

*Corporate Governance Committee*

# CORPORATE GOVERNANCE CODE

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# CORPORATE GOVERNANCE CODE

EDITION MARCH 2006

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*Borsa Italiana S.p.A.*

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*The Corporate Governace Code is available on the web site: [www.borsaitaliana.it](http://www.borsaitaliana.it)*

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*Seven years after the first edition, the decision was taken to substantially review the corporate governance principles applicable to Italian listed companies. This decision satisfies a need strongly felt by all the participants in the market.*

*The evolution of the best practice, sometimes through painful experiences, is linked to the growing awareness, by all market participants, of their responsibilities towards investors, the country in general and international intermediaries.*

*This cultural growth is nourished through a daily confrontation with the market and the stakeholders, of which the issuers are protagonists, not only those of a large size, naturally prone to liaise with investors, but also medium-small size companies, which are aware that they can find in good governance an effective instrument to increase value and to protect the investments of their shareholders.*

*Essentially a continuously evolving regulatory context, among European Union directives and recommendations, reforms of the domestic legislation in the field of corporate law and the protection of savings.*

*The new Corporate Governance Code was written with a view to the above scenario, with the goal of increasing the clarity and concreteness of people and roles – such as those of independent directors and the board’s internal committees – the contents of which were improved as a result of acquired experience.*

*Each matter is handled having regard to principles, criteria and comments, in order to facilitate the implementation of the “comply or explain” principle and the full understanding, by the market, of the corporate governance model applied by each company.*

*Moreover, the best efforts were used to avoid ineffective burdensome operating and administrative procedures for the issuers, introducing elements of flexibility that accommodates differences such as the size of the company, the shareholding composition and the economic sector involved.*

*The Committee for the Corporate Governance strongly believes in the possibility to contribute to maintaining and improving the high qualitative standards of our equity market, by increasing the level of interest and confidence both by national and international investors and intermediaries, as well as on the part of companies that wish to approach the capital markets.*

*The Committee has achieved a strong consistent sharing of recommendations in the Code.*

*Borsa Italiana, for its part, wishes to maintain its engagement in the promotion, support and strengthening of best practice in servicing the market. According to the auspices of the Committee, Borsa Italiana will follow the application of the Code by listed companies, indicating, where necessary, possible improvements.*

*This Code is the result of almost one year’s work by the Committee, the Experts and the Working Group. We entrust it to the market and hope that it is a source of inspiration.*

Massimo Capuano

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*We wish to thank all the people – experts, professional, associations – who contributed to enhancing the works of the Committee with their experience and expertise.*

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## INTRODUCTION PRINCIPLE

Adoption of and compliance with this Corporate Governance Code are voluntary.

A listed company (“issuer”) adopting this Code, in whole or in part, shall yearly disclose information to the relevant market, under the terms and the procedure stipulated in the applicable law and regulations, specifying which recommendations of the Code have actually been implemented by the issuer and how. In certain instances, the Code defines the contents of the information to be supplied to the market.

The information obligation relates to the principles and criteria contained in each article of the Code. Moreover, issuers are urged to take into account the indications and suggestions found in the comment included at the bottom of each article.

With reference to principles and criteria which contain recommendations regarding the issuers, their directors, auditors, shareholders or other company’s bodies or functions, each issuer shall provide accurate, concise, easily understandable information on the manner in which said recommendations have been concretely implemented during the period to which the annual report refers.

If the issuer has not implemented, in whole or in part, one or more recommendations, it shall supply adequate information with regard to the reasons for the omitted or partial application.

In the event that principles and criteria relate to optional conduct, a description of the line of conduct followed is required, though it is not necessary to provide the motives for the choices made.

As for principles and criteria meant to provide clarification, unless otherwise indicated by the issuer, it is assumed that the issuer has complied with them.

Under the Code, the annual reporting obligation is referred to as the “report on corporate governance”.

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Borsa Italiana shall monitor the implementation of this Code by the issuers and the ongoing development of the regulatory framework.

A panel of three experts, chosen among highly reputable individuals who possess specific knowledge and experience with regard to listed companies and regulated markets, will evaluate, prompted by Borsa Italiana, whether it is appropriate or necessary to proceed with a review of the Code. Should a review be recommended, Borsa Italiana shall entrust the Committee to carry out the assessment.

This Code replaces the Corporate Governance Code issued in 1999 and amended in 2002.

Issuers are invited to implement this Code by the end of the fiscal year starting in 2006, informing the market through the Report on Corporate Governance to be published in 2007.



## ARTICLE 1 - ROLE OF THE BOARD OF DIRECTORS

### *Principles*

- 1.P.1. Listed companies are governed by a Board of Directors that meets at regular intervals, and that adopts an organisation and a modus operandi which enable it to perform its functions in an effective, efficient manner.
- 1.P.2. The Directors act and pass resolutions with full knowledge of the facts and autonomously, pursue the priority of creating value for the shareholders. Consistent with this goal, they shall also take into account the directives and policies defined for the group of which the issuer is a member, as well as the benefits deriving from being a member of a group.

### *Criteria*

- 1.C.1. The Board of Directors shall:
  - a) examine and approve the company's strategic, operational and financial plans and the corporate structure of the group it heads, if any;
  - b) evaluate the adequacy of the organizational, administrative and accounting structure of the issuer and its subsidiaries having strategic relevance, as established by the managing directors, in particular with regard to the internal control system and the management of conflicts of interest;
  - c) delegate powers to the managing directors and to the executive committee and revoke them; it shall specify the limits on these delegated powers, the manner of exercising them and the frequency, as a rule no less than once every three months, with which the bodies in question must report to the board on the activities performed in the exercise of the powers delegated to them;
  - d) 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, if the shareholders' meeting has not already done so, determine the total amount to which the members of the board and of the executive committee are entitled;
  - e) evaluate the general performance of the company, paying particular attention to the information received from the executive committee (when established) and the managing directors, and periodically comparing the results achieved with those planned;

- f) examine and approve in advance transactions carried out by the issuer and its subsidiaries having a significant impact on the company's profitability, assets and liabilities or financial position, paying particular attention to transactions in which one or more Directors hold an interest on their own behalf or on behalf of third parties and, in more general terms, to transactions involving related parties; to this end, the board shall establish general criteria for identifying the transactions which might have a significant impact;
- g) evaluate, at least once a year, the size, composition and performance of the Board of Directors and its committees, eventually characterising new professional figures whose presence on the board would be considered appropriate;
- h) provide information, in the report on corporate governance, on the application of the present article 1 and, in particular, on the number of meetings of the board and of the executive committee, if any, held during the fiscal year, plus the related percentage of attendance of each director.

1.C.2. The directors shall accept the directorship when they deem that they can devote the necessary time to the diligent performance of their duties, also taking into account the number of offices held as director or auditor in other companies listed on regulated markets (including foreign markets) in financial companies, banks, insurance companies or companies of a considerably large size. The board shall record, on the basis of the information received from the directors, on a yearly basis, the offices of director or auditor held by the directors in the above-mentioned companies and include them in the report on corporate governance.

1.C.3. The board shall issue guidelines regarding the maximum number of offices as director or auditor for the types of companies referred to in the above paragraph that may be considered compatible with an effective performance of a director's duties. To this end, the board identifies the general criteria, differentiating them according to the commitment entailed by each role (executive or non-executive or independent director), as well as the nature and size of the companies in which the offices are performed, plus whether or not the companies are members of the issuer's group; it may also take into account the participation of the directors in committees established within the ranks of the board.

