C.N .P .F. **A.F .E.P.**

The Boards of Directors of Listed Companies in France

July 10th 1995

This translation has been prepared from the original French for the convenience of English-speaking readers.

Contents

Introduction

Privatization and the growing presence of non-resident investors on the Paris stock market has led to the rapid emergence of a new type of shareholder with little knowledge of the rules and practices applied by the boards of directors of listed companies in France. Such shareholders have naturally sought clarification.

This situation has given rise to considerable debate, all the more as corporate governance has been in the spot1ight in both the US and the UK in recent years

The French employers' association CNPF (Conseil National du Patronat Français) and the private business association AFEP (Association Française des Entreprises Privées) thus entrusted a specially constituted committee[1] with a review of the principal issues concerning the membership, powers and operation of the boards of directors of French listed companies.

The Committee reviewed related problems and the various solutions proposed, drawing the conclusions detailed in the present document.

Fundamental questions raised included in particular how far the legal framework provided by legislation dated July 24, 1966 meets current market expectations and business needs, as well as the principles which should guide the boards and each director of listed companies.

The Committee believes that implementation of its recommendations is necessary to consolidate investor confidence in the bodies governing the companies they are asked to invest in.

Is existing legislation concerning the: functions of the board of directors in need of change?

The Committee considers that problems can be resolved under the existing law governing the boards of listed companies, with no major amendments.

[1] The letter describing this body's terms of reference is appended to the present report, together with a list of its members.

On this point, representing an essential aspect of its considerations, the committee noted that the French law is extremely detailed, and is at once precise and flexible, providing appropriate responses to most of the problems raised in other countries. In particular, current legislation does not stand in the way of changes in the make-up of boards, or more formal procedures for the way they function - two concerns frequently voiced in the debate on corporate governance.

Here two examples may usefully be cited.

In contrast with the law applying in some other countries, French law already imposes strict limits on the board membership of management, setting a ceiling on the number of *directeurs généraux* (executive directors) and on the number of directors who may at the same time be employees of the company[2]. Obviously this favours rather than hampers the appointment of independent directors.

Secondly, boards may appoint some of their members to form committees to consider specific aspects of company operation. Quite a number have set up such committees with responsibilities in such areas as remuneration, auditing and strategy, and these have been functioning satisfactorily for several years within the current legal framework.

This framework is rooted in a principle which the Committee considers essential, namely that whatever a board's membership and procedures may be, its members collectively represent all shareholders and it must at all times put the company's interests first.

The function of the board of directors

In the exercise of its legal prerogatives, the board of directors fulfils what the Committee considers a four-fold function. It determines the company's strategy, appoints the corporate officers charged with implementing that strategy, supervises management, and ensures that proper information is made available to shareholders and markets concerning the company's financial position and performance, as well as any major transactions to which it is a party.

[2] Article of L93 of the Code des Sociétés (code of company law} limits the number of directors holding a contract of employment with the company to a third of board members, and article L115 limits the number of *directeurs généraux* to five

Formal procedures

A board is naturally entitled to conduct its business as it considers necessary and thus may or may not set up specialized advisory committees, and may or may not adopt a set of internal regulations.

Traditionally, French boards have applied few formal procedures, although there has been a trend in the opposite direction over recent years, which the Committee believes shou1d be vigorously encouraged.

The prevailing informality has made for some perplexity among shareholders, uncertain as to the quality of boards whose operation escapes their scrutiny.

One response to these legitimate concerns might be to establish strict roles for organization and procedures, applying equally to all the boards of listed companies.

However, the Committee does not believe this is desirable. Listed companies are enormously diverse, and the board of directors must operate in a way suited to the individual company's shareholder base and the scale and nature of its business, as well as to the particular circumstances it faces. Each board is the best judge of these matters and its prime responsibility is to ensure that its organization and operation enable it to fulfil its duties as efficiently as possible. Thus, while it would be desirable for practices to evolve in keeping with the Committee's recommendations, such changes should not be imposed in all cases and in the same manner.

The Committee thus considers that each board should periodically review its membership, organization and operations, and keep shareholders informed of conclusions and action taken.

