

**ASSOCIATION FRANCAISE
DES ENTREPRISES PRIVEES
AFEP**

**MOUVEMENT
DES ENTREPRISES DE FRANCE
MEDEF**

**Recommendations of the Committee
on corporate governance
chaired by Mr Marc VIENOT**

JULY 1999

CONTENTS

- **Recommendations of the Committee
on corporate governance**

- **Members**

The summary of the Committee's recommendations is intended solely to make them easier to review; it is not a substitute for the foregoing explanations, to which reference should be made for a statement of the Committee's precise positions.

In addition, while for the sake of convenience they are stated only by reference to listed corporations with Boards of Directors, the explanations below naturally also concern listed corporations with Boards of Management and Supervisory Boards, to which they are to be applied *mutatis mutandis*, except for the first six.

Part One

The Committee considered first the two issues for which the Ministry of Justice issued proposals on July 31, 1999, to wit, separation of the office of chairman of the Board of Directors from the office of chief executive officer, on the one hand, and disclosure of the compensation and options granted to corporate officers of listed companies, on the other hand.

I. Separation of the offices of chairman and chief executive officer

1. The Committee is favorable to the introduction in French law of an alternative allowing the Board of Directors to opt for combination or separation of the offices of chairman and chief executive officer, which option should always be subject to reversal by a further resolution of the Board of Directors.

As a result of such a statutory reform :

2. In the event of option for separation, the rules of operation of the Board will have to specify the duties assigned to the chairman of the Board of Directors, by delimitation in relation to the powers of the chief executive officer and those of the Board itself (frequency of meetings, agenda, presiding at the meeting of shareholders, monitoring of the corporation's operation, etc.).

3. In that situation, the chief executive officer will need to be a Director and be appointed by the Board upon the chairman's motion, will have full powers to act in all circumstances in the corporation's name, and will have the title of *directeur général exécutif* (chief executive officer).

4. Regardless of the election made, the rules of operation of the Board will have to specify clearly the division of powers between the Board of Directors, on the one hand, and the chairman and chief executive officer (combination) or the chief executive officer (separation), on the other hand.

In particular, areas such as the group's indebtedness and its major acquisitions and divestments will have to be subjected to resolutions passed in due time by the Board of Directors of the parent company, even if they are not legally mandatory.

5. The statutory rules with respect to civil and criminal liability will need to be amended so as to provide for the situation where the Board of Directors elects to separate the positions of chairman and chief executive officer, so that the chairman of the Board of Directors, devoid of management prerogatives, could be held liable only in respect of misconduct connected with his personal duties.

6. The grounds for and justification of the election made by the Board of Directors between combination and separation of the duties will need to be stated in the annual report.

II. Disclosure of the compensation granted to corporate officers of listed companies

7. The annual reports of listed companies should include a chapter, drafted with assistance from the compensation committee, relating to disclosure to the shareholders of the compensation collected by the corporate officers.

8. The first part of this chapter should describe in detail the policy for determination of the compensation granted to the members of the general-management team : principles for allocation of the fixed and variable portions, criteria for determination of the basis for variable portions, rules for the award of bonuses.

9. The second part should specify the aggregate amount of compensation of all kinds collected by such corporate officers, broken down between the fixed and variable portions.

10. The third part should specify the aggregate and individual amounts of attendance fees paid to the Directors and the rules for allocation among them, and the rules for collection of attendance fees granted to members of the general-management team in respect of directorships held in group affiliates.

11. In addition, the Committee recommends that a statutory amendment allow the Board of Directors to resolve upon payment of all or part of the attendance fees due to Directors in shares of the corporation's stock.

III. Disclosure of stock-option or stock-purchase plans in listed corporations

12. The annual reports of listed corporations having granted options should include a chapter relating to such options in the part of the report dealing with the structure of and changes in the stock.

13. This chapter, prepared by the Board committee in charge of grant of the options, should describe the policy for the grant of options to all the beneficiaries and to the members of the general-management team. In particular, the nature of the options, the criteria for determination of the classes of beneficiaries, the frequency of plans, and the terms set by Board of Directors for exercise of the options, should be specified.

14. In addition, a recapitulating table should set out all the data provided for with respect to options in the « shelf document », and a statement of the discount granted or premium charged. A separate line should provide such information for the members of the general-management team in the aggregate, and equivalent data for the options granted to them, if applicable, in other group affiliates.

Part Two

In general, the Committee has not considered it useful to repeat the recommendations in the report published in July 1995; it should be clear, however, that such recommendations are to be added to those summarized below.

I. Directors

15. The Committee considers that without affecting the duration of current terms of office, the duration of the Directors' term of office, set by the by-laws, should not exceed a maximum of four years, in order to enable the shareholders to rule upon their appointment with sufficient frequency.

16. The terms of office should be staggered so as to avoid renewal as a whole and to make the replacement of Directors smoother.

17. The annual report should specify precisely the dates of the initiation and expiry of each Director's term, so as to highlight the staggering.

It should also mention for each Director his or her age, major executive position, and directorships in other listed corporations (other than group affiliates), and specify the names of all the members of each Board committee.

18. When a Director's appointment or the extension of his or her term of office is referred to the meeting of shareholders, the annual report and notice calling the shareholders should include, in addition to the statutory statements, a biographical notice outlining his or her resume.

19. The number of shares of stock held by each Director in his or her personal capacity in the corporation concerned should be entered in the annual report and notice calling the meeting of shareholders.

20. The Committee stresses the recommendation in the 1995 report, that a Director performing executive duties in a listed corporation should limit the number of outside directorships, and in any event abstain from holding directorships in more than five listed French or foreign corporations other than group affiliates.

