

Association Française  
des Entreprises Privées  
**AFEP**



Mouvement  
des Entreprises de France  
**MEDEF**

# **Corporate Governance Code of Listed Corporations**

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**December 2008**

**Corporate governance principles resulting from  
the consolidation of the October 2003 AFEP and  
MEDEF report and the January 2007 and October  
2008 AFEP and MEDEF recommendations  
concerning the compensation of executive directors  
of listed companies**

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## PREAMBLE

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The principles for the corporate governance of listed corporations are based on the Viénot reports of July 1995 and July 1999, on the Bouton report of September 2002 and on the January 2007 and October 2008 recommendations concerning the compensation of executive directors<sup>1</sup> of listed companies. This collection of recommendations was prepared by working parties of the Association Française des Entreprises Privées (AFEP) and the Mouvement des Entreprises de France (MEDEF). Thus, all of these documents have stemmed from initiatives of the business community itself, which attaches importance to defining certain principles of good operation and transparency intended to improve management practices and to reinforce the confidence of investors and the public.

The text below consolidates and places into perspective these recommendations, which are complementary and based on the same logic. However, certain passages, which are in the nature of mere commentary, and the recommendations made in 1995, 1999, 2002 and 2007 and having since become obsolete, have not been repeated.

This set of recommendations, which constitutes the AFEP-MEDEF Code, may be designated by listed companies as their reference code pursuant to the Act of 3 July 2008.<sup>2</sup>

These recommendations are aimed at those companies whose securities are admitted to trading on a regulated market. It is also advisable and recommended that other companies apply these recommendations in whole or in part while adapting them to their own specific features.

Finally, most of these recommendations have been written with reference to corporations (*sociétés anonymes*) with a Board of Directors. Corporations with a Supervisory Board and Management Board, as well as partnerships limited by shares (*société en commandite par actions*) will need to make adjustments as appropriate to implement these recommendations.

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<sup>1</sup> Within the meaning of this document, executive directors include the chairman, the chief executive officer, the deputy chief executive officers of companies having a board of directors, the chairman and members of the management board of companies having a management board and supervisory board and the statutory managers of limited stock partnerships.

<sup>2</sup> Act No. 2008-649 of 3 July 2008 containing various provisions adapting company law to Community law and amending Articles L. 225-37 and L. 225-68 of the French Commercial Code.

## **1. THE BOARD OF DIRECTORS: A COLLEGIAL BODY**

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- 1.1 Regardless of its membership or how it is organised, the Board of Directors is and must remain a collegial body representing all shareholders collectively. It is required to act at all times in the interests of the company.
- 1.2. In exercising its statutory prerogatives, the Board of Directors is carrying out the main missions below: it defines the corporation's strategy, appoints the executive directors in charge of managing the corporation in line with that strategy, selects the form of organisation (separation of the offices of chairman and chief executive officer or combination of such offices), and monitors the management and secures the quality of information provided to shareholders and to the markets, through the accounts or in connection with major transactions.
- 1.3. It is not desirable, having regard to the great diversity of listed corporations, to impose formal and identical ways of organisation and operation for all Boards of Directors. The organisation of the Board's work, and likewise its membership, must be suited to the shareholder make-up, to the size and nature of each firm's business, and to the particular circumstances facing it. Each Board is the best judge of this, and its foremost responsibility is to adopt the modes of organisation and operation enabling it to carry out its mission in the best possible manner.

## **2. THE BOARD OF DIRECTORS AND THE MARKET**

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### **2.1. Corporations' communications to the market**

- 2.1.1 It is up to each Board of Directors to define the company's financial disclosure policy.
- 2.1.2. Each corporation should have a very rigorous policy for communication with analysts and the market. Certain practices of "selective disclosure", intended to assist analysts with their forecasts of results, should be dropped. The normal method for communication is a press release, which makes the same information available to all at the same time.

### **2.2. Off-balance sheet items and corporate risks**

Each listed company must be equipped with reliable procedures for the identification and assessment of its commitments and risks, and provide shareholders and investors with relevant information in this area.

For such purposes:

- the annual report should specify the internal procedures set up to identify and monitor off-balance-sheet-commitments, and to evaluate the corporation's material risks;
- each company must develop and clarify the information provided to shareholders and investors regarding off-balance-sheet-commitments and material risks, and disclose the company's ratings by financial rating agencies as well as any changes occurred during the financial year.

### **3. SEPARATION OF THE OFFICES OF CHAIRMAN OF THE BOARD OF DIRECTORS AND CHIEF EXECUTIVE OFFICER**

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#### **3.1. The diversity of forms of organisation of the management and supervisory powers under French law**

French law offers an option between a unitary formula (Board of Directors) and a two-tier formula (Supervisory Board and Management Board) for all corporations, including listed corporations.

In addition, corporations with Boards of Directors have an option between separation of the offices of chairman and chief executive officer and maintenance of the aggregation of such duties. The statute does not favour either formula and allows the Board of Directors to choose between the two forms of exercise of executive management. It is up to each corporation to decide on the basis of its own specific constraints.

French public limited companies (*sociétés anonymes*) accordingly can choose from among three forms of organisation of management and supervisory powers.

#### **3.2. Disclosure of the option selected**

Without seeking to determine whether one form should be preferred over another, it should be emphasized that the main form of regulation should come from transparency: transparency between the management team and the Board of Directors, transparent management in relation to the market, and transparency in relations with shareholders, in particular at the time of the General Meeting.

In this respect, it is essential for the shareholders and third parties to be fully informed of the choice made between separation of the offices of chairman and chief executive officer and maintenance of these positions as a single office.

In addition to the forms of disclosure required by regulations, the annual report is the medium for the disclosure to which shareholders are entitled, and the Board should report to them the grounds and justifications for its decisions.