Such regular reviews shou1d in particular address the following points:

- whether the frequency and length of meetings, and the information on which decisions are based, enable it to deliberate adequately.
- the desirability of appointing some members to form advisory committees, notably in areas such as the selection of directors and corporate officers, the remuneration of corporate officers, and the examination of accounting methods and procedures.

Should such committees be set up, particular attention should be paid to their membership to ensure impartiality and proper examination of the issues at stake.

- the desirability of granting the board sole power to take certain types of decision and of giving formal shape to the resulting allocation of authority in a decision issued by the board or through adoption of internal regulations
- whether board membership is in keeping with the company's shareholder base and the related question of the desirability of appointing one or several independent directors, that is to say directors who have no direct or indirect interest in the company or its affiliates.

  In cases of reciprocal directorships, particular care should be taken to ensure that the number of such directors or their responsibilities, notably on advisory committees, will not lead to suspicion that they lack the independence necessary to the fulfilment of their duties and the proper collective operation of the board.

- the adequacy of procedures for the replacement of the Chairman and corporate officers should it be required
- the desirability of imposing special obligations on directors such as ownership of a minimum number of shares, or of making directors subject to penalties for failure to abide by the principles set out in the 'Directors' Charter" in this report.

The Committee examined all of these points in detail, and has drawn up a series of related recommendations. It hopes that all boards will examine their own practice to establish how far it is in keeping with the principles embodied in these recommendations.

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While the Committee does not believe that its conclusions can replace the review to be conducted by the board of each individual company, it has given lengthy consideration to the issues of board membership, organization and operation. It hopes its efforts will speed the trend already underway toward the development of more formal procedures for boards of directors of listed companies and toward the greater transparency that is particularly necessary and for which they are responsible to shareholders.

Finally, it believes that the same issues should be re-examined in three years' time to assess progress achieved.

I. Duties and powers of the board of directors

1. Duties of the board of directors

In Anglo-American countries, the emphasis in this area is on enhancing share value, whereas in continental Europe, and particularly in France, it tends to be on the company's interest.

This difference in approach does not amount to a radical contradiction. Demonstrating concern for the company clearly does not mean ignoring the market, which regulates all aspects of economic life. Instead, it means that management and directors must consider the company first and put the general interest ahead of their own at all times.

The interest of the company may be understood as the over-riding claim of the company considered as a separate economic agent, pursuing its own objectives which are distinct from those of shareholders, employees, creditors including the internal revenue authorities, suppliers and customers. It nonetheless represents the common interest of all of these persons, which is for the company to remain in business and prosper.

The Committee thus believes that directors should at all times be concerned solely to promote the interests of the company.

2. The board of directors and the general meeting of shareholders

As the representative of all shareholders, the board of directors is collectively answerable to the general meeting of shareholders for the fulfilment of its duties, and is charged by law with a variety of related responsibilities. In particular, it convenes meetings and sets their agenda, appoints and dismisses the chairman and the *directeurs généraux* (executive directors) charged with the management of the company, supervises the fulfilment of their duties, and informs the shareholders' meeting through its annual report and the financial statements which it adopts.

While a company is instituted by private agreement, in France the respective powers of its governing bodies are determined by law and may not be altered by the terms of this agreement.

The Committee considered the respective powers of the board and shareholders' meetings so defined, and found no reason for new legislation or other significant changes to these powers.

The only conflicts of authority which have given rise to some disputes have concerned the divestment of major business operations and assets. The case law in this area is perfectly clear, making the board or its chairman alone competent to effect such divestments, except in the event that they prejudice the company's objects, which the extraordinary general meeting of shareholders alone is competent to modify.

Clearly, then, the board must respect the rights of the general meeting of shareholders when it envisages a transaction which is of a nature to affect, de jure or de facto, the company's objects, which represent the purposes for which it was established. Even if this is not the case, it is the Committee's opinion that the board should also ask the general meeting of shareholders to consider any divestment representing a preponderant portion of the company's assets or activities.

3. The board of directors and the market

In addition to strict compliance with legal obligations to shareholders, the board of directors of a listed company bears special responsibility to the market.

