

Association Française
des Entreprises Privées
AFEP



Mouvement
des Entreprises de France
MEDEF

The Corporate Governance of Listed Corporations

October 2003

**Principles for corporate governance
based on consolidation
of the 1995, 1999 and 2002
AFEP and MEDEF's reports**

Association Française
des Entreprises Privées – AFEP -
63, rue La Boétie
75008 PARIS
Telephone : 33.1.43.59.65.35
Fax : 33.1.43.59.81.17

French Business Confederation
– MEDEF –
55, avenue Bosquet
75330 PARIS CEDEX 07
Telephone : 33.1.53.59.19.19
Fax : 33.1.45.51.20.44
Internet : <http://www.medef.fr>

CONTENTS

| | |
|--|----|
| PREAMBLE | 4 |
| 1. THE BOARD OF DIRECTORS: A COLLEGIAL BODY | 5 |
| 2. THE BOARD OF DIRECTORS AND THE MARKET | 5 |
| 3. SEPARATION OF THE OFFICES OF CHAIRMAN AND CHIEF EXECUTIVE OFFICER | 6 |
| 4. THE BOARD OF DIRECTORS AND STRATEGY | 7 |
| 5. THE BOARD OF DIRECTORS AND THE MEETING OF SHAREHOLDERS | 7 |
| 6. MEMBERSHIP OF THE BOARD OF DIRECTORS : GUIDING PRINCIPLES | 8 |
| 7. REPRESENTATION OF SPECIFIC GROUPS OR INTERESTS..... | 8 |
| 8. INDEPENDENT DIRECTORS | 9 |
| 9. EVALUATION OF THE BOARD OF DIRECTORS | 10 |
| 10. MEETINGS OF THE BOARD AND OF THE COMMITTEES | 11 |
| 11. DIRECTORS' ACCESS TO INFORMATION | 11 |
| 12. DURATION OF DIRECTORS' TERMS OF OFFICE | 12 |
| 13. COMMITTEES OF THE BOARD | 12 |
| 14. THE AUDIT COMMITTEE | 13 |
| 15. THE COMPENSATION COMMITTEE | 15 |
| 16. THE APPOINTMENTS OR NOMINATIONS COMMITTEE | 18 |
| 17. DEONTOLOGY FOR DIRECTORS | 19 |
| 18. DIRECTORS' COMPENSATION | 20 |
| 19. IMPLEMENTATION OF THE RECOMMENDATIONS | 20 |

PREAMBLE

The principles for the corporate governance of listed corporations are based on the Viénot reports of July 1995 and July 1999 and on the Bouton Report of September 2002. This collection of recommendations has been developed by working parties composed of Chairmen of French listed corporations, at the request of the Association Française des Entreprises Privées (AFEP) and the Mouvement des Entreprises de France (MEDEF). Thus, all three reports represented initiatives of the business community itself, which attached 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 does not add to the Viénot and Bouton reports, the substance of which is retained. It brings together and orders the recommendations from the three reports, which are complementary and based on the same perspective. Certain passages which are in the nature of mere commentary and the recommendations made in 1995 or 1999 and having since become obsolete have not been repeated, however.

This “consolidation” of texts produced by chairmen of leading French corporations is in response to the communication from the European Commission on corporate governance and corporation law, which recommends that each Member-State designate a code of reference with which businesses must comply or explain how their practices differ from it, and why.

The recommendations that follow have been written with reference to corporations with a Board of Directors, which remains the most common form of organisation. 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 them.

1. THE BOARD OF DIRECTORS: A COLLEGIAL BODY

- 1.1** Regardless of its membership or how it is organized, 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 a four-fold mission: it defines the corporation's strategy, appoints the corporate officers¹ 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 market, 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 ways of organisation and operation enabling it to carry out its mission in the best possible manner.

2. THE BOARD OF DIRECTORS AND THE MARKET

2.1. Corporations' communications to the market

- 2.1.1** It is up to each Board of Directors to define its communication policy, in particular as regards the frequency of publication of results (quarterly statements or not).
- 2.1.2.** Each corporation should have a very rigorous policy for communications 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 When accounts are to be published

Listed corporations should take all appropriate action to comply with the following schedule:

- Final consolidated half-yearly accounts should be published no later than two and a half months after the end of the first half if estimated or provisional accounts have not been published earlier.
- If the corporation publishes estimated or provisional consolidated annual accounts, they should be published no later than one month after the close of the financial year and followed by final accounts no later than three months after that time.

¹ In this text, the term of *mandataires sociaux* (translated as "corporate officers") applies to the chairman of the Board, the chief executive officer and the chief operating officer(s) in companies with a Board of Directors, and to the chairman and members of the Management Board in the case of companies governed by a Management Board and Supervisory Board.

- Otherwise, the final accounts should be published within two months after the close of the financial year.