1.C.4. If the shareholders' meeting, when dealing with organisational needs, authorises, on a general, preventive basis, derogations from the rule prohibiting competition, as per Article 2390 of the Italian Civil Code, then the Board of Directors shall evaluate each such issue, reporting, at the next shareholders' meeting, the critical ones if any. To this end, each director shall inform the board, upon accepting his/her appointment, of any activities exercised in competition with the issuer and of any effective modifications that ensue.

**Comment**

The Committee believes that the Board of Directors has the primary responsibility for determining and pursuing the strategic objectives of the issuer and of the group of which it is a member or which it heads.

The decisions of each director are autonomous, to the extent he/she makes his/her choices with free judgement, doing so in the overriding interest of the generality of the shareholders. Therefore, even when management choices have been evaluated, addressed or otherwise influenced in advance, within the limits and in compliance with the applicable provisions of law, by those exercising management and coordination activities, or by subjects participating in a syndication agreement, each director shall pass resolutions in autonomy, adopting choices which may, reasonably, lead – primarily– to the creation of value for the shareholders in the medium-long term.

Independence of judgement is required for the decisions of all directors, regardless of whether they are executive or non-executive, and whether or not they are “independent” pursuant to Article 3 below.

The appointment of one or more managing directors, or of an executive committee, plus the fact that the business activity is exercised through several subsidiaries, does not relieve the board of the tasks entrusted to it hereunder. Notwithstanding the absence of precise statutory restrictions on this subject, the board is required to delegate powers in such a way that the board does not appear to be divested of its prerogatives. Moreover, the issuers shall adopt adequate measures to ensure that subsidiaries submit to the board of the parent company, for prior review, material transactions, subject to the principle of autonomous management, in the event that the subsidiary is also a listed company.

Among the matters reserved to the competence of the board, this article mentions the evaluation of the adequacy of the organizational, administrative and accounting structure of the issuer and of its subsidiaries having strategic relevance; it is pointed out that such relevance should be evaluated with reference to criteria that do not concern only the size, to be mentioned in the report on corporate governance.

In carrying out their duties, the directors shall review the information received from the delegated bodies, ask the same for any clarifications, elaborations or supplements that are deemed necessary or appropriate for a complete and correct evaluation of the facts submitted to the review of the board. The chairman of the Board of Directors shall use his/her best efforts in order to ensure that the material information and documents for enabling the board to take its decisions are made available to its members according to adequate procedures and timing.

The Board of Directors may request of the managing directors that executives of the issuer or the group participate in the meetings of the board, in order to supply the appropriate supplemental information on the items on the agenda.





## ARTICLE 2 – COMPOSITION OF THE BOARD OF DIRECTORS

### *Principles*

- 2.P.1. The Board of Directors shall be made up of executive and non-executive directors.
- 2.P.2. Non-executive directors shall bring their specific expertise to board discussions and contribute to the taking of balanced decisions paying particular care to the areas where conflicts of interest may exist.
- 2.P.3. The number, competence, authority and time availability of non-executive directors shall be such as to ensure that their judgement may have a significant impact on the taking of board's decisions.
- 2.P.4. It is appropriate to avoid the concentration of corporate offices in one single individual.
- 2.P.5. Where the Board of Directors has delegated management powers to the chairman, it shall disclose adequate information in the report on corporate governance on the reasons for such organisational choice.

### *Criteria*

- 2.C.1. The following are executive directors:
- the managing directors of the issuer or a subsidiary having strategic relevance, including the relevant chairmen when these are granted individual management powers and when they play a specific role in the definition of the business strategies;
  - the directors vested with management duties within the issuer or in one of its subsidiaries having strategic relevance, or in a controlling company when the office concerns also the issuer;
  - the directors who are members of the executive committee of the issuer, when no managing director is appointed or when the participation in the executive committee, taking into account the frequency of the meetings and the scope of the relevant resolutions, entails, as a matter of fact, the systematic involvement of its members in the day-to-day management of the issuer;

The granting of powers only in cases of urgency to directors, who are not provided with management powers is not enough, per se, to cause them to be identified as

executive directors, unless such powers are actually exercised with considerable frequency.

- 2.C.2. The directors shall know the duties and responsibilities relating to their office. The chairman of the Board of Directors shall use his best efforts for causing the directors to participate in initiatives aimed at increasing their knowledge of reality and business dynamics, also having regard to the relevant regulatory framework, so that they may carry out their role effectively.
- 2.C.3. In the event that the chairman of the Board of Directors is the chief executive officer of the company, as well as in the event that the office of chairman is covered by the person controlling the issuer, the board shall designate a lead independent director, who represents a reference and coordination point for the requests and contributions of non-executive directors and, in particular, those who are independent pursuant to Article 3 below.

**Comment**

In the Italian reality, the number of non-executive directors usually exceeds the number of executive directors. The Committee recommends that the shareholders, when appointing directors, evaluate the number, experience and personal characteristics of the candidates in relation to the size of the issuer, the complexity and specificity of the business sector in which the issuer operates, as well as the size of the Board of Directors.

The fact that the management powers are granted to some directors only does not eliminate the importance that the board, in the performance of its tasks of determining the strategy and exercising control, is actually able to express influential judgements, which are the result of real discussions among professionally qualified people.

The non-executive component has the primary role of providing a significant contribution to the exercise of such duties.

In particular, non-executive directors enrich the board's discussion with competences formed outside the company, having a general strategic character or a specific technical one. Such competences permit to analyse the different matters under discussion from different standpoints and, therefore, contribute to nourish the dialectics that is the distinctive precondition for a meditated informed corporate decision.

The contribution of non-executive directors appears to be useful on such subject matters in which the interests of executive directors and those of the shareholders could not coincide, such as the remuneration of the executive directors and the internal control system. In fact, the non-executive members of the board, due to their

extraneousness to the operational management of the issuer, may effectively contribute to the evaluation of the proposals and the activity of executive directors.

Within the Board of Directors, the figure of the chairman, to whom law and practice entrust duties of organization of the board's works and of liaison between executive and non-executive directors, takes up a fundamental importance.

The international best practice recommends to avoid the concentration of offices in one single individual without adequate counterbalances; in particular, the separation is often recommended of the roles of chairman and chief executive officer (CEO), the latter meant as a director who, by virtue of the delegations of powers received and the concrete exercise of these, is the main responsible officer for the management of the issuer.

The Committee is of the opinion that, also in Italy, the separation of the above-mentioned roles may strengthen the characteristics of impartiality and balance that are required from the chairman of the Board of Directors.

The Committee, in acknowledging that the existence of situations of accumulation of the two roles may satisfy, in particular in issuers of smaller size, valuable organizational requirements, recommends that, should this be the case, the figure, already known also to the Italian practice, of the lead independent director be created.

The Committee also recommends the designation of a lead independent director in the event that the chairman is the person controlling the issuer, a circumstance this which, per se, takes up no negative characteristics, but which requires, however, the creation of adequate counterweights.

Non-executive directors (and, in particular, independent directors) shall make reference to the lead independent director for a better contribution to the activity and operation of the board. In particular, the lead independent director shall collaborate with the chairman for the purpose of ensuring that the directors are addressees of complete timely flows of information.

The lead independent director is granted, inter alia, with the power to convene, autonomously or upon demand of other directors, appropriate meetings of independent directors only, for the discussion of subject matters judged of interest regarding the functioning of the Board of Directors or the company's operations.