### **4. THE BOARD OF DIRECTORS AND STRATEGY**

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The Board of Directors should consider and decide upon transactions with a genuinely strategic importance, after review by an ad hoc committee if appropriate. The internal rules of the Board of Directors should specify:

- the cases in which prior approval by the Board of Directors is required, setting out the related principles, which may differ according to which division of the group is concerned;
- the principle that any material transaction outside the scope of the firm's stated strategy is subject to prior approval by the Board of Directors;
- the rules according to which the Board of Directors is informed of the corporation's financial situation, cash position and commitments.

All of these rules are related not only to external acquisitions or divestments, but also to major investments in organic growth or internal restructuring action. The Board of Directors should be informed in a timely fashion of the corporation's cash position, and where appropriate take decisions relating to its funding and indebtedness.

## **5. THE BOARD OF DIRECTORS AND THE MEETING OF SHAREHOLDERS**

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- 5.1** The Board of Directors represents all of the shareholders. It is collectively accountable for performance of its assignments to the meeting of shareholders, in relation to which it assumes by statute the essential responsibilities: it calls the meeting and sets its agenda, appoints and dismisses the chairman, the chief executive officer and the deputy chief executive officers in charge of the corporation's management, supervises their management, determines the annual accounts submitted to the meeting of shareholders for approval, and reports on its action in the annual report.
- 5.2** The shareholders' meeting is a decision-making body. Its sessions must be not only the occasion when the managing bodies report on the corporation's business and on operation of the Board of Directors and the specialised committees (audit, compensation, etc.), but also an opportunity for a genuine and open discussion with the shareholders.

The Board of Directors must take care not to infringe upon the specific powers of the shareholders if the transaction that it proposes is such as to modify, in fact or in law, the business purposes of the company, which is the very basis of the contract founding the corporation.

Even when no change in the business purposes of the company as defined by the by-laws of the company is involved, the Board of Directors must refer the matter to the meeting of shareholders if the transaction relates to a material part of the group's assets or business.

## **6. MEMBERSHIP OF THE BOARD OF DIRECTORS: GUIDING PRINCIPLES**

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- 6.1.** The first quality of a Board of Directors is in its membership: directors who are, naturally, honest, but also competent, who understand the corporation's operations, are concerned with the best interests of all shareholders, and are sufficiently involved in the definition of strategy and in discussions, to play an active part in decision making, which is collegial, in order to subsequently support any decisions effectively.
- 6.2.** Regardless of personal qualities or abilities, each director should consider himself or herself as representing all shareholders and act accordingly in the performance of his or her duties; failure to do so can give rise to personal liability.
- 6.3.** Each Board should consider what would be the desirable balance within its membership and within that of the committees of Board members which it has established, and take appropriate action to assure the shareholders and market that its duties will be performed with the necessary independence and objectivity.
- 6.4.** A designation as independent director does not imply a value judgment. Independent directors are not by virtue of their personal qualities supposed to be different from the other directors in a way that would give them a stronger incentive to act in the interests of the shareholders.

## **7. REPRESENTATION OF SPECIFIC GROUPS OR INTERESTS**

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It is not desirable to have within the Board representatives of various specific groups or interests, first because the Board could become a battleground for vested interests instead of representing the shareholders as a whole, and second because the presence of independent directors is sufficient to ensure that all appropriate interests have been taken into account.

## **7.1. Employees and employee shareholders**

French legislation has a double specific feature of involving representatives of the Works Council in proceedings of the Board in an advisory capacity, and providing for appointment of one or more directors from among employee shareholders if the employee shareholdings exceed 3% of the corporate capital, or the possibility of full participation of employee representatives in the Board.<sup>3</sup>

## **7.2. Minority shareholders in controlled corporations**

7.2.1. When a corporation is controlled by a majority shareholder (or a group of shareholders acting in concert), the latter assumes a specific responsibility to the other shareholders, which is direct and separate from that of the Board of Directors.

The majority shareholder must take particular care to avoid possible conflicts of interest, to secure transparency of the information provided to the market, and to fairly take all interests into account.

7.2.2. Rather than seeking to provide specific representation for minority shareholders, the best formula consists in appointing independent directors in controlled corporations in the proportions defined in this Code.

## **7.3 Small shareholders in non-controlled corporations**

In non-controlled corporations, the interests of small shareholders should be taken into account by appointing independent directors.

## **8. INDEPENDENT DIRECTORS**

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8.1. A director is independent when he or she has no relationship of any kind whatsoever with the corporation, its group or the management of either that is such as to colour his or her judgment. Accordingly, an independent director is to be understood not only as a non executive director, i.e. one not performing management duties in the corporation or its group, but also as one devoid of any particular bonds of interest (significant shareholder, employee, other) with them.

8.2. Even though the quality of the Board of Directors cannot be defined simply by reference to a percentage of independent directors, as the directors are above all required to be competent, active, in regular attendance and involved, it is important to have on the Board of Directors the presence of a significant proportion of independent directors not only in order to satisfy an expectation of the market but also in order to improve the quality of proceedings.

The independent directors should account for half the members of the Board in widely-held corporations and without controlling shareholders. In controlled companies, independent directors should account at least for a third.

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<sup>3</sup> These are based on Articles L.225-23 and L.225-27 *et seq.* of the French Commercial Code, respectively. In addition, the law limits to a maximum of one third the number of directors bound to the corporation by contracts of employment (Article L. 225-22 of the said Code).

- 8.3.** Characterisation as an independent director should be discussed by the appointments committee and reviewed every year by the Board of Directors prior to publication of the annual report.

The Board of Directors must, upon the motion of the appointments committee, review individually the position of each of its members on the basis of the criteria mentioned below, then notify its conclusions to the shareholders in the annual report and to the shareholders' meeting at the time of the particular director's appointment, so that identification of independent directors is carried out not only by the corporation's management but by the Board itself.