II. Operation of the Board of Directors

21. The Committee points out the need for the Board of Directors to review on a periodic basis its membership, organization and operation.

The existence of this review should be notified to the shareholders in the annual report.

22. The Committee considers that the definition of an independent Director contained in the 1995 report may be simplified as follows :

« A Director is independent of the corporation's management when he or she has no relationship of any kind whatsoever with the corporation or its group that is such as to jeopardize exercise of his or her free judgment ».

23. The independent Directors should account for at least one-third of the Board of Directors.

They should also account for at least one-third of the audit committee and appointments committee.

The compensation and options committee, for its part, should have a majority of independent Directors among its members.

24. The independent Directors should be identified as such in the annual report.

25. The frequency and duration of meetings of the Board of Directors should be such as to allow in-depth review and discussion of matters within the Board's purview.

The same is true of meetings of the Board committees (e.g., audit, compensation and options, and appointments committees).

26. The number of meetings of the Board of Directors and Board committees held during the past financial year should be specified in the annual report, which should also provide the shareholders with appropriate information regarding the Directors' attendance at such meetings.

27. Corporations are bound to provide their Directors, if appropriate, with information prior to meetings (of the Board) and on a continuing basis (between meetings of the Board) which is sufficient, relevant and of first rate quality, and such as to enable them to perform their duties effectively.

Directors are bound to request appropriate information which they consider to be necessary in order to perform their duties.

III. Operation of the Board committees ¹

28. Committees of the Board should be allowed the opportunity to approach, in performance of their duties, the corporation's main officers after informing the chairman of the Board of Directors, and subject to reporting to the Board.

¹ In addition to recommendations 23, 25 and 26 above, which also relate to them.

29. The Board committees should be able to request external technical reviews of matters within their purview, at the corporation's expense, after informing thereof the chairman of the Board of Directors or the Board itself, and subject to reporting to the Board.

30. The audit committee should submit every year to the Board of Directors a report :

- concerning the amount of auditing and consulting fees paid by the corporation and its affiliates to entities in the network to which the statutory auditors belong, and the related percentage of the total amount of fees collected by such network during the year;
- concerning the assignment to entities in the network to which the statutory auditors belong of any assistance and consulting duties, material either in terms of importance for the corporation and its affiliates or in terms of the amount of related fees.

Corporations should not entrust significant assistance or consulting assignments to entities in the network to which their statutory auditors belong unless that network is able to warrant that such assignment is not liable to impair the statutory auditors' independence and objectivity.

31. The audit committee should refer to the Board of Directors the issue of selection of the accounting standards for the consolidation of accounts.

For such purpose, it should be provided with precise documentation drafted by the corporation's financial management under technical supervision by the statutory auditors, ensure that it is updated, and submit to the Board for review an advisory document highlighting all the consequences of the terms of the election.

32. The appointments committee (or an *ad hoc* committee) should draw up a plan for succession of the executive Directors. The chairman should be a member of that committee, but not its chairman.

IV. Financial disclosure

33. The Committee recommends that listed corporations ensure that they are able as soon as possible to publish :

- estimated (provisional) consolidated annual accounts at the latest one month after the close of the financial year, if they are unable to draw up the final accounts within two months after the close of the financial year;
- final consolidated accounts at the latest three months after the close of the financial year;
- final consolidated half-yearly accounts at the latest two and a half months after the end of the first half if they are unable to publish estimated (provisional) accounts sooner.

V. The meeting of shareholders

34. The Committee recommends that corporations in future cease submitting to an extraordinary meeting of shareholders a resolution expressly permitting the use of delegations of authority to increase the capital after a take-over bid has been made.

VI. Implementation of the recommendations

35. The Committee considers that it is necessary that listed corporations should specify clearly, in their annual reports, compliance with the recommendations in the 1995 report and these recommendations, and explain, if applicable, the reasons for not implementing some of them.

MEMBERS

CHAIRMAN :

M. Marc VIENOT, Président d'honneur de la SOCIETE GENERALE, Président

MEMBERS

M. Euan BAIRD	Président Directeur Général	SCHLUMBERGER
M. Jean-Louis BEFFA	Président Directeur Général	Compagnie de SAINT-GOBAIN
M. Pierre BLAYAU	Président Directeur Général	MOULINEX
M. Vincent BOLLORE	Président Directeur Général	BOLLORE
M. Jean BURELLE	Président Directeur Général	Compagnie PLASTIC OMNIUM
M. Bertrand COLLOMB	Président Directeur Général	LAFARGE
M. Pierre FAURRE	Président Directeur Général	SAGEM
M. Jean-René FOURTOU	Président Directeur Général	RHONE POULENC
M. André LEVY-LANG	Président du Directoire	PARIBAS
M. Gérard MESTRALLET	Président du Directoire	SUEZ LYONNAISE DES EAUX
M. Yves-René NANOT	Président Directeur Général	CIMENTS FRANCAIS
M. Bruno ROGER	Associé Gérant	LAZARD FRERES & COMPAGNIE
M. Louis SCHWEITZER	Président Directeur Général	RENAULT SA
M. Serge TCHURUK	Président Directeur Général	ALCATEL

RAPPORTEUR

M. Bernard FIELD	Secrétaire Général	Compagnie de SAINT-GOBAIN
-------------------------	--------------------	---------------------------

TECHNICAL COMMITTEE

M. Jean BLONDEAU	Chargé de mission	AFEP
M. Philippe BOUGON	Directeur des services juridiques	AFEP
M. Jacques CREYSSEL	Directeur Délégué	MEDEF
Mme Agnès LEPINAY	Directeur des affaires financières	MEDEF
M. Patrick ROCHET	Directeur général	AFEP
Mme Joëlle SIMON	Directeur des affaires juridiques	MEDEF