## ARTICLE 3 – INDEPENDENT DIRECTORS

### *Principles*

- 3.P.1. An adequate number of non-executive directors shall be independent, in the sense that they do not maintain, nor have recently maintained, directly or indirectly, any business relationships with the issuer or persons linked to the issuer, of such a significance as to influence their autonomous judgement.
- 3.P.2. The directors' independence shall be periodically assessed by the Board of Directors. The results of the assessments of the board shall be communicated to the market.

### *Criteria*

- 3.C.1. The Board of Directors shall evaluate the independence of its non-executive members having regard more to the contents than to the form and keeping in mind that a director usually does not appear independent in the following events, to be considered merely as an example and not limited to:
- a) if he/she controls, directly or indirectly, the issuer also through subsidiaries, trustees or through a third party, or is able to exercise over the issuer dominant influence, or participates in a shareholders' agreement through which one or more persons may exercise a control or considerable influence over the issuer;
  - b) if he/she is, or has been in the preceding three fiscal years, a relevant representative of the issuer, of a subsidiary having strategic relevance or of a company under common control with the issuer, or of a company or entity controlling the issuer or able to exercise over the same a considerable influence, also jointly with others through a shareholders' agreement;
  - c) if he/she has, or had in the preceding fiscal year, directly or indirectly (e.g. through subsidiaries or companies of which he/she is a significant representative, or in the capacity as partner of a professional firm or of a consulting company) a significant commercial, financial or professional relationship:
    - with the issuer, one of its subsidiaries, or any of its significant representatives;
    - with a subject who, jointly with others through a shareholders' agreement, controls the issuer, or – in case of a company or an entity – with the relevant significant representatives;

or is, or has been in the preceding three fiscal years, an employee of the above-mentioned subjects;

- d) if he/she receives, or has received in the preceding three fiscal years, from the issuer or a subsidiary or holding company of the issuer, a significant additional remuneration compared to the “fixed” remuneration of non-executive director of the issuer, including the participation in incentive plans linked to the company’s performance, including stock option plans;
- e) if he/she was a director of the issuer for more than nine years in the last twelve years;
- f) if he/she is vested with the executive director office in another company in which an executive director of the issuer holds the office of director;
- g) if he/she is shareholder or quotaholder or director of a legal entity belonging to the same network as the company appointed for the accounting audit of the issuer;
- h) if he/she is a close relative of a person who is in any of the positions listed in the above paragraphs.

3.C.2. For the purpose of the above, the legal representative, the president of the entity, the chairman of the Board of Directors, the executive directors and executives with strategic responsibilities of the relevant company or entity, must be considered as “significant representatives”.

3.C.3. The number and competences of independent directors shall be adequate in relation to the size of the board and the activity performed by the issuer; moreover, they must be such as to enable the constitution of committees within the board, according to the indications set out in the Code. If the issuer is subject to management and coordination activity by third parties or is controlled by a subject operating, directly or through other subsidiaries, in the same sector of activity or in contiguous sectors, the composition of the Board of Directors of the issuer shall be suitable to ensure adequate conditions of autonomous management and, therefore, to pursue in a priority way the objective of the creation of value for the shareholders of the issuer.

3.C.4. The Board of Directors shall evaluate, after the appointment of a director who qualifies himself / herself as independent, and subsequently at least once a year, on the basis of the information provided by the same director or, however, available to the issuer, those relations which could be or appear to be such as to jeopardize the autonomy of judgement of such director. The Board of Directors shall notify the result of its evaluations, on the occasion of the appointment, through a press release

to the market and, subsequently, within the report on corporate governance, specifying, with adequate reasons, whether any criteria have been adopted other than those indicated in these criteria.

- 3.C.5. The Board of Auditors shall ascertain, in the framework of the duties attributed to it by the law, the correct application of the assessment criteria and procedures adopted by the board for evaluating the independence of its members. The result of such controls is notified to the market in the report on corporate governance or in the report of the Board of Auditors to the shareholders' meeting.
- 3.C.6. The independent directors shall meet at least once a year without the presence of the other directors.

**Comment**

Independence of judgement is required of all directors, executive and non-executive alike: directors who are conscious of the duties and rights associated with their position always bring independent judgement to their work.

In particular, non-executive directors may provide an independent unbiased judgement on the proposed resolutions, since they are not directly involved in the running of the company.

The most delicate aspect in issuers with a broad shareholder base consists in aligning the interests of executive directors with those of the shareholders. In such companies, therefore, the predominant aspect is their independence from the executive directors.

In issuers with concentrated ownership, or where a controlling group of shareholders can be identified, the problem of aligning the interests of the executives directors with those of the shareholders continues to exist, but there emerges the need for some directors to be independent also from the controlling shareholders, or shareholders which are, however, able to exercise a considerable influence.

The qualification of a non-executive director as independent director does not express a judgement of value, but it rather indicates an actually existing situation: the absence, as the principle states, of any relation with the issuer, or with subjects linked to the issuer, such as to actually affect, due to their importance, to be evaluated in relation to the individual subject, the independence of judgement and the unbiased assessment of the management activity.

The criteria set out some of the most common elements that are symptomatic of absence of independence. Such elements are set out by way of example and are not binding on the Board of Directors, which may adopt, for the purpose of its evalua-



tions, additional or different, in whole or in part, criteria from those mentioned above, giving adequate information to the market together with the relevant reasons. The Board of Auditors, in its control of the modalities of concrete implementation of the corporate governance rules, is demanded to verify the correct application of the criteria adopted by the board and of the procedures of assessment utilized by it. Such procedures make reference to the information provided by the single parties concerned or, however, at disposal of the issuer, since no appropriate investigation activity aimed at identifying any material relations is demanded from the issuer.

When the board deems that the independence requirement exists, in concrete, even in the presence of situations that may be considered as being without independence – e.g., defining a commercial relationship as not significant in relation to its economic value – it will be sufficient to notify the market of the result of the evaluation, subject to the control of the Board of Auditors on the adequacy of the relevant reasons.

The non-exhaustive or mandatory character of the events set out in the criteria implies the need to review also additional circumstances, not expressly contemplated, which might appear, however, likely to negatively affect the independence of directors.

For example, even though the mere remuneration of a (non-executive) director of the issuer, one of its subsidiaries or its holding company, does not negatively affect, per se, the independence requirement, it appears necessary to evaluate on a case by case basis the amount of any additional compensations received in the framework of such tasks. On the other hand, also the ownership of a (direct or indirect) shareholding of such an amount as not to determine the control or dominant influence over the issuer and not subjected to a shareholders' agreement, could be considered suitable to jeopardize, in particular circumstances, the independence of a director.

Significant representatives of a company controlling the issuer or controlled (at least whether having a strategic relevance) by the issuer or under common control are usually considered not independent irrespective of the amount of the relevant remunerations, by reason of the duties entrusted to them. Also in this event, moreover, the Board of Directors is required to make a substantial evaluation: therefore, by way of example, a director who is vested with the office of non-executive chairman of the controlling company or of a subsidiary, could be considered independent, if he had received such appointment because he is “super partes”; vice-versa, a director could appear to be non-independent, if he actually plays, also in absence of formal delegations of powers, a guidance role in the definition of strategies of the issuer, of a controlling company or a subsidiary having strategic relevance.

As regards commercial, financial and professional relations directly or indirectly entertained by the director with the issuer or other subjects linked to the issuer, the

Committee does not deem it useful to set out precise quantitative criteria, on the basis of which their relevance must be judged.