The Board of Directors may consider that, although a particular director meets all of the above criteria, he or she cannot be held to be independent owing to the specific circumstances of the person or the company, due to its ownership structure or for any other reason. Conversely, the Board may consider that a director who does not meet the above criteria is nevertheless an independent director.

- 8.4.** The criteria to be reviewed by the committee and the Board in order to have a director qualify as independent and to prevent risks of conflicts of interest between the director and the management, the corporation, or its group, are the following:

- Not to be an employee or executive director of the corporation, or an employee or director of its parent or a company that it consolidates, and not having been in such a position for the previous five years;
- Not to be an executive director of a company in which the corporation holds a directorship, directly or indirectly, or in which an employee appointed as such or an executive director of the corporation (currently in office or having held such office going back five years) is a director;
- Not to be<sup>4</sup> a customer, supplier, investment banker or commercial banker:
  - that is material for the corporation or its group;
  - or for a significant part of whose business the corporation or its group accounts;
- Not to be related by close family ties to an executive director;
- Not to have been an auditor of the corporation within the previous five years;
- Not to have been a director of the corporation for more than twelve years<sup>5</sup>.

- 8.5.** As regards directors representing major shareholders of the corporation or its parent, these may be considered as being independent, provided that they do not take part in control of the corporation. In excess of a 10% holding of stock or votes, the Board, upon a report from the appointments committee, should systematically review the qualification of a director as an independent director, having regard to the make-up of the corporation's capital and the existence of a potential conflict of interest.

## **9. EVALUATION OF THE BOARD OF DIRECTORS**

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- 9.1.** For sound corporate governance, the Board of Directors should evaluate its ability to meet the expectations of the shareholders having entrusted authority to it to direct the corporation, by reviewing from time to time its membership, organisation and operation (which implies a corresponding review of the Board's committees).

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<sup>4</sup> Or be bound directly or indirectly to.

<sup>5</sup> As a practical guideline, loss of the status of independent director on the basis of this criterion should occur only upon expiry of the term of office during which the 12-year limit is reached.

Accordingly, each Board should think about the desirable balance in its membership and that of the committees created from among its members and consider from time to time the adequacy of its organisation and operation for the performance of its tasks.

## **9.2. The evaluation should have three objectives:**

- assess the way in which the Board operates;
- check that the important issues are suitably prepared and discussed;
- measure the actual contribution of each director to the Board's work through his or her competence and involvement in discussions.

## **9.3. The evaluation, which should preferably be conducted on an annual basis, should be performed in the following manner :**

- Once a year, the Board should dedicate one of the points on its agenda to a debate concerning its operation.
- There should be a formal evaluation at least once every three years. It could be implemented, possibly under the leadership of an independent director, with help from an external consultant.
- The shareholders should be informed each year in the annual report of the evaluations carried out and, if applicable, of any steps taken as a result.
- It is recommended that the directors who are external to the company (i.e. are neither executive directors nor employees) meet periodically without the "in-house" directors. The internal rules of operation of the Board of Directors could provide for such a meeting once a year, at which time the evaluation of the chairman's, chief executive officer's and deputy chief executive's respective performance would be carried out, and the participants could reflect on the future of the company's executive management.

## **10. MEETINGS OF THE BOARD AND OF THE COMMITTEES**

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- The number of meetings of the Board of Directors and of the committees held during the past financial year should be mentioned in the annual report, which must also provide the shareholders with any relevant information relating to the directors' attendance at such meetings.

- The frequency and duration of meetings of the Board of Directors should be such that they allow in-depth review and discussion of the matters subject to the board's authority. The same applies for meetings of the Board's committees (audit, compensation, appointments, etc.).

- Proceedings should be unambiguous. The minutes of the meeting should summarise the discussion and specify the decisions made. They are of particular importance, since they provide, if necessary, a record of what the Board has done in order to carry out its duties. Without being unnecessarily detailed, they should mention briefly questions raised or reservations stated.

## **11. DIRECTORS' ACCESS TO INFORMATION**

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- The law recognises the principle that the chairman or the chief executive officer is bound to disclose to each director all the documents and information required for performance of his or her duties. The manner in which this right to disclosure is exercised and the related confidentiality duty should be set out in the internal rules of the Board of Directors, the Board being responsible, where necessary, for determining the relevance of the documents requested.

- Corporations must also provide their directors with the appropriate information throughout the life of the corporation between meetings of the Board, if the importance or urgency of the information so require. That ongoing disclosure should also include any relevant information, including criticism, relating to the corporation, such as articles in the press and financial analysts' reports.
- Conversely, the directors are bound to request the appropriate information that they consider as necessary to perform their duties. Accordingly, if a director considers that he or she has not been enabled to take part in the proceedings with appropriate information, he or she is bound to say so to the Board and to demand the necessary information.
- One of the major requirements for appointment of a director consists of his or her business knowledge and judgement, but these cannot extend to specific prior knowledge of the corporation's organisation and activities. Each director should accordingly be provided, if he or she considers it to be necessary, with supplementary training relating to the corporation's specific features, its businesses and its markets.
- Directors should have the opportunity to meet with the corporation's main managers, even outside the presence of executive directors. In the latter case, these should be given prior notice.

## **12. DURATION OF DIRECTORS' TERMS OF OFFICE**

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Without affecting the duration of current terms, the duration of directors' terms of office, set by the by-laws ("*statuts*")<sup>6</sup>, should not exceed a maximum of four years, so that the shareholders are called to express themselves through elections with sufficient frequency.

Terms should be staggered so as to avoid replacement of the entire body and to favour a smooth replacement of directors.

The annual report should detail the dates of the beginning and expiry of each director's term of office, so as to make clear the existing staggering. It should also mention, for each director, in addition to the list of offices and positions held in other corporations, his or her age and principal position, and a list by name of members of each Board committee.

