the Board of Directors, should be determined by

the Board itself and should be in accordance with the time they devote to the affairs of the company. The remuneration of directors in their capacity as members of the Board of Directors should be approved by shareholders at a general meeting.

- B.1.5 The Remunerations Committee should enable the Chairman and Chief Executive Officer to express their views as regards proposals on the remuneration of other executive directors and should also have access to both internal and external professional advice.

## **B. 2 Level and Make-up of Remuneration.**

**Principle:** The level of remuneration should be sufficient to attract and retain the services of directors who strengthen the management of the company, but companies should avoid paying more than is necessary for this purpose. It is recommended that a proportion of the remuneration of executive directors be structured in such a way as to link rewards with the company's and the individual's overall performance.

### **Code Provisions**

#### **Remuneration Policy**

- B.2.1 The Remunerations Committee should offer the remuneration necessary to attract, retain and give incentives to executive directors who have the required knowledge and experience, while at the same time avoiding having to pay more than is necessary for the purpose.
- B.2.2 The Remunerations Committee should evaluate the position of the company in matters of remuneration in relation to other

companies. It should be aware what comparable companies are paying and should take performance into account. However, such comparisons should be made with caution because of the danger of leading the company to excessive pay increases without a corresponding improvement in performance.

B.2.3 The Remunerations Committee should be sensitive to the wider scene, including the terms of remuneration and conditions of employment prevailing elsewhere in the group, in particular when determining annual salary increases.

B.2.4 In the event that part of the remuneration of executive directors is related to performance, this should be designed in such a way as to align their interests with those of shareholders by giving executive directors strong incentives to achieve high performance.

B.2.5 Executive directors should not be given share options at a lower price than the average closing price of shares of the last 30 trading days prior to the date of issue. Proposals for issuing share options should only be adopted with the approval of an Extraordinary General Meeting of shareholders.

B.2.6 Remuneration of non-executive directors should be proportional to the time they allocate to meetings and decision-making in the management of the company. Remuneration should not be linked to the profitability of the company. It may be in the form of company shares. However, the remuneration of non-executive directors should not include participation in the insurance / pension schemes of the company.

## **Employment Contracts and Compensation of Executive Directors**

- B.2.7 It is good practice for Boards of Directors to set employment contracts at not more than five years' duration and to limit the period of indefinite contracts to one year's duration or less. This should be the aim of a Board of Directors, although it should be acknowledged that it may not prove possible to achieve straight away.
- B.2.8. The Remuneration Committee should examine the compensation commitments (including pension contributions) in directors' employment contracts, if any, in the event of early termination. It should in particular examine the advantages of a clear provision in the original contract for such compensation obligations, with the exception of removal due to misconduct. Employment contracts of executive directors should not contain clauses that can be interpreted as being prohibitive in the event of acquisition or merger of the company, nor should there be clauses subjecting the company to fines imposed on directors.
- B.2.9. Where the original contract does not clearly specify any compensation commitments, the Remunerations Committee should, within legal constraints, adapt its approach to cases of early termination according to the specifics of the case. The wider objective should be to avoid rewarding poor performance while at the same time dealing fairly with cases where termination is not due to poor performance and following a strict policy of reducing compensation to reflect the departing director's obligation to mitigate loss.

### **B.3. Disclosure**

**Principle:** The Company's report on corporate governance should contain a statement on remuneration policy and related criteria as well as details of the remuneration of both executive and non-executive directors. These amounts should be broken down into remuneration for services rendered as a director and remuneration for executive services. The total amount of remuneration of executive directors should be divided into groups of £50.000 (total remuneration and number of directors by category e.g. three executive directors with remuneration between £50.000 and £100.000).

#### **Provisions of the Code**

B.3.1 The Board of Directors should submit an annual Remunerations Report to shareholders. This report should form part of, or be annexed to, the company's annual report. It should be the main tool with which the company may report to shareholders on directors' remuneration.

B.3.2 The report should set out the company's policy on remuneration of directors. It should emphasize specific factors that concern the company.