In any event, the Board of Directors should evaluate such relationships having regard to their materiality, both in absolute terms and in relation to the economic-financial situation of the party concerned. Any agreement in favour of the director (or subjects linked to the directors) containing any financial or contractual conditions not aligned with those of the market, is to be considered material. Moreover, the fact that the relationship is governed at market conditions does not entail, per se, a judgement of independence, since it is, however, necessary, as already mentioned, to evaluate the relevance of the relationship.

Those relations which, even though they are not significant from an economic standpoint, are particularly material for the reputation of the director concerned or relate to important transactions of the issuer (just think to the case of a company or professional, who takes up an important role in an acquisition or listing transaction) should also be taken into consideration.

From a subjective standpoint, in addition to the relations directly entertained with significant representatives (of the issuer, subsidiaries of the issuer or controlling subjects), also the relations maintained with subjects however traceable to such representatives, such as, by way of example, companies controlled by them, may be taken into consideration.

The Committee also believes that, in certain particular circumstances, also the existence of relations other than economic ones, may be material. For example, in issuers subject to public control, any political activity performed on a continuing basis by a director could be taken into consideration for the purpose of evaluating his/her independence. However, the so-called courtesy relationships are not relevant.

Also for the definition of the relations of a “family” nature, it is appropriate to rely on the prudent evaluation of the Board of Directors, which might consider as not relevant, taking into account the actual circumstances, the existence of a close family or in-law relationship. Parents, children, the spouse who is not legally separated, the companion living together and family members living together with a person, who could not be considered as an independent director, should be judged as being not independent.

The customary structure of Italian administrative bodies entails the possibility that also directors who are members of the executive committee of the issuer are qualified as non-executive and independent, being the executive committee a corporate body that does not grant individual powers to its members.

A different evaluation appears, however, appropriate when a managing director is not appointed or when the participation in the executive committee, taking into account

the frequency of the meetings and the scope of the relevant resolutions, entails, as a matter of fact, the systematic involvement of its members in the current running of the issuer or determines a considerable increase in the relevant remuneration compared to that of the other non-executive directors.

Finally the Committee believes that the presence in the Board of Directors of directors who may be qualified as “independent” is the most suitable solution for guaranteeing the composition of the interests of all the shareholders, both majority and minority ones. In this respect, in the correct exercise of the rights of appointment of directors, it is possible that the “independent” directors are proposed by the same controlling shareholders: independence is an objective element, not liable to being biased by the typology of the shareholders proposing the appointment.

Similarly, the circumstance that a director is expressed by one or more minority shareholders does not imply, per se, a judgement of independence of such director: these characteristics must be verified in concrete, according to the principles and criteria outlined above.

## ARTICLE 4 –TREATMENT OF CORPORATE INFORMATION

### *Principles*

- 4.P.1. Directors and members of the Board of Auditors shall keep confidential the documents and information acquired in the performance of their duties and shall comply with the procedure adopted by the issuer for the internal handling and disclosure to third parties of such documents and information.

### *Criteria*

- 4.C.1. The managing directors shall ensure the correct handling of corporate information; to this end they shall propose to the Board of Directors the adoption of a procedure for the internal handling and disclosure to third parties of documents and information concerning the issuer, having special regard to price sensitive information.

### *Comment*

The issuers, in view of the importance of the disclosure of information, both for investors and for the regular formation of prices in the financial markets on which they are listed, must pay special attention to the internal handling and the disclosure to third parties of information concerning them, especially if it is price sensitive information.

The Committee recommends, also considering the value of a correct disclosure of information to the market, that issuers should adopt internal procedures for the handling of such information in a safe confidential form. Such procedure is also aimed at preventing that its disclosure occurs selectively (i.e. anticipated early only to certain persons, such as shareholders, journalists or analysts) or in an untimely, incomplete or inadequate manner. The managing directors are required to propose the adoption of such procedures to the Board of Directors and to take care of the handling of price-sensitive information and its communication to the public.



## ARTICLE 5 – INTERNAL COMMITTEES OF THE BOARD OF DIRECTORS

### *Principle*

- 5.P.1. The Board of Directors shall establish among its members one or more committees with proposing and consultative functions according to what set out in the articles below.

### *Criteria*

- 5.C.1. The establishment and functioning of committees within the Board of Directors shall meet the following criteria:
- a) committees shall be made up of at least three members. However, in those issuers whose Board of Directors is made up of no more than five members, committees may be made up of two directors only, provided, however, that they are both independent;
  - b) the duties of individual committees are provided by the resolution by which they are established and may be supplemented or amended by a subsequent resolution of the Board of Directors;
  - c) the functions that the Code attributes to different committees may be distributed in a different manner or demanded from a number of committees lower than the envisaged one, provided that for their composition the rules are complied with those indicated from time to time by the Code and is ensured the achievement of the underlying objectives;
  - d) minutes shall be drafted of the meetings of each committee;
  - e) in the performance of their duties, the committees have the right to access the necessary company's information and functions, according to the procedures established by the Board of Directors, as well as to avail themselves of external advisers. The issuer shall make available to the committees adequate financial resources for the performance of their duties, within the limits of the budget approved by the board;
  - f) persons who are not members of the committee may participate in the meetings of each committee upon invitation of the same, with reference to individual items on the agenda;
  - g) the issuer shall provide adequate information, in the report on corporate governance, on the establishment and composition of committees, the contents of the mandate entrusted to them and the activity actually performed during the fiscal

year, specifying the number of meetings held and the relevant percentage of participation of each member.

**Comment**

The Board of Directors shall perform its duties collectively.

An organizational procedure that may increase the efficiency and effectiveness of its works is represented by the establishment among its members of specific committees having consultative and proposing functions; committees which, as it appears from the best Italian and international practices, far from replacing the board in the performance of its duties, may usefully carry out a preliminary role – which is represented by the formulation of proposals, recommendations and opinions – for the purpose of enabling the board to adopt its decisions with a better knowledge of the facts.

Such role may be particularly effective in relation to the handling of matters, which appear to be delicate also because they are a source of potential conflicts of interest.

For this reason, in the articles below the Code recommends the establishment of a committee for the remuneration (Article 7) and an internal control committee (Article 8), also defining their composition and competences; the Code, moreover, recommends to evaluate the advisability to establish a nomination committee (Article 6).

This article contains general indications concerning all three of the above-mentioned committees and additional consultative committees of which the issuer should deem it useful the establishment.

Such indications are inspired by the need of flexibility, which takes into account the features of each issuer, in relation, for example, to the size of its Board of Directors.

With regard, in particular, to the number of committees, it is clarified that, in the presence of organizational requirements, the board may group the functions assigned to the committees provided by the Code in the manner that it deems more appropriate, in compliance with the rules relating to the compositions of each committee.

Should this be the case, the board is required to explain in its report on corporate governance, the reasons that led it to choose an alternative approach and how this approach permits to achieve anyway the goals fixed by the Code for each committee.

The powers of individual committees, in particular those having for their object the direct access to the necessary company's information and departments for the performance of their duties, are determined by the board in the framework of the mandate conferred on them.

## ARTICLE 6 – APPOINTMENT OF DIRECTORS

### *Principles*

- 6.P.1. The appointment of Directors shall occur according to a transparent procedure. The procedure shall ensure, inter alia, timely adequate information on the personal and professional qualifications of the candidates.
- 6.P.2. The Board of Directors shall evaluate whether to establish among its members a nomination committee made up, for the majority, of independent directors.