While it is the Chairman's duty to provide the market with a regular flow of information on a day-to-day basis, the board of directors is responsible for presenting annual and half-yearly financial statements, and for informing the market of major financial transactions. In such cases, the board must provide quality information, which is sufficiently reliable and clear to ensure the fair execution of the transactions concerned.

With a view to achieving this transparency, the Committee believes that the board should publish its assessment of all transactions concerning the company's securities, even when this is not legally required. It would seem natural, for example, for the board to give its opinion on a standing offer to buy company shares (*procédure de garantie de cours*) or on the company's interest as this is affected by an offer to buyout minority shareholders prior to delisting. While directors have a duty to be discrete, this does not prevent them from expressing their dissent when they believe this is necessary.

4. The board of directors and its chairman

The organization of authority within a French board of directors has frequently been criticized on two counts. Firstly, it is claimed that the division of authority between chairmen and their boards is ill-defined, and secondly that, since chairmen are also *directeurs généraux* (executive directors) and as such responsible for management, their powers are excessive compared with those of the board.

Respective powers

With the exception of the powers which the law expressly reserves to the board as a whole, both the board of directors and the chairman have the widest powers to act in the company's name in all circumstances.

Critics point to the conflict of authority thus inherent in the law, but have little to say about resulting problems in practice, which are in fact hard to find.

As in other countries where similar bodies exist, French boards are not intended to take the many decisions involved in the operation of a company collectively, since such decisions are by nature the responsibility of the management which they appoint and whose management they supervise.

In the Committee's opinion, the French legal framework, far from being a source of confusion, offers clear advantages as a result of its flexibility. Each board can adapt the organization of authority to circumstances and the specific nature and requirements of the company. It can limit the cases where its prior intervention is necessary if it wishes to give management a freer hand, or, on the contrary, extend its competence by defining the types of decision it wants to be subject to its consideration. To this end, it can adopt regulations which may be as narrowly defined as it wishes.

Without taking over from management, the board may thus involve itself in decisions it considers important whenever necessary.

The Committee believes that the diversity of companies and their circumstances makes the freedom to organize authority within the board essential to the smooth operation of supervisory and management bodies.

In this regard, there is no call for the type of "constitutional" debate sometimes heard and which is further obscured by the unwarranted use of terms properly applied only to political life.

Nevertheless, the latitude allowed to the board is not unlimited and implies an obligation. The board cannot divest itself of the powers attributed to it by law and must carry out its duties to the full, notably as regards supervision of management provision of information to the market and strategic planning.

A clear strategy is not only a necessary condition for good management, it is also a fundamental component of the information to be supplied to shareholders and the market.

The Committee believes that while it is the Chairman's role to draw up and propose a strategy, this must be adopted by the board. By virtue of the same principle, it must consider and decide on all strategically important decisions, either directly in a full meeting or, where appropriate, after consideration by an ad hoc committee, which may or may not decide that such a meeting is necessary.

Separation of authority is not a universal remedy

Some observers not directly involved in business have criticized the fact that in France, the same person is head of company management and chairman of the board charged with supervising management, suggesting that these two functions should be separated.

On this point, the Committee noted that such separation was the rule in France prior to the Second World War, and that it was precisely because this led to difficulties that the present arrangement was adopted. Separation may well have its advantages where directors also exercising a management role represent a significant or even preponderant proportion of board membership. This is not the case in France, since not only does the law impose a ceiling on the number of *directeurs généraux* {executive directors) who are also board members, but this limit is rarely reached in practice.

Moreover, under French law, companies wishing to create a strict distinction between management and supervision may achieve this by opting for organization

based on a legal system providing for distinct supervisory and executive boards.

Admittedly, this type of organization remains the exception in France, possibly because of the drawbacks of this rigid division between the two boards[3]. The Committee did not examine this question which was beyond the scope of its assignment.

Nonetheless the fact that most French listed companies and *sociétés anonymes* (business corporations) in general have opted for a board of directors rather than supervisory and executive boards suggests, in the Committee's view, that in most cases there is no clear need for a stricter division of responsibilities, and such a division is not usually a guarantee of better management or supervision.