When the meeting of shareholders is asked to appoint a director or extend his or her term, the annual report, and the notice for the corresponding meeting of shareholders, must contain a biographical notice outlining his or her *curriculum vitae*, in addition to the items required by statute.

The number of shares in the corporation concerned held personally by each director should appear in the annual report and/or in the booklet or the notice calling the meeting of shareholders.

## **13. COMMITTEES OF THE BOARD**

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The number and structure of the committees are determined by each Board. However, it is recommended that:

- the review of accounts
- the monitoring of internal audit
- the selection of statutory auditors
- the compensation policy and
- appointments of directors and executive directors

should be subject to preparatory work by specialised committees of the Board of Directors.

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<sup>6</sup> Under French law, the duration of directors' terms of office is set by the by-laws, and may not exceed six years.

When the Board has appointed specialised committees to address particular concerns, the creation of such committees shall in no event remove the matter from the purview of the Board itself, which has sole statutory decision-making authority, nor be allowed to cause division within the Board which, as a collegial body, is and should remain collectively accountable for the performance of its duties. For this reason in particular, the quality of reports by the committees to the Board and the inclusion in the annual report of a description of the committees' activities should be stressed.

The committees of the Board may contact, for the carrying out of their duties, the main executives of the corporation after informing the chairman of the Board of Directors and subject to reporting back to the Board on such contacts.

The committees of the Board may request external technical studies relating to matters within their competence, at the corporation's expense, after informing the chairman of the Board of Directors or the board of directors itself, and subject to reporting back to the Board thereon.

## **14. THE AUDIT COMMITTEE**

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Each Board should appoint an audit committee, the duties of which are inseparable from those of the Board of Directors, which is legally bound to approve the corporate accounts and to prepare the consolidated accounts. The committee does not act in the place of the Board, but rather as an extension of the Board, facilitating its work.

Approving the accounts is the main occasion on which the Board assumes two of its essential duties: review of management performance and verification of the reliability and clarity of the information to be provided to the shareholders and the market.

### **14.1 Membership**

The proportion of independent directors on the audit committee should be at least equal to two-thirds, and the committee should not include any executive director.

When extension of the term of office of the audit committee's chairman is proposed by the appointments committee, it should be specially reviewed by the Board.

One should avoid the appointment to the audit committee of corporation A of a director from a company whose audit committee includes a director from corporation A.

It is up to the chairman of the committee to appoint the person in charge of acting as secretary for the committee's proceedings.

### **14.2 Duties**

#### *14.2.1. Review of the accounts*

The main tasks of the audit committee are:

- to review the accounts and ensure the relevance and consistency of accounting methods used in drawing up the corporation's consolidated and corporate accounts;
- to monitor the process for the preparation of financial information;
- to monitor the effectiveness of the internal control and risk management systems.

The central concern is to assess the follow-up of the systems whereby the accounts are drawn up and the validity of methods selected to account for material transactions, rather than to go into details of the accounts. It is also desirable, at the time of review of the accounts, for the committee to consider the major transactions in connection with which conflicts of interest could have arisen.

The time available for reviewing the accounts should be sufficient (no less than two days before review by the Board).

The review of accounts by the audit committee should be accompanied by a presentation from the statutory auditors stressing the essential points not only of the results, but also of the accounting methods chosen, and a presentation from the chief financial officer describing the corporation's risk exposures and its material off-balance-sheet commitments.

#### *14.2.2. Monitoring of the rules securing the statutory auditors' independence and objectivity*

In addition to regular interviews with the statutory auditors, including interviews without management present, the committee should steer the procedure for selection of the statutory auditors and submit the outcome of that selection to the Board of Directors. Upon expiry of their terms of office, selection of the statutory auditors or extension of their terms should be preceded, upon a decision by the Board, by a tender offer supervised by the audit committee, which is to ensure that the best and not the lowest bidder is selected.

The committee should in particular receive each year the following information from the statutory auditors:

- the amount of the fees paid to the network of statutory auditors by the companies controlled by the company or by the entity controlling the company, in respect of services not directly related to the statutory auditors' assignment ;
- information concerning the services supplied in respect of the tasks directly related to the statutory auditors' engagement.

In addition, the committee must also review with the statutory auditors the risks weighing on their independence and the protection measures taken in order to attenuate these risks. The committee must in particular ensure that the amount of the fees paid by the company and its group, or the share of such fees in the turnover of the firms and networks are not likely to impair the statutory auditors' independence.

For listed corporations, the statutory auditing assignment should be exclusive of any other assignment not related to statutory audit. The selected firm should give up, for itself and the network to which it belongs, any consulting activity (legal, tax, IT, etc.) performed directly or indirectly for the corporation having selected it or for its group.

However, subject to prior approval from the audit committee, services that are accessory or directly complementary to auditing may be performed, such as acquisition audits, but exclusive of valuation or advisory services.

### **14.3. Operation**

Rules laying down the duties and mode of operation should be drafted by the audit committee and approved by the Board.

Its operating reports to the Board of Directors should provide the Board with full information, thereby facilitating the latter's proceedings.

The annual report should include a statement on the audit committee's activity during the elapsed financial year.

#### *14.3.1. Members' training*

The audit committee members, who should be competent in finance or accounting, should be provided, at the time of appointment, with information relating to the corporation's specific accounting, financial and operational features.

#### *14.3.2. Working methods*

The audit committee should interview the statutory auditors, but also the persons responsible for finance, accounting and treasury matters. It should be possible to hold these interviews, if the committee so wishes, without the presence of the corporation's general management.

The committee should review the consolidation scope, and if applicable, the reasons for excluding certain companies.

The committee should be able to call upon outside experts as needed.