## **C. ACCOUNTABILITY AND AUDIT**

### **C.1 Financial reporting**

**Principle:** The Board of Directors should submit a balanced, detailed and understandable assessment of the company's position and prospects.

#### **Code Provisions**

C.1.1 The Board' responsibility to submit a balanced, detailed and understandable assessment extends to all public reports, reports to regulators, as well as to information needed by statutory requirements.

C.1.2 The Board of Directors should state in its annual report on corporate governance that the company plans to continue to function as a going concern for the next twelve months.

### **C.2. Internal Control**

**Principle:** The Board of Directors should maintain a healthy system of internal control in order to safeguard shareholders' investments and the company's assets.

#### **Code Provisions**

C.2.1 Directors should, at least once a year, conduct a review of the effectiveness of the group's system of internal control and give assurances to shareholders in their report on corporate governance that they have done so. This inspection should cover all systems of internal control, including financial, operational, as well as compliance controls and risk management.

C.2.2 The report on corporate governance should mention whether any loans were made to directors of the company or to directors of a sister company or subsidiary company. Specifically, each director should state the average loan received, as well as the highest amount received over the last 12 months, as well as the date of repayment. (It should be clarified that in the case of banks or other financial institutions, transactions between non-executive directors and the company, which are carried out in the usual run of business of that company, under the usual trade conditions and with transparency, are not subjected to the provisions of this paragraph).

C.2.3 The Chief Executive Officer, or Executive Chairman, if there is one (the highest executive director) of a listed company should certify annually to the Cyprus Stock Exchange that the company has adopted and complies with the procedure of verification of the accuracy and completeness of the information provided to shareholders (that these procedures were successful and were based on the evaluation of the Chief Executive Officer that the procedures were sufficient and were satisfactorily carried out) and that he has no reason to believe that the information is not complete and accurate. In addition he should certify that he and the Board of Directors have reviewed the particular procedures and the company's compliance with them.

The Chief Executive Officer should also certify annually to the Cyprus Stock Exchange that to the best of his knowledge there has been no violation of the Security and Stock Exchange of Cyprus Law.

### **C.3 Audit Committee, Auditors and Compliance with the Code**

**Principle:** The Board of Directors should introduce formal and transparent procedures as regards the way in which the principles governing financial reporting, corporate governance and internal auditing are to be applied and that a suitable relationship is maintained with the company's auditors.

#### **Code Provisions**

- C.3.1 The Board of Directors should establish an Internal Audit Committee made up of at least two non-executive directors, with written terms of reference clearly describing its powers and responsibilities. The members of the Committee, the majority of whom should be independent non-executive directors, should be identified in the annual report. The Chairman of the Committee should be experienced in accounting and financial policy. The Committee should meet at regular intervals at least twice a year.
- C.3.2 The duties of the Audit Committee should include a proposal to the Board of Directors as regards the appointment, dismissal and remuneration of the company's auditors, the continual review of the extent and cost-effectiveness of the audit, as well as the independence and objectivity of the auditors. In the event that the auditors also provide the company with a substantial amount of non-audit services, the Committee should keep the nature and extent of such services under review, keeping a balance between the maintenance of objectivity and value for money.

C.3.3 The Audit Committee should submit each year to the Board of Directors a report including:

a) the total amount that the company and any sister companies pay auditors for their auditing and consultative services.

b) The allocation to the auditors of substantial assistance and consultative duties either according to how important these are for the company or any sister companies, or according to the amount of remuneration. The companies should not entrust important assistance and consultative services to bodies belonging to the same group as the company's auditors except if the auditors are in a position to guarantee that this will not affect their independence and objectivity.

C.3.4 The Audit Committee should report to the Board of Directors on the matter of selection of accountancy principles for the consolidation of accounts. In such an event it should obtain accurate information which the company's financial management will formulate under the technical supervision of the auditors, and submit to the Board of Directors for review, an advisory document stressing all the repercussions from such a selection.