In any case, the board of directors is simultaneously and collectively answerable to the general meeting of shareholders for both management and supervision. The Chairman and the board thus together assume responsibility for the success or failure of management as well as for the efficiency or shortcomings of supervision, and they must jointly adopt measures to satisfy shareholders on these points.

Management and supervision are two sides of the same coin, and it is up to the board of directors to organize itself to carry out all its duties to the full.

[3] There have been frequent suggestions for relaxation, notably by allowing company statutes to empower the supervisory board to dismiss members of the management board, or to grant it greater freedom to appoint a single general manager, or to provide that appointees to the executive board must be nominated by its chairman.

II. Board membership

1. Fundamental principles

Debate concerning board membership has concerned in particular the representation of interest-groups and expertise, reflecting public doubts as to the independence and impartiality of current members.

Having examined such criticism and related suggestions, the Committee can only affirm its attachment to the traditional principles or French law and practice. However it is made up, and whoever its members may be, the board of directors collectively represents all company shareholders, and is not the sum of conflicting interests. It must carry out its duties in the interests of the company and if it fails to do so, its members are jointly and severally liable.

Similarly, whatever the status or expertise or individual board members, they must consider themselves representatives of all shareholders and behave as such, and are personally liable if they fail to do so.

The board of directors of a listed company must be particularly vigilant in applying these principles, bearing in mind the need for its membership to win the confidence of markets, as well as the specific features of its shareholder base.

The Committee thus considers that it is up to each board to determine the most suitable structure for its own membership and that or the committees it sets up, and to ensure that markets and shareholders have no reason to doubt their independence and impartiality. While the number of members should not be increased to a point where it would be difficult for each to contribute to discussion, boards should also consider the desirability of appointing one or more independent directors and how many directors with seats on other boards it is prepared to accept.

2. Independent directors, management and shareholders

Debate on the need for independent directors began in the US and UK in protest against the over-representation of management on boards. This has since spread to France, where it at first sight appears largely irrelevant, given that the law sets strict limits on the number of executives or employees represented on the board, as the Committee believes is normal.

However, the notion of independent director is not only opposed to that of executive directors, it also opposed to that of any director with any sort of special interest in the company, whether as a shareholder, a supplier or a customer.

According to theories commonly heard in the US and the UK, an independent director is an individual who has no direct or indirect interest of any kind in the company or in any of its affiliates, and is thus able to provide a completely impartial contribution to boardroom debate. Such directors cannot be employees, or Chairmen, or executive directors of the company or any of its affiliates, or have occupied such a position in the three previous years. Nor can they be major shareholders of the company or any of its affiliates, or have links with any such shareholders. Finally they must not be associated in any way with any usual and significant partner, whether commercial or financial, of the company or its affiliates.

The boards of directors of listed companies in France already include numerous members chosen exclusively for their personal expertise and are independent in the sense described in the previous paragraph.

The question is how far this practice should be extended.

While the Committee believes that boards representing as they do an shareholders, should be principally made up of shareholders, it also notes that the appointment of independent directors corresponds to market expectations, and is of a nature to enhance the quality of boardroom debate and favour compliance with the traditional principles referred to above.

The appropriate balance between independent directors, shareholder directors and executive directors varies from one company to another, although in general the last should in any case not be too numerous.

The Committee thus concludes that the boards of all listed companies should have at least two independent members, although it is up to each board to determine the most appropriate balance in its membership.

3. Representation of interest groups

Some have suggested that board members should include representatives of certain

interest groups but the Committee believes that a move in this direction would not be desirable. The result could well be to make the board a focus for conflicts between such groups instead of collectively representing the interests of all shareholders as it is supposed to. Moreover, the presence of independent directors should suffice to ensure that all legitimate interests are taken into account.

Naturally, there may still be special cases where it can be useful to include representatives of such interest groups, and it is up to the board to decide if this is so. However, once directors are appointed, it is their duty to represent all the shareholders and to act in the sole interest of the company.

Employees and employee shareholders

French law provides for the attendance of works council (*comité d'entreprise*) representatives at board meetings, where they have a consultative vote, and allows for full board membership of representatives of employees (by ministerial order of 1986) or of employee shareholders (under legislation dated 1994).