As regards internal audit and risk review, the committee should review the material risks and off-balance-sheet commitments, interview the person in charge of internal audit, issue an opinion regarding that department's organisation, and be informed of its work program. It should receive internal audit reports or a regular summary of those reports.

## **15. THE APPOINTMENTS OR NOMINATIONS COMMITTEE**

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The appointments or nominations committee plays an essential role in shaping the future of the company, as it is in charge of preparing the future membership of leadership bodies. Accordingly, each Board should appoint, from among its members, a committee for the appointment or nomination of directors and executive directors, which may or may not be separate from the compensation committee.

### **15.1. Membership and form of operation**

When the appointments or nominations committee is separate from the compensation committee, the recommendations relating to the latter's membership and mode of operation are also applicable to it (see hereafter). However, unlike the provisions governing the compensation committee, the current Board chairman shall be associated with the appointments or nominations committee's proceedings.

### **15.2. Duties**

#### *15.2.1. Selection of new directors*

This committee is in charge of submitting proposals to the Board after reviewing in detail all of the factors that it is to take into account in its proceedings: desirable balance in the membership of the Board having regard to the make-up of and changes in ownership of the corporation's stock, identification and evaluation of potential candidates, desirability of extensions of terms. In particular, it should organise a procedure for the nomination of future independent directors and perform its own review of potential candidates before the latter are approached in any way.

### 15.2.2. *Succession planning for executive directors*

The appointments or nominations committee (or an ad-hoc committee) should design a plan for replacement of executive directors in order to be able to submit to the Board solutions for replacement in the event of an unforeseeable vacancy. This is one of the committee's main tasks, even though such task may, if necessary, be entrusted by the Board to an ad-hoc committee. It is natural for the chairman to be a member of the committee for carrying out this task, but while his or her views should be considered, it is not desirable that he or she should chair this committee.

As for the other committees, the annual report should contain a statement on the appointments committee's activity during the relevant financial year.

## **16. THE COMPENSATION COMMITTEE**

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### **16.1. Membership**

The committee should not include any executive directors, and should have a majority of independent directors.

The recommendation relating to cross-directorships in committees as set forth for the audit committee also applies to the compensation committee.

### **16.2. Operation**

Rules laying down the duties and mode of operation should be drafted by the compensation committee and approved by the Board.

The committee's operating reports to the Board of Directors should provide the Board with full information, thereby facilitating its proceedings. During the presentation of the report on the proceedings of the compensation committee, the Board must deliberate on compensation issues without the presence of executive directors.

The annual report should include a statement on the compensation committee's activity during the elapsed financial year.

### **16.3 .Duties**

The compensation committee must help place the Board of Directors or the Supervisory Board under the best conditions to determine the whole of the compensation and benefits accruing to executive directors. All decisions are to be made by the Board of Directors or by the Supervisory Board.

Furthermore, the committee must be informed of the compensation policy applicable to the main managers who are not executive directors of the company. For that purpose, the executive directors attend meetings of the compensation committee.

## 17. DEONTOLOGY FOR DIRECTORS

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Any director<sup>7</sup> of a listed corporation should consider himself or herself as being bound by the following obligations:

- Before accepting office, the director should ensure that he or she has taken cognisance of the general or specific obligations connected with that office. In particular, he or she should familiarise himself/herself with relevant statutes and regulations, the company by-laws, these rules of deontology as supplemented from time to time by the Board and its own rules of internal operation adopted by the Board.
- The director should be a shareholder personally and hold a fairly significant number of shares; if he or she does not hold them when assuming office, he or she should apply his or her directors' fees to acquiring them.
- Even though the director is personally a shareholder, the director represents all the shareholders and should act in all circumstances in the best interests of the corporation.
- The director is bound to report to the Board any conflict of interest, whether actual or potential, and abstain from taking part in voting on the related resolution.
- The director should apply to his or her duties the necessary time and attention. If performing executive duties, he or she should not, in principle, agree to hold more than four other directorships in listed corporations, including foreign corporations, not affiliated with his group.
- The director should be regular in his or her attendance and take part in all meetings of the Board, and any committees of which he or she is a member.
- The director is under a duty to obtain information. To that end, he or she should demand of the chairman in due time all useful information required to effectively participate in meetings with respect to the matters on the Board's agenda.
- As regards any non-public information obtained pursuant to his or her duties, the director should consider that he or she is bound by a strict confidentiality duty, going beyond the mere duty of discretion provided for by law.
- Finally, the director should:
  - abstain from engaging in transactions in securities of the corporations, including derivatives, where (and insofar as) he or she, as a result of his or her duties, has information not yet made public;
  - disclose transactions entered into in respect of the corporation's securities, as required by statute and regulation.

Last, the directors should attend the meetings of shareholders.

Each Board is responsible for supplementing, if appropriate, this list of directors' basic obligations with specific provisions that seem necessary for its operation.

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<sup>7</sup> The obligations are naturally applicable both to permanent representatives of legal entities holding directorships and to individual directors.

## 18. DIRECTORS' COMPENSATION

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18.1. It shall be recalled that the method of allocation of directors' compensation, the total amount of which is determined by the meeting of shareholders, is set by the Board of Directors. It should take account, in such ways as it shall determine, of the directors' attendance at meetings of the Board and committees, and therefore include a variable portion.

It seems natural that the directors' attendance at meetings of specialised committees should be rewarded with an additional amount of directors' fees.

18.2. The amount of directors' fees should reflect the level of responsibility assumed by the directors and the time that they need to apply to their duties. The new definitions of directors' duties and responsibilities ought to encourage all Boards to consider the adequacy of the level of directors' fees.

18.3. The rules for allocation of the directors' fees and the individual amounts of payments thereof made to the directors should be set out in the annual report.