C.3.5 The duties of the Audit Committee should, with the help of the Compliance with the Code of Corporate Governance Officer, include the drawing up of a report on corporate governance on behalf of the Board of Directors to be included in the company's annual report. In the first half of the report on corporate governance, the company is required to state whether it applies the principles of the Code. In the second half of the report the company is required to confirm that it has complied with the provisions of the Code and, if it has not, to provide an explanation.

- C. 3.6 The duties of the Audit Committee should include a review of the transactions of the company referred to in paragraph A.1.2 (h) so as to ensure that these are being carried out at arm's length.
- C. 3.7 The Board of Directors should appoint a suitable person as Compliance with the Code of Corporate Governance Officer.

## **D. RELATIONS WITH SHAREHOLDERS**

### **D.1 Constructive use of the Annual General Meeting**

**Principle: Boards should use the Annual General Meeting in order to communicate with investors and encourage their participation.**

#### **Code Provisions**

- D.1.1 Companies should count all the proxy votes and, except where a secret vote is called for, should indicate the number of proxy votes submitted for each resolution, as well as the number of votes in favor and against a resolution, after the vote by a show of hands.
- D.1.2 Companies should propose a separate resolution at the AGM on each substantially separate issue and should in particular propose a resolution at the AGM regarding the report and accounts.
- D.1.3 The Chairman of the Board should make sure that the chairmen of the Audit, Remuneration and Nominations Committees are available to answer questions at the AGM.
- D.1.4 The Chairman of the Board should make sure that the agenda and that the overall organization of an AGM should not weaken substantial dialogue and the decision-making procedure. Proposals submitted at an Extraordinary General Meeting, or proposals considered unusual, should be adequately and clearly explained to shareholders, who should be given sufficient time before the meeting to evaluate them. This also applies when proposals submitted before an AGM concern giving the right to the Board to issue and allocate shares at its discretion.

## **D. 2 The Equitable Treatment of Shareholders**

**Principle:** The practice of corporate governance should stem from the principle of equal treatment of all shareholders, all categories of shareholders, including minority shareholders and foreign shareholders. The procedures at an AGM should guarantee the equitable treatment of all shareholders.

### **Code Provisions**

D.2.1 All shareholders of a particular category should be treated equally:

a) All shareholders within the same category should have the same voting rights. All investors should be able to obtain information as regards the voting rights connected to all categories of shares before shares are purchased. Any changes to voting rights should first be subjected to a shareholder vote in that particular category.

b) Proxy votes should be cast after written permission from the legal shareholder.

c) The procedures at an AGM should guarantee the equitable treatment of shareholders. The company should adopt simple and inexpensive procedures for casting votes.

d) Shareholders should furnish themselves with timely and sufficient information, including the date, place and agenda of the AGM, as well as be fully informed on issues on which resolutions will be passed at the AGM.

e) Shareholders with voting rights **5%** should be given the opportunity to question the members of the Board of Directors

and to place items on the agenda of the AGM at least 15 days before the notice of the AGM.

D.2.2 Directors and executive directors should be obliged to inform the Board and the AGM as regards any substantial material interest they may have in transactions or other matters affecting the company.

D.2.3 The acquisition of a company should be carried out in an efficient and transparent way. The rules and regulations governing the acquisition of companies, as well as unusual transactions, such as mergers and sell-offs of a large section of a company, should be clearly revealed so that investors may understand the consequences and protect their rights. Transactions should be shown in clearly understood figures and under fair conditions so as to protect the rights of all categories of shareholders.

D.2.4 The Board should appoint a director or managing director as Investor Liaison Officer to liaise between shareholders and the company. All information regarding the company should be distributed fairly, inexpensively and in a timely fashion to all shareholders.

D.2.5 Shareholders should be given timely and precise information about all the essential issues concerning the company, including its finances, performance, ownership and corporate governance. This information should include, but not be limited to, essential information such as:

- a) Company finances and operational issues
- b) Company targets
- c) Principal shareholders and voting rights

- d) Members of the Board of Directors and management and their remuneration
  - e) Basic foreseeable dangers
  - f) Basic issues concerning employees and shareholders
  - g) Governance structure and policies
  - h) Unusual transactions of the company
-