The Committee expresses its surprise that the ministerial order of 1986 means that works council representation must be maintained even when companies have opted to grant full board membership to the elected representatives of employees.

Minority shareholders in controlled companies

Where a company is controlled by a majority shareholder or a group of shareholders acting in concert, this shareholder or group has special direct responsibilities to other shareholders, distinct from those of the board of directors.

In such cases, the board must be particularly attentive to avoid any conflict of interest, take all interests into due account and ensure the transparency of information provided to the market.

Unless all minority shareholders can be represented on the board, any arrangement for the representation of minority shareholders will be contested by those left out.

In view of this, the Committee believes that the best solution is to appoint several independent directors to boards of companies controlled by a majority shareholder, rather than to provide for special representation of minority shareholders.

These independent directors would ensure the impartiality of debate.

Small shareholders in companies not controlled by a majority shareholder

Similarly, in companies with a scattered shareholder base, small shareholders have called for special representation to reflect their interests.

For reasons similar to those that led the Committee to come out against special representation for minority shareholders, it considers that small shareholders' interests should be taken into account by the appointment of independent directors who may naturally be selected from individuals sharing their concerns.

4. Cross-shareholdings and reciprocal board membership

The relative weakness of French capitalist structures is reflected the number of cross-shareholdings.

This weakness should be reduced through the necessary development of funded pension schemes, incentives for personal equity investment and an inflow of foreign capital. By raising companies' equity capital, such developments should quite naturally diminish the prevalence of cross-shareholdings.

In this respect, the existence of cross-shareholders may be viewed as a transitional phenomenon in French capitalism, and one whose elimination as quickly as possible would appear highly desirable.

Cross-shareholdings frequently, but not inevitably, result in reciprocal board membership, with one company holding a seat on the board of another company which in turn has a seat on the board of the first company. This situation naturally raises some questions on the market.

The Committee thus believes that when a board is considering how best to structure its membership, it should take care to avoid including an excessive number of such reciprocal directorships.

Similarly, the Committee advises boards against appointing directors to their remunerations or audit committees when these directors represent another company

where its own representatives are members of the equivalent committees.

Finally, the recommendation made below on limiting the number of directorships held by anyone individual in listed companies should help to reduce reciprocal directorships.

5. Selection of board members and corporate officers

While the power to appoint and dismiss directors belongs to the general meeting of shareholders, the board has considerable power over its own membership since it can co-opt members and propose their appointment by shareholders' meetings.

At present, the identification of potential board members and corporate officers is a highly informal process, and there is thus little guarantee that all the factors contributing to the desirable balance in board membership have been considered and taken into account.

The absence of formal procedures also leads markets to assume that chairmen have undue influence on the choice of board members.

The Committee thus recommends that boards should set up special committees to select board members and corporate officers, or, if this is not practicable, that the tasks described below should be carried out by its remunerations committee.

Selection committee

Made up of three to five members, including the chairman and at least one independent director, this committee would be charged with proposing candidates after due examination of all relevant factors. Such factors include in particular the desirable balance in board membership considering the structure and development of shareholdings, the desirable number of independent directors, the possible representation of interest groups, the identification and assessment of possible candidates and the desirability of renewing existing directorships.

Replacement of corporate officers

The appointment of the chairman and, at the chairman's suggestion, of other corporate officers, whether members of the board or not, is the sole responsibility of

the board.

The selection committee must naturally be charged with examining the chairman's proposals and presenting its opinion to the board.

In contrast to the situation in other countries, it is generally thought that French boards do not make adequate provision for the replacement of the chairman, which makes for some concern on the market.

The Committee thus recommends that it should be the permanent responsibility of the selection committee to be in a position to propose successors at short notice, although clearly this would require confidentiality.

III. Operation of the board of directors

In France, board operation remains highly informal, and even where formal procedures have been adopted, the boards concerned have given them little publicity. This has led to some concern as to whether the boards of listed company carry out their assignments with the necessary thoroughness and efficiency.

The Committee believes that each board should inform shareholders of the arrangements made to ensure that its duties are properly performed, and should periodically review the adequacy of its organization and operation. In particular, such arrangements should include more formal procedures for the preparation of meetings.