## 19. TERMINATION OF EMPLOYMENT IN CASE OF APPOINTMENT AS COMPANY OFFICER

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When a senior executive is appointed as executive director, it is recommended to terminate his or her employment contract with the company, whether through contractual termination or resignation.

This recommendation applies to the chairman, to the chief executive officer of companies having a Board of Directors, to the chairman of the management board and to the sole managing director of companies having a management board and a supervisory board and to statutory managers of limited stock partnerships.

This recommendation does not apply to employees of a group of companies who are executive directors of a subsidiary of the group, whether listed or not.

This recommendation applies to executive directors appointed after 6 October 2008, date on which the recommendation was made public, and upon the renewal of the appointment of executive directors appointed prior to that date, pursuant to a decision made by the board of directors or supervisory board.

## 20. COMPENSATION OF EXECUTIVE DIRECTORS

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### 20.1. Principles for the determination of the compensation of executive directors and role of the Board of Directors

Boards of directors and supervisory boards are responsible for determining the compensation of executive directors, based on proposals made by the compensation committee.

In order to determine the said compensation, the relevant boards and committees must take into account the following principles:

- **Comprehensiveness:** the compensation determined through this process must be complete. Fixed components, variable components (bonus), stock options, performance shares, directors' fees, pension terms and specific benefits must be taken into account when determining the overall compensation level.
- **Balance** between the compensation components: each compensation component must be clearly substantiated and correspond to the general interest of the company.
- **Benchmark:** the compensation must be assessed within the context of a business sector and the benchmark European or global market.

- **Consistency:** the executive director's compensation must be determined in a manner consistent with that of the other officers and employees of the company.
- **Clarity of the rules:** the rules must be simple, stable and transparent. The performance criteria used in order to determine the variable part of the compensation or where applicable the award of options or performance shares, must correspond to the company's objectives, and be demanding, explainable, and, to the greatest extent possible, long-lasting.
- **Reasonableness:** the method of determining the compensation and award of stock options and performance shares must be balanced and take into account at the same time the company's general interest, market practices and officer performance.

## 20.2. Compensation policy applicable to executive directors and awards of share options and performance shares<sup>8</sup>

The compensation of executive directors must be appropriate, balanced and fair. Such compensation must strengthen the sense of solidarity and motivation within the enterprise. The need to provide explanations and to maintain balance must also prevail as regards shareholders. Compensation must also take into account, to the greatest extent possible, the reactions of other stakeholders and of public opinion at large. Finally such compensation must make it possible to attract, retain and motivate effective officers.

While the market is a benchmark, it may not be the sole one. An executive director's compensation depends on the work carried out, the results obtained but also assumed responsibilities. An executive director bears the ultimate responsibility for the management team, and this warrants a higher compensation.

The compensation of an executive director may also depend on the nature of the tasks entrusted to him or her or on special circumstances (e.g. the restructuring of an ailing enterprise).

Stock options and performance shares are aimed at strengthening over time the convergence between the interests of shareholders and corporate management. Save in exceptional entities (such as start-ups), the award of stock options must correspond to a policy aimed at involving workers in the capital, i.e. aligning the interests of beneficiaries with the associated uncertainty, and not to an instantaneous additional remuneration. The options' exercise terms should be adapted accordingly.

The general policy for the award of the stock options and performance shares should be debated within the compensation committee, and, on the basis of a recommendation from the committee, approved by the Board of Directors or Supervisory Board. Such policy, which must be reasonable and appropriate, is explained in the annual report and during the shareholders' meeting, in connection with the review of a draft resolution authorizing the award of stock options or performance shares.

### 20.2.1 Fixed part of the compensation of executive directors

The fixed part may be calculated differently depending on whether the executive director has made a continuous career within the company or is recruited from outside the enterprise.

In principle, such fixed compensation may only be reviewed at relatively long intervals, e.g. every three years. Its changes must be linked to events affecting the enterprise and must take into account the fact that performance is compensated through the variable component.

The fixed part includes fringe benefits.

### 20.2.2. Variable part of the compensation of executive directors

The variable part must be understandable by shareholders and must be determined by the board of directors or by the supervisory board for a fixed period.

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<sup>8</sup> Performance shares are shares awarded to executive directors under Articles L. 225-197-1 *et seq.* of the French Commercial Code, while being subject to additional requirements mandated by these recommendations.

The board of directors must monitor any changes of the aggregate compensation, comprised of the fixed part and the variable part, over a period of a few years, having regard to corporate performance.

The relationship between the variable part and the fixed part must be clear. The variable part is a maximum percentage of the fixed part, and is suited to the business conducted by the enterprise.

The variable part is not linked to the share price, but rewards short-term performance, as well as the progress made by the enterprise in the medium term.

The quantitative and qualitative criteria guiding the award of the variable part must be specific and of course predetermined.

The rules governing the determination of the variable part must be consistent with the annual assessment of executive directors' performance and with the enterprise's medium-term strategy.

Within the variable part, the qualitative part must be appropriate and where applicable make it possible to account for exceptional circumstances.

Quantitative criteria must be simple, in limited number, objective, measurable and suited to corporate strategy. These criteria must be regularly reviewed in order to avoid any ad-hoc adjustments.

It is also necessary to pay considerable attention to possible threshold effects generated by quantitative criteria. Only highly specific circumstances may warrant the award of an extraordinary variable component.

### *20.2.3. Stock options and performance shares*

#### **Award:**

Awards of options and shares to executive directors must be conditional on the attainment of performance targets.

An executive director may not be awarded any stock option or performance share at the time of his or her departure.

If the stock options or performance shares are not awarded to all employees, then it is necessary to provide for another scheme involving them in corporate performance (incentive scheme, profit-sharing scheme departing from the mandatory scheme, grant of bonus shares, etc.).

The total amount of the stock option plans and performance shares must represent a small fraction of the capital, and the right balance must be struck according to the benefits derived by shareholders from the management. The level of dilution must be taken into account.