### *Criteria*

- 6.C.1. The lists of candidates to the office of director, accompanied by exhaustive information on the personal traits and professional qualifications of the candidates with an indication where appropriate of their eligibility to qualify as independent directors as defined in Article 3, shall be deposited at the company's registered office at least fifteen (15) days before the date fixed for the shareholders' meeting. The lists, complete of the information on the characteristics of the candidates, shall be timely published through the Internet site of the issuer.
- 6.C.2. Where established, the committee to propose candidates for appointment to the position of director, may be vested with one or more of the following functions:
  - a) to propose to the Board of Directors candidates to the position of director in the events provided by Article 2386, first paragraph, of the Italian Civil Code, as it is necessary to replace an independent director;
  - b) to designate candidates to the position of independent director to be submitted to the shareholders' meeting of the issuer, taking into account any recommendation in this regard received from shareholders;
  - c) to express opinions to the Board of Directors regarding the size and composition of the same as well as, possibly, with regard to the professional skills whose presence within the board is considered appropriate.

### *Comment*

The Committee recommends that for the appointment of directors a procedure be



followed, which should ensure transparency and a balanced composition of the board, guaranteeing an adequate number of independent directors.

To such purpose, issuers are required to evaluate whether it is useful to establish, within the Board of Directors, a nomination committee, made up for the majority of independent directors, vested with one or more of the functions listed in the criteria. The Committee acknowledges that such solution is historically born in systems characterized by a high degree of fragmentation of the shareholding structure, for the purpose of ensuring an adequate level of independence of the directors with respect to the management. Above all, the Committee acknowledges that in the presence of a large shareholder base it performs a function of particular importance in the identification of the candidates for the office of director. In any event, the nomination committee may perform a useful consultative role in the identification of the best composition of the board, possibly indicating the professional figures whose presence may favour a correct and effective functioning.

Also slate voting, now mandatory for the appointment of directors, may appear to be useful for the purpose of ensuring a transparent nomination procedure and a balanced composition of the board, which includes also an adequate number of independent directors. In this regard, the Committee wishes that the issuers should, including in their by-laws the provisions of law in the matter of election of board members, ensure transparency in the selection and appointment process of directors.

The Committee believes that, while complying with the law with regard to the voting procedure to be adopted for the appointment of directors (secret voting), the chairman of the shareholders' meeting may point out to the shareholders attending the meeting that they have the right to declare their vote for the purpose of making the proceedings of shareholders' meeting more transparent and functional. It is, moreover, desirable that qualified shareholders (which include also controlling shareholders and institutional investors) in shareholders' meetings convened for electing Directors, declare their vote spontaneously.

In any event, it is in the best interest of the generality of shareholders to know the personal traits and professional qualifications of candidates (as well as the offices they hold) sufficiently in advance for them to be able to exercise their votes in an informed manner, especially in the case of institutional investors, which are often represented in shareholders' meetings by proxies.

## ARTICLE 7 – REMUNERATION OF DIRECTORS

### *Principles*

- 7.P.1. The remuneration of directors shall be established in a sufficient amount to attract, maintain and motivate directors endowed with the professional skills necessary for managing the issuer successfully.
- 7.P.2. The remuneration of executive directors shall be articulated in such a way as to align their interests with pursuing the priority objective of creating value for the shareholders in a medium-long term timeframe.
- 7.P.3. The Board of Directors shall establish among its members a remuneration committee, made up of non- executive directors, the majority of which are independent.

### *Criteria*

- 7.C.1. A significant part of the remuneration of executive directors and executives with strategic responsibilities is linked to the economic results achieved by the issuer and/or the achievement of specific goals indicated in advance by the Board of Directors or, in the event of the above-mentioned executives, by the managing directors.
- 7.C.2. The remuneration of non-executive directors shall be proportional to the engagement requested from each of them, taking into account their possible participation in one or more committees. Their remuneration shall not be – other than for an insignificant portion – linked to the economic results achieved by the issuer. Non-executive directors shall not be beneficiaries of stock option or equity based remuneration plans, unless it is so decided by the shareholders' meeting, which shall also give the relevant reasons.
- 7.C.3. The remuneration committee shall:
- formulate proposals to the board for the remuneration of the managing directors and other directors who cover particular offices, monitoring the application of the decisions adopted by the board;
  - periodically evaluate the criteria adopted for the remuneration of executives with strategic responsibilities, control their application on the basis of the information provided by the managing directors and submit to the Board of Directors general recommendations on the subject matter thereof.

7.C.4. No director shall participate in meetings of the remuneration committee in which proposals are submitted to the Board of Directors relating to his/her remuneration.

*Comment*

The Committee believes that an adequate structuring of the overall remuneration of managing directors represents one of the principal instruments for enabling the alignment of the relevant interests with those of the shareholders and that the use of variable remuneration systems, linked to the results, including stock options, make it easier to motivate the entire top management and promote its loyalty.

The Board of Directors has the duty to decide, upon proposal of the remuneration committee, whether to utilize such remuneration systems in an extensive manner and to define the objectives of the managing directors. As regards, in particular, the compensation plans based on shares, in compliance with the applicable provisions of law, the board has the task to define and submit proposals to the shareholders' meeting, to which Italian regulation ascribes the ultimate decision.

The remuneration committee shall submit to the Board of Directors proposals on the remuneration of managing directors, with regard to the several forms of compensation granted to them.

The remuneration committee also has the duty to propose to the board, on the basis of the indications provided by the managing directors, the adoption of general remuneration criteria of the company's executives with strategic responsibilities.

As far as the part of remuneration linked to the results is concerned, the relevant proposals are accompanied by suggestions on the connected objectives and the evaluation criteria, for the purpose of correctly aligning the remuneration of managing directors and executives with strategic responsibilities with the medium-long term interests of the shareholders and with the objectives established by the Board of Directors for the issuer. Also the reference to the average market remuneration of similar positions may be useful for the purpose of determining the remuneration level, but this however, cannot leave out of consideration appropriate parameters linked to the performance of the company.

With reference, in particular, to stock-options and other equity based incentive systems, the remuneration committee shall submit its recommendations to the Board of Directors with regard to their use and to all relevant technical aspects linked to their formulation and application. In particular, the remuneration committee shall submit proposals to the Board in relation to the incentive system considered the most appropriate (stock options, other equity based plans) and shall monitor the evolution and application in the course of time of the plans approved by the shareholders' meeting upon proposal of the board.

## ARTICLE 8 – INTERNAL CONTROL SYSTEM

### *Principles*

- 8.P.1. The internal control system is the set of rules, procedures and organizational structures aimed at making possible a sound and correct management of the company consistent with the established goals, through adequate identification, measurement, management and monitoring of the main risks.
- 8.P.2. An effective internal control system contributes to safeguard the company's assets, the efficiency and effectiveness of business transactions, the reliability of financial information, the compliance with laws and regulations.
- 8.P.3. The Board of Directors shall evaluate the adequacy of the internal control system with respect to the characteristics of the company.
- 8.P.4. The Board of Directors shall ensure that its evaluations and decisions relating to the internal control system, the approval of the balance sheets and the half yearly reports and the relationships between the issuer and the external auditor are supported by an adequate preliminary activity. To such purpose the Board of Directors shall establish an internal control committee, made up of non-executive directors, the majority of which are independent. If the issuer is controlled by another listed company, the internal control committee shall be made up exclusively of independent directors. At least one member of the committee must have an adequate experience in accounting and finance, to be evaluated by the Board of Directors at the time of his/her appointment.