1. Board meetings

In general, the boards of limited companies meet three or four times a year, and in practice meetings last around two hours.

The frequency and duration of meetings are not amenable to the definition of general rules, and should be left up to each board to decide. Clearly boards should meet whenever circumstances make this desirable, but where no special circumstances arise, four to six meetings should be sufficient to review business developments and take necessary decisions, especially if preparatory work has been carried: out by specialized committees. The meeting should last long enough to allow proper consideration of the items on the agenda.

The Committee noted two obstacles to the rapid consultation of the board.

In the first place, the legal position appears to be that decisions can only be taken at an actual meeting. It would desirable to relax this requirement and allow meetings to be held over the telephone or by videoconference, since modern technology means distance is no obstacle to full debate.

Secondly, the chairman alone can call a meeting of the board except when it has not met in the two previous months, in which case a meeting can be called by a third of the directors. Boards should consider relaxing these rules through amendments to company by-laws.

The course of debate and decisions should be clear.

The minutes of the meeting summarize discussion and report the decisions taken. They are of particular importance since they provide evidence, should it be needed, of the board's diligence in fulfilling its duties. While they should not be excessively detailed, they should include succinct reports of questions raised and any reserves expressed by directors.

2. Information available to the board and directors

It is frequently insinuated that directors do not have the information they need to carry out their dudes properly.

It is perhaps superfluous to point out that the chairman is obliged to provide directors, in due time, with all significant information necessary to the fulfilment of their supervisory duties. Directors should receive in due time documentation concerning items on the agenda requiring particular analysis and prior consideration (whenever this is not prevented by the need to respect confidentiality).

The Committee considers that when directors believe they have not been put in a position to make an informed judgement, it is their duty to say so at the board meeting and to demand the information they need.

3. Creation of specialized committees within the board

Many French boards have set up permanent committees to consider particular types of issue and put related proposals to the board.

The Committee takes a highly favourable view of this type of organization which allows for more detailed examination without the need to take up the time of all directors and ensures that the particular questions concerned receive proper attention.

Each board may decide to set up such committees to deal with issues of particular concern to the company. However, in no case should this amount to a transfer of duties away from the board, which alone is legally empowered to take decisions, or lead to the dismemberment of the board, which is collectively responsible for the fulfilment of its duties and must remain so.

The Committee recommends that all boards should set up special committees for the

selection of directors, for remuneration and for accounting. They should inform the Annual General Meeting of Shareholders of the existence of these committees and of the number of meetings they have held in the course of the year.

The role of the selection committee has already been discussed above.

Remunerations committee

Most boards already have a committee charged with recommending remuneration levels for corporate officers, including in some cases stock options plans, although these may be the responsibility of a separate committee.

Such committees have frequently been criticized on the grounds that reciprocal directorships account for a high proportion of membership, and this point calls for particular attention.

As already noted above, the Committee thus recommends that boards should avoid appointing directors to their remunerations committee when these directors represent another company whose own representatives are members of the equivalent committee.

Accounting or audit committee

Adoption of financial statements is central to the board's supervisory duties as is its obligation to ensure information provided to markets and shareholders is reliable and clear.

Preparatory consideration by a specialized committee, whose membership and powers are made public, offers a guarantee that these duties will be fulfilled with the necessary diligence and impartiality.

The Committee thus recommends that each board should appoint an advisory committee principally charged with ensuring the appropriateness and consistency of accounting policies applied in consolidated and company financial statements, and with verifying that internal procedures for collecting and checking information are such that they guarantee its accuracy.

The advisory committee's task is not so much to examine the details of financial

statements as to assess the reliability of procedures for their establishment and the validity of decisions taken concerning significant transactions.

When the advisory committee is examining financial statements, it would also be desirable for it to examine major transactions which may have given rise to conflicts of interest. It should also give its opinion on the appointment of statutory auditors and the quality of their work.

Finally, this committee should also be able to meet, without the presence of corporate officers or executive directors, the people involved in drawing up or checking financial statements including both statutory auditors and the company's financial and internal audit departments.

The committee must report on its work to the board and bring to its notice any points which raise difficulties or require a decision, thereby assisting the board in its consideration.