Furthermore, it is necessary to ensure that:

- The awarded options and shares valued in accordance with IFRS standards do not represent a disproportionate percentage of the aggregate of all compensation, options and shares awarded to each executive director. To that end, the board must systematically review the award of new options and shares in view of all compensation items of the executive director concerned. The board shall then be responsible for determining the percentage of the compensation (in accordance with market standards) not to be exceeded by the said award.
- Awards are not overly concentrated on executive directors. According to the situation of each company (size, industry, broad or narrow scope of the award, number of officers, etc.), the board must define the maximum percentage of options and shares that may be awarded to executive directors, as compared with the aggregate award approved by shareholders.
- Awards are made at the same calendar periods, e.g. after the disclosure of the financial statements for the previous financial year, and probably each year, in order to limit any windfall effects.
- Any windfall effects associated with a bear market are prohibited. The number of awarded options and shares may not be markedly different from the enterprise's earlier practices, unless a material change to the scope of business justifies a revision of the scheme.

- In accordance with terms determined by the board and announced upon the award, the performance shares awarded to executive directors are conditional upon the acquisition of a defined quantity of shares upon the availability of the awarded shares.

**Price:**

No discount should be applied upon the award of stock options and in particular as regards stock options awarded to executive directors.

Those executive directors who are in office and who are beneficiaries of stock options and/or performance shares may not engage in any risk hedging transactions in respect of their own interests.

**Exercise:**

The exercise by executive directors of all of the options and the acquisition of the shares must be related to performance conditions that are to be met over a period of several consecutive years. These conditions must be serious and demanding and combine internal and/or external performance requirements, i.e. they must be related to the performance of other industries, a benchmark sector, etc.

It is necessary to determine periods preceding the disclosure of the financial statements, during which the exercise of the stock options is not possible. The board of directors or supervisory board must determine these periods and where applicable determine the procedure to be implemented by executive directors prior to any exercise of the stock options in order to ensure that they do not hold any information likely to prevent such exercise.

**Custody of the acquired shares:**

The board of directors or supervisory boards periodically determines the number of shares resulting from the exercise of stock options or the award of performance shares that the chairman of the board, the chief executive officer, the deputy chief executive officers, the members of the management board or the statutory manager of limited stock partnership are required to hold as registered shares until the end of their term of office. The number of the shares so acquired must be material and must increase over time.

The board may use a benchmark serving for the determination of the annual compensation of each executive director and/or a percentage of the net capital gain after disposals that are required for the exercise of the options and the taxes and social contributions and expenses related to the transaction, or may also use as a benchmark a fixed number of shares.

Regardless of the standard used, the standard will need to be compatible with any existing performance criteria and must be periodically revised in light of the executive director's situation, at least upon each renewal of the corporate office.

**20.2.4. Termination payments:**

It is not acceptable that executive directors whose enterprise has failed or who have personally failed may receive termination payments upon departure.

The law gives a major role to shareholders, imposes total transparency and makes termination payments conditional upon performance requirements. These performance requirements set by the board must be demanding and may not allow for the indemnification of an executive director, unless his or her departure is imposed on such director and linked to a change in control or strategy.

The payment of any termination benefits to an executive director must be excluded if the said executive director elects to leave the enterprise in order to hold another position or is assigned to another position within the same group or is able to benefit in the near future from pension rights.

In any event, the termination payment should not exceed two years of compensation (fixed and variable).

These rules and cap apply to all termination payments and include in particular any indemnification paid pursuant to a non-competition clause.

Any artificial swelling of the compensation during the period preceding the departure should be prohibited.

#### *20.2.5. Additional pension schemes*

The possibility for an enterprise of proposing additional pension schemes to senior executives must comply with conditions avoiding any abuse.

Additional pension schemes with defined benefits must be subject to the condition that the beneficiary must be a director or employee of the company when asserting his or her pension rights pursuant to applicable rules.

In order to prevent any abuse, it is necessary to impose certain additional rules:

- the relevant benefit must be taken into account in the overall determination of the compensation on the basis of the general principles stated above;
- the group of potential beneficiaries must be materially broader than the sole executive directors;
- the beneficiaries must meet reasonable requirements of seniority within the enterprise, as determined by the Board of Directors or the management board;
- each year, the increase in potential rights may only account for a limited percentage of the beneficiary's compensation;
- the benchmark period taken into account for the calculation of the benefits must cover several years, and it is necessary to avoid over the same period any artificial swelling of the compensation aimed at increasing pension benefits.

Therefore, it is necessary to exclude any schemes giving a right, immediately or over time, to a high percentage of the total compensation at the end of the career.

## **21. INFORMATION CONCERNING EXECUTIVE DIRECTORS' COMPENSATION**

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The law imposes on companies the obligation to disclose in their management report the aggregate compensation and benefits of all types paid during the financial year to each executive director as well as the amount of the compensation and benefits of any type that each of these directors has received during the financial year from companies of the group.

Very complete information must be provided to shareholders so that they can have a clear view, not only of the individual compensation paid to executive directors, but also of the policy applied by the company in order to determine the compensation paid.

### **21.1. Ongoing information**

It is recommended to disclose publicly, immediately after the meeting of the board approving the relevant decisions, all of the directors' compensation items, whether potential or vested.

### **21.2. Annual information**

The annual report of listed companies must include a chapter, determined with the support of the compensation committee, informing shareholders of the compensation received by executive directors.