### *Criteria*

- 8.C.1. The Board of Directors, with the assistance of the internal control committee, shall:
  - a) define the guide-lines of the internal control system, so that the main risks concerning the issuer and its subsidiaries are correctly identified, as well as adequately measured, managed and monitored, determining, moreover, the criteria for determining whether such risks are compatible with a sound correct management of the company;
  - b) identify an executive director (usually, one of the managing directors) for supervising the functionality of the internal control system;

- c) evaluate, at least on an annual basis, the adequacy, effectiveness and actual functioning of the internal control system;
- d) describe, in the report on corporate governance, the essential elements of the internal control system, expressing its evaluation on the overall adequacy of the same.

Moreover, the Board of Directors shall, upon proposal of the executive director in charge of supervising the functionality of the internal control system and after consulting with the internal control committee, appoint and revoke one or more persons in charge of internal control and define their remuneration in line with the company's Policies.

8.C.2. The Board of Directors shall exercise its functions relating to the internal control system taking into due consideration the reference models and the best practices existing on the national and international fields. Particular attention shall be devoted to the organization and management models adopted pursuant to legislative decree no. 231 of 8th June 2001.

8.C.3. In addition to assisting the Board of Directors in the performance of their duties set out in criterion 8.C.1, the internal control committee shall:

- a) evaluate together with the executive responsible for the preparation of the company's accounting documents and the auditors, the correct utilization of the accounting principles and, in the event of groups, their consistency for the purpose of the preparation of the consolidated balance sheet;
- b) upon request of the executive director, express opinions on specific aspects relating to the identification of the principal risks for the company as well as on the design, implementation and management of the internal control system;
- c) review the work plan prepared by the officers in charge of internal control as well as the periodic reports prepared by them;
- d) evaluate the proposals submitted by the auditing firm for obtaining the relevant appointment, as well as the work plan prepared for the audit and the results described in the report and the letter of suggestions, if any;
- e) supervise the validity of the accounting audit process;
- f) perform any additional duties that are assigned to it by the Board of Directors;
- g) report to the board, at least on a half yearly basis, on the occasion of the approval of the balance sheet and the half yearly report, on the activity carried out, as well as on the adequacy of the internal control system.

8.C.4. The chairman of the Board of Auditors or another auditor designated by the chairman of the board shall participate in the works for the internal control.

- 8.C.5. The executive director responsible for supervising the functionality of the internal control system, shall:
- a) identify the main business risks, taking into account the characteristics of the activities carried out by the issuer and its subsidiaries, and submit them periodically to the review of the Board of Directors;
  - b) implement the guidelines defined by the Board of Directors, through the design, implementation and management of the internal control system, constantly monitoring its overall adequacy, effectiveness and efficiency; moreover, it shall adjust such system to the dynamics of the operating conditions and the legislative and regulatory framework;
  - c) propose to the Board of Directors the appointment, revocation and remuneration of one or more persons in charge of internal control.
- 8.C.6. Each person in charge of internal control shall:
- a) ensure that the internal control system is always adequate, fully operating and effective;
  - b) not be responsible for any operational divisions and shall not report hierarchically to any manager of operational divisions, including the administration and finance divisions;
  - c) have direct access to all useful information for the performance of his/her duties;
  - d) have the availability of adequate means for the performance of the functions assigned to him/her;
  - e) report about his/her activity to the internal control committee and the board of auditors; moreover, they could be required to report also to the executive director responsible for the supervision of the functionality of the internal control system. In particular, he/she shall report about the procedures according to which the risk management is conducted, as well as about the compliance with the plans defined for their reduction and express his/her evaluation of the internal control system to achieve an acceptable overall risk profile.
- 8.C.7. The issuer shall establish an internal audit function. The person responsible for internal control shall usually coincide with the person responsible for the internal audit function.
- 8.C.8. The internal audit functions may be entrusted, as a whole or by business segments, to persons external to the issuer, provided, however, that they are endowed with adequate professionalism and independence; these persons may also be responsible for the internal control. The adoption of such organizational choices, with a satisfactory explanation of the relevant reasons, shall be disclosed to the shareholders and the market in the report on corporate governance.

**Comment**

The Committee underlines the central position of the Board of Directors in the internal control: the board is responsible for the adoption of a system that is adequate to the characteristics of the company.

The Committee recommends that the Board of Directors organizes itself in such a manner as to be able to handle this issue with due attention and the necessary in-depth study. In this regard, a crucial importance is vested by a good organization of the works, so that the matters connected to internal control in general, and risk management, in particular, may be discussed during the board's meetings with the support of adequate research and preparatory work.

The due diligence and preparatory activity is typically carried out by the internal control committee, made up of non-executive directors, the majority of which are independent (or exclusively independent, in the event that the issuer is controlled by another listed company), to which consultative and proposing functions are attributed; the role of such committee remains separate from the role attributed by the law to the Board of Auditors, which performs mainly an ex post control function.

The Committee is aware that, in addition to the different functions performed, the internal control committee carries out activities the objective scope of which coincides in part with the matters submitted to the supervision of the Board of Auditors. It deems, therefore, appropriate that the Board of Directors benefits from an adequate preparatory support in these matters and that such support may be profitably provided by the internal control committee. In such context, the issuers are recommended to coordinate the activity of this committee with that of the Board of Auditors. In the framework of such coordination, the issuers may cause that certain functions provided by this article – in particular those set out in letters c), d) and e) of criterion 8.C.3. – are carried out by the Board of Auditors, provided, however, that this occurs according to adequate procedures, which should enable the Board of Directors to find in the works of the Board of Auditors, made timely available to them, an exhaustive analysis of the matters forming the object of its responsibilities.

According to the introduction principle, the organizational choices made in this respect and the relevant reasons shall be disclosed to the shareholders and the market in the report on corporate governance.

The prerogatives of the internal control committee set out in the Code represent an open list, to which other functions may be added. An important role may be attributed to this committee in the preparation of measures and systems aimed at ensuring transparency and fairness to the transactions with related parties and in the approval of these transactions, as described in Article 9 below.

## ARTICLE 9 – DIRECTORS’ INTERESTS AND TRANSACTIONS WITH RELATED PARTIES.

### *Principles*

- 9.P.1. The Board of Directors shall adopt measures aimed at ensuring that the transactions in which a director is bearer of an interest, on his/her behalf or on behalf of third parties, and transactions carried out with related parties, are performed in a transparent manner and meet criteria of substantial and procedural fairness.

### *Criteria*

- 9.C.1. The Board of Directors shall, after consulting with the internal control committee, establish approval and implementation procedures for the transactions carried out by the issuer, or its subsidiaries, with related parties. It shall define, in particular, the specific transactions (or shall determine the criteria for identifying those transactions), which must be approved after consulting with the internal control committee and/or with the assistance of independent experts.
- 9.C.2. The Board of Directors shall adopt operating solutions suitable to facilitate the identification and an adequate handling of those situations in which a director is bearer of an interest on his/her behalf or on behalf of third parties.

### *Comment*

The new provisions contained in the Italian Civil Code regarding directors’ interests and transactions with related parties (Articles 2391 and 2391-second) dictate a precise set of rules governing the matter, for a good part adopting the basic principles introduced by the previous version of the Corporate Governance Code. Therefore, the definition of best practice simply clarifies certain aspects relating to the procedures for handling said transactions.