2.3. Off-balance-sheet items and risk disclosure

Each listed corporation should have reliable internal procedures to identify and evaluate its commitments and risks, and provide shareholders and investors with relevant information in this respect.

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;
- methods used for informing shareholders and investors regarding off-balance-sheet-commitments and material risks should be developed and clarified:
 - provision of specific information on these matters in the annual report, presenting them in a clear and easily accessible manner;
 - bringing together under a separate heading the information relating to off-balance-sheet items provided in notes to the accounts;
 - grouping of the information relating to market risks (interest-rate, foreign-exchange, equity, lending, commodity-prices) under a specific heading in the notes to the accounts;
 - in the event of significant exposure to interest-rate, foreign-exchange or commodity-price risks, publication of indicators for the earnings' sensitivity to such risks, specifying the methods and assumptions used for the indicators selected;
 - publication of the corporations' ratings by financial-rating agencies and changes having occurred during the financial year.

As regards off-balance-sheet items, it will be up to the accounting-standardisation bodies, if appropriate, to develop rules allowing suitable presentation in the financial statements.

3. SEPARATION OF THE OFFICES OF CHAIRMAN AND CHIEF EXECUTIVE OFFICER

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

Only 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, a recent statute has provided for corporations with Boards of Directors an option between separation of the offices of chairman and chief executive officer and maintenance of the aggregation of such duties. As recommended by the Viénot report of July 1999, 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 *sociétés anonymes* accordingly can choose from among three forms of organisation of the management and supervisory powers.

3.2. Disclosure of the option selected

Without seeking to determine the issue whether one form should be preferred to another, it should be emphasized that the main form of regulation should come from transparency: transparency between the executive 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 decree, the annual report is the medium for the disclosure to which shareholders are entitled, and the Board should report to them the grounds and justification for its decisions.

4. THE BOARD OF DIRECTORS AND STRATEGY

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 as a function of 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 these rules relate 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

The Board of Directors represents all 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 and 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.

The meeting of shareholders is a decision-making body. Its sessions must not only be 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 directors should attend the meeting of shareholders.

5.1. The combined authority of the Board and the meeting of shareholders with respect to major contributions or sales of assets or businesses

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 objects of the company, which is the very basis of the contract founding the corporation.

Even when no change in the objects of the company is involved, the Board of Directors should put the concern to the meeting of shareholders if the transaction relates to a part of the group's assets or business of overriding importance.

5.2. Legitimacy of the permission granted to the Board of Directors to make use of delegations of authority to increase the capital during a take-over bid period

It is recommended that in future, corporations should no longer submit to the extraordinary meeting of their shareholders a resolution to permit the use of delegations of authority to increase the capital during a take-over bid period.

6. MEMBERSHIP OF THE BOARD OF DIRECTORS: GUIDING PRINCIPLES

- 6.1.** The first quality of a Board of Directors is in its membership: directors who are, naturally, honest, but also able, 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 subsequently to support them 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 is established, and take appropriate action to ensure to 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 their personal qualities supposed to be different from the other directors in a way that would make them more disposed to act in the interests of the shareholders.

7. REPRESENTATION OF SPECIFIC GROUPS OR INTERESTS

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 interests that it may be appropriate to have taken into account indeed have been.

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.²

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.

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

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

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

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 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 others, the rule of "a third at least" set by the Viénot report of July 1999 should be observed.

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.

² These are based on Articles L.225-23 and L.225-27 *et seq.* of the Commercial Code, respectively. In addition, the law limits to a maximum of three the number of directors bound to the corporation by contracts of employment (Article L. 225-22 of the said Code).

It is up to the Board of Directors, upon the motion of the appointments committee, to review individually the position of each of its members on the basis of the criteria mentioned below, then to 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, and the converse also applies.

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 corporate officer 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 a corporate officer of a company in which the corporation holds a directorship, directly or indirectly, or in which an employee appointed as such or a corporate officer of the corporation (currently in office or having held such office going back five years) is a director;
- ⇒ Not to be³ 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 a corporate officer;
- ⇒ 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 years⁴.

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 independent, 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

9.1. For good 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).

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.

³ Or be bound directly or indirectly to.

⁴ 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.

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 it would be desirable to see becoming annual, 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 that are external to the company (i.e. are neither corporate officers 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 and chief executive officer'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

- 10.1.** 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.
- 10.2.** 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, options, appointments, etc.).
- 10.3.** 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

- Corporations are bound to provide to their directors the information required for effective participation in proceedings of the Board, prior, if appropriate, to meetings of the Board, in order to enable them to perform their duties in an appropriate manner. The same is true throughout the life of the corporation between meetings of the Board, if the importance or urgency of the information so require. That permanent 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 meet with the corporation's main managers, even outside the presence of corporate officers. In the latter case, these should be given prior notice.
- The law recently laid down 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.