This chapter must contain the following:

- A detailed presentation of the policy for the determination of the compensation paid to executive directors, and in particular the rules governing the award of the variable part. This presentation must indicate the criteria on the basis of which this variable part is determined, the manner in which these criteria have been applied during the financial year, as compared with initial expectations, and whether the individual director's personal targets have been attained.
- Information concerning the pension systems or commitments provisioned by the company. Taking into account the considerable variety of pension schemes, it is necessary to indicate whether executive directors benefit from the same pension schemes as the group's senior executives or benefit from a specific pension scheme and describe the main features of these schemes and in particular their calculation modes.
- A detailed presentation of each executive director's individual compensation, compared with that of the preceding financial year, and broken down between fixed components and variable components. Although the French Commercial Code does not impose any such obligation, it appears that the information most relevant for shareholders consists in connecting the variable component to the financial year in respect of which it is calculated, even though the compensation is only paid during the following financial year. It is therefore recommended to disclose on a priority basis the compensation due in respect of the financial year and to show in a recapitulative table the amounts due and paid for the current and the preceding financial years.
- The aggregate and individual amount of directors' fees paid to directors and the rules for allocating the same, as well as the rules governing the collection of the directors' fees awarded where applicable to the general management team in respect of corporate offices held in affiliates of the group.
- A description of the policy for the award of stock options to all beneficiaries by explaining separately, where applicable, the specific award policy applicable to executive directors. In particular, it is necessary to indicate the nature of the options (purchase or subscription options), where applicable the criteria used to define categories of beneficiaries, the periodicity of the plans, the conditions approved by the board as regards the exercise of the options and the dilutive impact of these option awards. A recapitulative table must show all data relevant to the existing option plans, as used for the benchmark document.
- A description of the share award policy applicable to employees or to certain categories of employees and to executive directors, the conditions and where applicable the criteria determined by the board of directors or the supervisory board and the dilutive impact of these share awards. In the same manner as for stock options, a recapitulative table must show all of these data and in particular the number of performance shares awarded to each executive director and the total number of shares awarded to the main beneficiaries who are employees of the group.
- The valuation of stock options and performance shares awarded to executive directors, at the time of the award and in accordance with the method used for consolidated financial statements, and the fraction of the capital so awarded to each executive director.

It is recommended to comply with the standardised presentation (attached as a schedule hereto) of all director compensation items.

## **22. IMPLEMENTATION OF THE RECOMMENDATIONS**

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Listed corporations referring to this corporate governance code should report, with particulars, in their reference documents or in their annual reports, on implementation of these recommendations and, if applicable, explain the reasons why any of them may not have been implemented.

In order to ascertain the actual implementation of the fundamental corporate governance rule (comply or explain), AFEP and MEDEF analyse the information disclosed by SBF 120 companies.

When AFEP and MEDEF note that a company does not apply one of these recommendations and does not provide sufficient explanations, they contact the company's officers.

A general report on the monitoring of recommendations shall be made public each year.

**ANNEX:**  
**STANDARDISED PRESENTATION OF THE COMPENSATION OF EXECUTIVE DIRECTORS OF COMPANIES  
 WHOSE SECURITIES ARE ADMITTED TO TRADING ON A REGULATED MARKET**

In order to improve the clarity and comparability of executive directors compensation information, AFEP and MEDEF recommend that companies whose securities are admitted to trading on a regulated market adopt the following disclosure format.

These seven tables must be grouped in a specific chapter of the annual report devoted to executive directors' compensation. These tables supplement, but do not replace, the information that must be otherwise disclosed by the said companies, for instance as regards the compensation policy, the criteria for the determination of the variable fraction of compensation or the full features of past stock option plans.

Also, these tables must be supplemented with the information necessary in order to make them understandable and by data that may be detailed in tables, such as for instance the features of collective benefit schemes and pension schemes, entailing a risk factor.

**Table 1**

<b>Table summarising the compensation, options and shares awarded to each executive director</b>		
<b>Executive director's name and position</b>	<b>Financial year N -1</b>	<b>Financial year N</b>
Compensation <u>due</u> in respect of the financial year (detailed in table 2)		
Valuation of the stock options awarded during the financial year (detailed in table 4)		
Valuation of the performance shares awarded during the financial year (detailed in table 6)		
<b>TOTAL</b>		

**Table 2**

<b>Table summarising the compensation paid to each executive director</b>				
Executive director's name and position	Financial year N - 1		Financial year N	
	Amounts due	Amounts paid	Amounts due	Amounts paid
- fixed compensation				
- variable compensation				
- extraordinary compensation				
- directors' fees				
- fringe benefits <sup>9</sup>				
TOTAL				

**Table 3**

<b>Non executive Directors' fees table</b>		
Members of the Board <sup>10</sup>	Directors' fees paid in financial year N – 1	Directors' fees paid in financial year N
TOTAL		

**Table 4**

<b>Subscription or purchase options awarded during the financial year to each executive director</b>						
Options awarded to each executive director by the issuer and by any company of the group (nominative list)	No. and date of the plan	Nature of the options (purchase or subscription)	Valuation of the options according to the method used for consolidated financial statements	Number of options awarded during the financial year	Exercise price	Exercise period

<sup>9</sup> These fringe benefits must be described: car, housing, etc.

<sup>10</sup> It is necessary to disclose here all members of the board of directors, even if this information is already included in the tables concerning the individual compensation of executive directors.

**Table 5**

<b>Subscription or purchase options exercised during the financial year by each executive director</b>			
Options exercised by executive directors (nominative list)	No. and date of the plan	Number of the options exercised during the financial year	Exercise price

**Table 6**

<b>Performance shares awarded to each executive director</b>					
Performance shares awarded during the financial year to each executive director by the issuer and by any company of the group (nominative list)	No. and date of the plan	Number of shares awarded during the financial year	Valuation of the shares according to the method used for consolidated financial statements	Acquisition date	Availability date

**Table 7**

<b>Performance shares that have become available during the financial year for each executive director</b>			
Performance shares awarded during the financial year that have become available for each executive director (nominative list)	No. and date of the plan	Number of shares that became available during the financial year	Acquisition terms