First of all, the Committee wishes that adequate practices are adopted by the Board of Directors, aimed at pursuing the objective, now expressly provided by the law, of substantial and procedural fairness in the transactions with related parties.

The Committee recommends, in this respect, that the Board of Directors shall avail itself of the support of the internal control committee in defining the approval and execution procedures of the above-mentioned transactions. The practice has identified, on this issue, several criteria, which may be adopted, also cumulatively, for ensuring a sub-



stantial procedural fairness of such transactions. In this regard, the following criteria are mentioned, by way of example: reserving to the competence of the board the approval of the most important transactions, the provision of a prior opinion of the internal control committee, entrusting negotiations to one or more independent directors (or directors having no ties with the related party), the recourse to independent experts (possibly selected by independent directors). The concrete implementation of the above or similar measures cannot be left to the self-regulation power of the board – even though in compliance with the general principles indicated by Consob pursuant to Article 2391-bis of the Italian Civil Code – depending on the type and relevance, from an economic and/or strategic standpoints, of the transactions as well as the nature and extent of the existing relations with the counter-parties.

As far as the transactions in which a director has an interest, either directly or on behalf of third parties, are concerned, the Committee recommends that the Board of Directors looks for solutions that adapt the need for transparency and fairness stressed by the provisions of law with the advisability of avoiding an increase in the activity of the Board of Directors with excessively burdensome fulfilments. This refers in particular to those events where the director of the issuer is a representative of the company exercising the management and control activity, taking into account that in such a circumstance Articles 2497 and following of the Italian Civil Code provide for incisive measures for the protection of shareholders.

In general, in the events in which the director is a bearer of an interest since he/she is member of the board of directors of a company linked to the issuer by a control (or common control) relationship, it seems reasonable that any obligations to provide information and/or reasons relating to the transactions included in the normal activity of the group, should be performed in a general synthetic manner also on a preventive basis, save for the need to provide supplemental information with regard to transactions of particular importance.

With regard to the handling of the transactions governed by Article 2391 of the Italian Civil Code, it is pointed out that in practice it is not seldom that the director concerned – even though there is no obligation provided by the law in this regard – is asked to abstain from voting or to leave the meeting at the time of the discussion and resolution. This solution may contribute to avoiding or reducing the risk of an alteration of the correct formation of the will by the board of directors. However, there are also events in which such risk is not significant and, conversely, the participation in the discussion and vote by the director on an issue would be appropriate, since there are elements of assumption of responsibility with regard to the transactions that the director concerned might know better than the other members of the board. In the light of the above, the practice that contemplates the obligation to abstain from voting could also attribute to the board, in consideration of the specific circumstances of the case, the power to dispose otherwise and in this way permit the participation in the discussion and vote by the director concerned.

## ARTICLE 10 – MEMBERS OF THE BOARD OF AUDITORS

### *Principles*

- 10.P.1. The appointment of auditors shall occur according to a transparent procedure. It shall ensure, inter alia, timely adequate information on the personal and professional characteristics of the candidates.
- 10.P.2. The auditors shall act with autonomy and independence also vis-à-vis the shareholders, which elected them.
- 10.P.3. The issuer shall adopt suitable measures to ensure an effective performance of the duties typical of the board of auditors.

### *Criteria*

- 10.C.1. The lists of candidates 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 fifteen (15) days before the date fixed for the shareholders' meeting. The lists complete of the information on the characteristics of the candidates shall be timely published through the internet site of the issuer.
- 10.C.2. The auditors shall be chosen among people who may be qualified as independent also on the basis of the criteria provided by this Code with reference to the directors. The Board of Auditors shall check the compliance with said criteria after the appointment and subsequently on an annual basis, including the result of such verification in the report on corporate governance.
- 10.C.3. The auditors shall accept the appointment when they believe that they can devote the necessary time to the diligent performance of their duties.
- 10.C.4. An auditor who has an interest, either directly or on behalf of third parties, in a certain transaction of the issuer, shall timely and exhaustively inform the other auditors and the chairman of the board about the nature, the terms, origin and extent of his/her interest.
- 10.C.5. The board of auditors shall monitor the independence of the auditing firm, verifying both the compliance with the provisions of law and regulation governing the subject matter thereof, and the nature and extent of services other than the accounting control provided to the issuer and its subsidiaries by the same auditing firm and the entities belonging to the network of the same.

- 10.C.6. In the framework of their activities, the auditors may demand from the internal audit function to make assessments on specific operating areas or transactions of the company.
- 10.C.7. The board of auditors and the internal control committee shall timely exchange material information for the performance of their respective duties.

**Comment**

As provided in Article 6 for the appointment of directors, the Committee recommends that the members of the board of auditors should similarly 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.

Also in the event of shareholders’ meetings for the appointment of auditors the same observations as set out in the comment to Article 6 on the appointment of directors apply, in particular regarding the need for transparency of the votes expressed by qualified shareholders, also in the presence of a voting system by secret ballot, if it is considered applicable to the matter under review. Therefore, reference is made to such observations.

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.

The Committee is convinced that the interests of the majority and those of the minority shall be both be taken into consideration 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.

Accordingly, the members of the board of auditors proposed or elected by the majority or the minority are not their “representatives” on the board and even less are they authorised to communicate information to third parties, especially the shareholders who elected them. They shall also comply with the same transparency procedure provided for the directors in the event of transactions in which they are bearers of an interest on their behalf or on behalf of third parties.

Finally, the Committee recommends a regular exchange of information between the board of auditors and the bodies and functions, which perform within the issuer material duties in the subject matter of internal controls.

## ARTICLE 11 – RELATIONS WITH THE SHAREHOLDERS

### *Principles*

- 11.P.1. The Board of Directors shall take initiatives aimed at promoting the broadest participation possible of the shareholders in the shareholders' meetings and making easier the exercise of the shareholders' rights.
- 11.P.2. The Board of Directors shall endeavour to develop a continuing dialogue with the shareholders based on the understanding of their reciprocal roles.

### *Criteria*

- 11.C.1 The Board of Directors shall use its best efforts for ensuring that access to the information concerning the issuer that is material for its shareholders is timely and easy to access, so as to allow the shareholders an informed exercise of their rights. To such purpose, the issuer shall establish a specific section on its internet site that may be easily identified and accessed, in which the above-mentioned information is available, with particular reference to the procedures provided for the participation and the exercise of the voting right in the shareholders' meetings, as well as the documentation relating to items on the agenda of the shareholders' meetings, including the lists of candidates for the positions of director and auditor with an indication of the relevant personal traits and professional qualifications.
- 11.C.2. The Board of Directors shall ensure that a person is identified as responsible for handling the relationships with the shareholders and shall evaluate from time to time whether it would be advisable to establish a business structure responsible for such function.
- 11.C.3. The Board of Directors shall use its best efforts for reducing the restrictions and fulfilments, which make it difficult and burdensome for the shareholders to participate in the shareholders' meeting and exercise their voting right.
- 11.C.4. All the directors usually participate in the shareholders' meetings. The shareholders' meetings are also an opportunity for disclosing to the shareholders information concerning the issuer, in compliance with the rules governing price-sensitive information. In particular, the Board of Directors shall report to the shareholders' meeting with regard to the performed and planned activity and shall use its best efforts for ensuring that the shareholders receive adequate information about the necessary elements for them to take in an informed manner the decisions that are the competence of the shareholders' meeting.