12. DURATION OF DIRECTORS' TERMS OF OFFICE

Without affecting the duration of current terms, the duration of directors' terms of office, set by the company charter ("*statuts*")⁵, 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 as a 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 called up 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 in the notice calling the meeting of shareholders.

13. COMMITTEES OF THE BOARD

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 auditing
- the selection of statutory auditors
- the compensation and stock-options policies and
- appointments of directors and corporate officers

⁵ Under French law, the duration of directors' terms of office is set by the by-laws, and may not exceed six years.

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

When the Board has appointed specialised committees to meet 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

Each Board should appoint an audit committee, the duties of which are inseparable from those of the Board of Directors, which is responsible for approving the corporate accounts and for preparing 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 raised to two-thirds and the committee should not include any corporate officer.

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 a corporation A's audit committee of a director from a company of whose similar committee a director from corporation A is a member.

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 ensure that in-house procedures for the collection and review of information secure the achievement of these goals.

The central concern is to assess the reliability 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 note from the statutory auditors stressing the essential points not only of the results, but also of the accounting methods chosen, and a note from the chief financial officer describing the corporation's risk exposures and its material off-balance-sheet commitments.

14.2.2 Compliance with 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 appointed.

The committee should obtain disclosure of the fees paid by the corporation and its group to the auditors' firm and network and ensure that the related amount, or the share that they represent in the turnover of the firm and network, is not such as to affect detrimentally the statutory auditors' independence.

Duality of statutory auditors, a specific feature of the French system, secures the auditors' independence. It should be genuine, naturally, in that major issues arising when drawing up the accounts should actually be subject to a double review.

The duration of the term of office, set by law at 6 years, and its renewable nature, also help ensure their independence. But a rotation in signatories of accounts for accounting firms in the major networks and a time-lag between expiry of the two statutory auditors' terms of office are especially desirable.

For listed corporations, the statutory auditing assignment should be exclusive of any other. 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 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 wish, out of the presence of the corporation's general management.

The committee should review criteria for the consolidation of companies, 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 programme of work. It should receive internal audit reports, or a regular summary of those reports.

15. THE COMPENSATION COMMITTEE

15.1 Membership

It should not include any corporate officers, and should have a majority of independent directors.

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

15.2 Operation

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

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

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

15.3 Duties

15.3.1. *As regards managers' compensation*

Information regarding corporate officers' compensation

The law provides that the Board of Directors has sole authority to determine the compensation of the chairman, chief executive officer and chief operating officers. It also provides a duty for corporations to specify in their annual reports the total compensation and benefits of all kinds paid, during the financial year, to each corporate officer, and the amount of compensation and benefits of all kinds received during the financial year by each such officer from group affiliates.⁶

It seems reasonable that more complete information should be provided to the shareholders and that they should be made aware clearly, not only of the individual compensation paid to corporate officers, but also of the overall cost of their group's general management and the policy applied for the determination of their compensation.

Listed corporations' annual reports should include a chapter, drafted with assistance from the compensation committee, dedicated to information to the shareholders relating to the compensation received by managers, containing the following three parts:

- ⇒ **the first part** should set out in detail the policy for the determination of corporate officers' compensation: principles for allocation of fixed and variable portions, criteria determining the grounds used for the variable parts, rules for awards of bonuses;
- ⇒ **the second part** should specify in detail the individual compensation of each corporate officer and the total amount of compensation collected by the corporate officers during the elapsed financial year, compared with the previous financial year, and broken down between fixed and variable parts in aggregate;
- ⇒ **the third part** should specify the aggregate and individual amount of attendance fees paid to the directors and the rules for allocation among them, and the rules for collection of attendance fees paid to members of the general-management team in connection with corporate offices held in group affiliates.

Variable portion of corporate officers' compensation:

The compensation committee should define the rules for determination of this variable portion, ensuring that they are consistent with the annual evaluation of the corporate officers' performance and the corporation's medium-term strategy; it should then review the annual application of those rules.

It should also evaluate the total compensation and benefits collected by such managers, if any, from other group affiliates, including pension benefits and other benefits of all kinds.

In addition, the committee should be informed of the policy for compensation of the main managers who are not corporate officers. For this, the committee shall act in conjunction with the corporate officers.

15.3.2 *Stock options*

Due to differences among the various texts and legal environments, the term "stock options" covers very different realities; some of the practices that have caused concern in certain countries are not possible in France.

⁶ Article L.225-102-1 of the Commercial Code.