The Committee hopes that this will rapidly become general practice for listed companies.

Particular attention should be paid to the membership of the audit committee, which should include at least three directors, to the exclusion of executive directors and employees and including at least one independent director. As regards common membership of several committees, the same considerations apply to the audit committee as to the remunerations committee.

4. Directors' rights and obligations

Directors' Charter

Whether they result from legislation or practice, the duties of directors have rarely been the object of a systematic general description, and many remain implicit.

Directors are more aware of their duties than is generally supposed but it is preferable to dispel all ambiguity with a clear statement of the essential deontological principles.

In the Committee's view, all directors[4] should consider themselves subject to the obligations described below.

- Before accepting a directorship, they must make sure they are fully aware of all the general and particular obligations entailed. This involves in particular apprizing themselves of relevant laws and regulations, company bylaws, the present charter and any additional information provided by the board concerned, as well as of any internal regulations it may have adopted for its own operation.
- Directors should personally own a fairly significant number of their company's shares, whether or not this is required by company bylaws. Should this not be the case on their appointment, they should use their directors' fees for this purpose.
- While directors are themselves shareholders, they represent all shareholders and must act in their company's interest in all circumstances.
- Directors must inform the board of any conflict of interest, whether actual or potential and must abstain from voting on any related proposal put to the board.
- Directors must devote the necessary time and attention to their duties. If they are chairman or *directeur général* (executive director) of a company, they should in principle not accept more than five directorships with French or foreign listed companies outside their group.
- Directors must be assiduous and attend all meetings of the board and any of its advisory committees of which they are members.
- Directors must ensure they are properly informed and to this end make timely requests to the chairman for any information necessary to proper consideration of items on the board's agenda.
- When information they acquire in the exercise of their duty is not public, directors should consider themselves bound by a duty of professional secrecy rather than of simple discretion as stipulated by regulations.
- Directors should obviously abstain from trading in the securities of a company in which their position has made them party to information not yet made public.

Finally, the Committee considers it highly desirable for directors to attend general meetings of shareholders.

[4] These naturally apply equally whether the director is an individual or a corporate entity.

In addition to this fundamental charter, each board may establish particular requirements when it considers these necessary to its proper operation.

The board and its members

Directors carry out their duties within the framework of the responsibilities incumbent on the board collectively and on each individual director and it is their duty to inform the board of their concerns or reserves.

The Committee suggests that the board should collectively consider the status of its members and their capacity to fulfil their duties, notably in that they have the necessary information, and should not hesitate to impose requirements in addition to the fundamental obligations described above if it believes the company's circumstances make this necessary. These tasks could be carried out by the board's selection committee.

Points to be considered include in particular the minimum number of shares to be held by each director over and above the minimum required under company bylaws, which is frequently very low. To avoid placing an excessive burden on some directors, the board could provide that their directors' fees, after deduction of tax, be used to acquire company shares until the desired minimum is reached.

Contrary to common opinion, absenteeism is rare among directors. Where it does arise, it is the board's duty to take the necessary measures to ensure members' attendance at its meetings and those of its advisory committees. Such measures may include, for example, making fees proportional to attendance, publication of attendance lists or adoption of roles requiring directors to resign or face dismissal by the shareholders' meeting once they have been absent a certain number of times.

Considering the responsibilities borne by directors and the time they must devote to their duties, fees should be more than token and it thus appeals natural to encourage directors to participate in advisory committees by increasing fees.

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In conclusion to the considerations set out above, the Committee once again stresses the importance of the individual and collective responsibility that directors of listed companies have to the market.

Once a company calls on the market, its nature changes and its board of directors becomes answerable not only to actual shareholders but to all potential buyers of its securities.

The board must thus respond to public concern by introducing more formal procedures for its operation and show greater readiness to make the measures taken in this area known.

Current regulations allow for a move in this direction, which has already begun. They cannot, however, replace respect for a strict code of ethics, which has up to now remained too implicit. The Committee has attempted to remedy this situation by setting out the fundamental principles involved, and it calls on the boards of all companies concerned to consider how they can best apply these to their own operations.

A move is now under way towards better organization of boards of directors and the Committee hopes to have contributed to its acceleration and expansion.