- 11.C.5. The Board of Directors shall propose to the approval of the shareholders' meeting rules laying down the procedures to be followed in order to permit an orderly and effective conduct of the ordinary and extraordinary shareholders' meetings of the issuer, without prejudice, however, to the right of each shareholder to express his or her opinion on the matters under discussion.
- 11.C.6. In the event of a significant change in the market capitalization of the company, the composition and/or the number of the shareholders, the Board of Directors shall assess whether proposals should be submitted to the shareholders' meeting to amend the by laws as regards the minimum percentage required for exercising actions and rights provided for as a protection of minority interests.

**Comment**

The Committee believes that it is in the best interests of the issuers to establish a continuing dialogue with the generality of the shareholders, and in particular, with institutional investors, in compliance with rules and procedures governing the disclosure of price-sensitive information.

In such context, the shareholders' meeting remains an important opportunity of confrontation between shareholders and directors.

Accordingly, the Committee recommends 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. Further, since such meetings are an occasion for dialogue between shareholders and directors, the Committee wishes the director be present, especially those who, in consideration of the duties with which they are entrusted in the Board of Directors and/or the committees of the board, can make a useful contribution to the discussion in the meeting.

The information to the shareholders' meeting about the most significant transactions shall be sufficiently analytical, so as to enable the understanding of the benefits deriving to the issuer from the transactions, in particular with regard to transactions with related parties and those possibly influenced by the person who exercises management and coordination activity on the issuer.

The Committee also recommends that issuers establish rules for shareholders' meetings laying down the procedures to be followed in order to permit an orderly and effective conduct of business, without prejudice, however, to the right of each shareholder to express his or her opinion on the matters under discussion.

The matters covered in the rules can include, inter alia, the maximum duration of individual interventions, their order, the voting procedures, the interventions by

directors and members of the board of auditors, as well as the powers of the chairman, also with regard to settling or preventing conflicts in meetings.

With reference to the legal provisions protecting the rights of minorities that require minimum percentages to be fixed for the exercise of voting rights and the prerogatives of minorities, the Committee recommends that directors should regularly assess the desirability of adapting such percentages in line with the evolution of the company's size and shareholder structure.

The Committee believes that it is not its responsibility to take into consideration the behaviours of institutional investors. The Committee, however, is of the opinion that the acknowledgement by them of the importance of the corporate governance rules contained in this Code may represent a significant element for the purpose of a more convinced widespread application of the principles of the Code by the issuers.



## ARTICLE 12 – TWO TIER AND ONE TIER MANAGEMENT AND CONTROL SYSTEMS

### *Principles*

- 12.P.1. In the event of adoption of a two tier or one tier management and control system, the above articles shall apply insofar as compatible, adapting individual provisions to the particular system adopted, consistently with the objectives of good corporate governance, transparency of information and protection of investors and the markets pursued by the Code and in the light of the criteria provided by this article.
- 12.P.2. In the event that a new management and control system is proposed, the directors shall inform the shareholders and the market with regard to the reasons for such proposal, as well as on how it is envisaged that the Code will be applied to the new management and control system.
- 12.P.3. In the first report on corporate governance published after the modification of the management and control system, the issuer shall describe in detail how the Code has been applied to such system. Such information shall be published also in the subsequent reports, indicating any amendments to the procedure followed in applying the Code to the selected management and control system.

### *Criteria*

- 12.C.1. In the event of adoption of the two tier management and control system, the Code shall be applied according to the following criteria:
- a) except as provided in paragraph (b) below, the articles of the Code that make reference to the Board of Directors and the Board of Auditors, or their members, are applied, in principle, to the Management Board and Supervisory Board, or their members respectively;
  - b) due to the specific options of the by-laws adopted, in the configuration of the management and supervisory bodies also in consideration of the number of members and the powers and duties attributed to them, and of the specific circumstances existing, the issuer may apply the provisions concerning the Board of Directors or directors to the Supervisory Board or its members;
  - c) the provisions relating to the appointment of directors provided by Article 6 of this Code shall apply, insofar as compatible, to the appointment of the members of the Supervisory Board and/or the members of the Management Board.



- 12.C.2. In the event of adoption of the one tier management and control system, the Code shall be applied according to the following criteria:
- a) the articles of the Code that make reference to the Board of Directors and to the board of auditors, or their members shall be applied, in principle, to the Board of Directors and to the Management Control Committee, or their members respectively;
  - b) if the issuer deems it appropriate and provides adequate reasons therefore, the duties attributed to the internal control committee by Article 8 of this Code may be reported to the Management Control Committee provided by Article 2409-octiesdecies of the Italian Civil Code.

**Comment**

The two tier and one tier management and control systems, alternative to the traditional one based on a Board of Directors and board of auditors, have been recently introduced and have had till now a very limited utilization by the issuers. Therefore, it is not possible to identify, with specific reference to the Italian system and experiences, a consistent significant applicative practice on which a best practice code must be based in order to indicate specific principles and criteria.

Moreover, it must be kept in mind that the alternative systems provide for significant margins of freedom, which allow the statutory autonomy to adjust their characteristics to the specific corporate governance needs of the issuer, with the consequence that the same model applied in different ways may show, in practice, mixed features, which may cause the provision of general abstract rules to become ineffective.

Due to the above reasons, a considerable degree of flexibility must be granted to the issuers, flexibility that they may use – provided that there is full transparency in the choices made – for the purpose of meeting, in the event of adoption of the one tier or two tier system, the substantial goals underlying this Code, which appear from the reading of the provisions regarding the traditional model of corporate governance.

The Committee believes that the acceptance of the Code may require the application of the principle, followed also by the legislator, according to which the recommendations that make reference to the directors in the traditional model shall apply to the members of the Management Board (in the two tier model) and Board of Directors (in the one tier model), and those which make reference to the auditors shall apply to the members of the Supervisory Board (in the two tier model) and of the Management Control Committee (in the one tier model).

With specific reference to the two tier model, however, in the opinion of the Committee, also taking into account the main foreign experiences, it is likely – and in principle preferable – that the Management Board does not take up a excessive size, but should rather be a body made up of a limited number of executive directors, or directors who are actively involved in the management activity. As a consequence highly strategic duties should be attributed to the Supervisory Board, with the power to adopt resolutions upon strategic transactions and industrial and financial plans of the issuer. Should the configuration of the management and control system follows such criterion, in compliance with the provisions of the law, it may be appropriate to apply the recommendations of this Code, in particular with regard to the composition of the management body and committees, not to the Management Board, but – insofar as compatible – to the Supervisory Board, as suggested by criterion 12.C.1, letter b). It is pointed out that, should this be the case, in consideration of the composition and nature of the control board, such body may also establish that the functions assigned to the committees provided by the Code are performed by the Supervisory Board as a whole, provided that the size of the body allows for an efficient performance of these functions and that adequate information is supplied in this regard.

With specific regard to the event that the one tier model is adopted, the Committee believes that the functions of the internal control committee may be performed by the Management Control Committee. The solution indicated satisfies the need to avoid the joint presence, within the Board of Directors, of two committees with duties that are, even though not identical, obviously similar, a solution that is considered poorly functional and a possible source of inefficiency. However, for the purpose of avoiding that such solution may negatively affect the effectiveness of the control functions, the hope is expressed that the choice to adopt the one tier model, and to accumulate the functions of the control body provided by the legislator and the committee provided by this Code, are always supported by adequate reasons on the part of the issuer. Moreover, appropriate measures should be implemented (starting from the very same qualitative and quantitative composition of the Committee) for ensuring that the control body may perform its functions effectively and independently.



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