In particular, under French law:

- Only the General Meeting of shareholders has the power to authorise the granting of options, to set their maximum number and to determine the main conditions of the granting process.
- The exercise price of the options, which is set based on stock prices at the time of granting, cannot subsequently be revised or altered regardless of stock price trends.
- The holding period of options - the time between the granting of the options and the sale of the shares subscribed for or purchased upon exercise of the options - is directly determined in practice by tax rules: five years minimum from the date of grant for options granted prior to April 2000, four years minimum for options granted after that date.⁷ These long holding periods ensure that options granted by French companies do not give their executive management an incentive to focus on a short-term vision. They truly align the management's interests with those of shareholders, in accordance with the very philosophy of stock options.
- Directors who are neither corporate officers nor employees are barred from receiving stock options.
- Companies are strictly prohibited from making loans to their executive managers or directors, whether for the purpose of exercising options or any other purpose. To do so, or to receive such loans, would represent a misappropriation of corporate assets which carries criminal liability.
- In application of recommendations of the *Autorité des Marchés Financiers*⁸ complete and transparent information is provided in the annual report concerning the options granted to corporate officers and the exercise of such options.
- Last, the law recently introduced an obligation for corporations to set out in a special report information with individual identification relating to the options awarded and exercised by the corporate officers, and by each of the ten employees having been granted or having exercised the largest numbers of options.

The annual reports of listed corporations having granted options should include a section relating to such options in the part of the report dealing with the composition of and changes to the capital of the company.

That section, drafted by the committee of directors in charge of granting the options, should describe the policy for the award of options for all beneficiaries and state separately, if applicable, the specific policy for awards to corporate officers and to the employees covered by the new legal provisions described a few lines above. In particular, the following should be stated: the nature of the options, the criteria for definition of classes of beneficiaries, the intervals at which options are granted, and the terms set by the Board for exercise of the options.

The second part should consist of a summary in tabular form setting out all the relevant data for the option plans in force, as provided for in the reference document, adding thereto, if applicable, next to the exercise price, a statement of the discount granted or premium applied.

In addition to such information:

It is strongly recommended that there be no discount at the time of grant of the options, and in particular for options granted to corporate officers.

⁷ Unless the holder is prepared to pay compulsory payroll deductions and income tax at the marginal rate on the capital gain.

⁸ This is the new authority created as a result of the merger between the *Commission des Opérations de Bourse* (COB) and of the *Conseil des Marchés Financiers* (CMF).

The general policy regarding the granting of options should be debated by the compensation committee and made the subject of a proposal by the latter to the Board of Directors. That policy, which must be reasonable and appropriate, is to be stated in the annual report and also to the meeting of shareholders when a resolution for authorisation to grant options is submitted to it.

The intervals at which grants are made should avoid the grant of options on an opportunistic basis at periods of exceptionally low market prices. The intervals may differ for corporate officers, senior executives and other grantees.

The committee should also make known to the Board its proposals concerning the choice between granting subscription or purchase options, specifying the reasons for its choice as well as the consequences that this choice has.

16. THE APPOINTMENTS OR NOMINATIONS COMMITTEE

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 corporate officers, which may or may not be separate from the compensation committee.

16.1 Membership and form of operation

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

16.2 Duties

16.2.1 Selection of new directors

This committee is in charge of submitting proposals to the Board after reviewing in detail all 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.

16.2.2 Succession planning for corporate officers

The appointments or nominations committee (or an ad hoc committee) should design a plan for replacement of corporate officers in order to be able to submit to the Board solutions for replacement in the event of an unforeseeable vacancy. This one of the committee's main tasks, even though it 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 the carrying out of 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.

17. DEONTOLOGY FOR DIRECTORS

Any director⁹ 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 charter, these rules of deontology as supplemented from time to time by that Board and its own rules of internal operation adopted by that Board.
- ⇒ The director should be a shareholder personally and hold - above and beyond the minimum provided for by the company charter - 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 attendance fees to acquiring them.
- ⇒ Even though a shareholder personally, 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 to its group.
- ⇒ The director should be regular in 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 the information required for useful meeting participation with respect to the matters on the Board's agenda.
- ⇒ As regards 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.
- ⇒ Last, 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 the corporation's securities, as required by statute and regulation.

⁹ The obligations are naturally applicable both to permanent representatives of legal entities holding directorships and to individual directors.

Last, the directors should attend the meetings of shareholders.

It is up to each Board to supplement, if appropriate, this list of directors' basic obligations with specific provisions that seem necessary for its operation.

18. DIRECTORS' COMPENSATION

- 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 specialised committees should be rewarded with an additional amount of attendance fees.
- 18.2** The amount of attendance fees should reflect the level of responsibility assumed by the directors and the time they need to apply to their duties. The new definitions of directors' duties and responsibilities ought to incite all Boards to consider the adequacy of the level of attendance fees.
- 18.3** The rules for allocation of the attendance fees and the individual amounts of payments thereof made to the directors should be set out in the annual report.

19. IMPLEMENTATION OF THE RECOMMENDATIONS

Listed corporations 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.