

ヨーロッパにおける非業務執行取締役・監査役と財務報告及びそれに係る内部統制

1 従来

・ 多くの国では、監査委員会の設置は法令上は要求されていなかった(すなわち、財務報告における非業務執行取締役の役割はさほど強調されてこなかった)。

もっとも、コーポレート・ガバナンス原則において、監査委員会の設置が強く推奨されてきた。

コーポレート・ガバナンス原則はかならずしも強制力を有しないが、多くの国において、comply or explain という考え方がとられてきた。

	comply or explain
オーストリア	ウィーン証券取引所第1部上場会社
ベルギー	強制なし
デンマーク	上場会社
ドイツ	上場会社
ギリシャ	上場会社
フィンランド	上場会社
フランス	強制なし
アイルランド	上場会社
イタリア	上場会社
ルクセンブルク	強制なし
オランダ	上場会社
ポルトガル	上場会社は遵守の程度
スペイン	強制なし
スウェーデン	上場会社
イギリス	上場会社
スイス	上場会社

・ ただし、ドイツ型[2層型]の仕組みを有する国においては、監査役会(日本とは異なるが)が取締役会・取締役による業務執行を監督。そして、監査役会員と取締役とは兼任できないこととされてきた。そして、たとえば、ドイツでは、外部監査人との監査契約の締結は監査役会が行うものとされ、独立性の確保を図ってきた。

・ 日本にやや近いのがイタリア(3つのタイプが現在では認められているが、従来型のスキームでは監査役会が存在し、その任務は日本の監査役と類似)。

	独立取締役の要求	勧告 2005/162/EC が示す職務
オーストリア	あり (人数についての規定なし)	選任等の推薦を行わない
ベルギー	あり	有する
デンマーク	あり	有する
ドイツ	なし	有する
ギリシャ	なし(しかも、内部監査委員会のみ)	
フィンランド	あり	有する
フランス	あり	有する
アイルランド	あり	有する
イタリア	あり	有する
ルクセンブルク	あり (人数についての規定なし)	有する
オランダ	あり	有する
ポルトガル	あり(草案)	有する(草案)
スペイン	なし	有する(草案)
スウェーデン	あり	有する
イギリス	あり	有する
スイス	なし(推奨)	選任等の推薦を行わない

2 EC 会社法第 8 号指令[2008 年 6 月 29 日までに国内法化する義務を加盟国は負っている]

公益に影響を与える企業については監査委員会の設置を原則として強制。

まだ国内法化は進んでいない模様(たとえば、イギリス—上場規則の改正で対応予定)

資料編

EC 会社法第 8 号指令

DIRECTIVE 2006/43/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC

*Article 41***Audit committee**

1. Each public-interest entity shall have an audit committee. The Member State shall determine whether audit committees are to be composed of non-executive members of the administrative body and/or members of the supervisory body of the audited entity and/or members appointed by the general meeting of shareholders of the audited entity. At least one member of the audit committee shall be independent and shall have competence in accounting and/or auditing.

In public-interest entities which meet the criteria of Article 2(1), point (f) of Directive 2003/71/EC (1), Member States may permit the functions assigned to the audit committee to be performed by the administrative or supervisory body as a whole, provided at least that when the chairman of such a body is an executive member, he or she is not the chairman of the audit committee.

2. Without prejudice to the responsibility of the members of the administrative, management or supervisory bodies, or of other members who are appointed by the general meeting of shareholders of the audited entity, the audit committee shall, *inter alia*:

(a) monitor the financial reporting process;

(b) monitor the effectiveness of the company's internal control, internal audit where applicable, and risk management systems;

(c) monitor the statutory audit of the annual and consolidated accounts;

(d) review and monitor the independence of the statutory auditor or audit firm, and in particular the provision of additional services to the audited entity.

3. In a public-interest entity, the proposal of the administrative or supervisory body for the appointment of a statutory auditor or audit firm shall be based on a recommendation made by the audit committee.

4. The statutory auditor or audit firm shall report to the audit committee on key matters arising from the statutory audit, and in particular on material weaknesses in internal control in relation to the financial reporting process.

5. Member States may allow or decide that the provisions laid down in paragraphs 1 to 4 shall not apply to any public interest entity that has a body performing equivalent functions to an audit committee, established and functioning according to provisions in place in the Member State in which the entity to be audited is registered. In such a case the entity shall disclose which body carries out these functions and how it is composed.

6. Member States may exempt from the obligation to have an audit committee:

- (a) any public-interest entity which is a subsidiary undertaking within the meaning of Article 1 of Directive 83/349/EEC if the entity complies with the requirements in paragraphs 1 to 4 of this Article at group level;
- (b) any public-interest entity which is a collective investment undertaking as defined in Article 1(2) of Directive 85/611/EEC. Member States may also exempt public-interest entities the sole object of which is the collective investment of capital provided by the public, which operate on the principle of risk spreading and which do not seek to take legal or management control over any of the issuers of its underlying investments, provided that those collective investment undertakings are authorised and subject to supervision by competent authorities and that they have a depositary exercising functions equivalent to those under Directive 85/611/EEC;
- (c) any public-interest entity the sole business of which is to act as issuer of asset-backed securities as defined in Article 2(5) of Commission Regulation (EC) No 809/2004 (2). In such instances, the Member State shall require the entity to explain to the public the reasons for which it considers it not appropriate to have either an audit committee or an administrative or supervisory body entrusted to carry out the functions of an audit committee;
- (d) any credit institution within the meaning of Article 1(1) of Directive 2000/12/EC whose shares are not admitted to trading on a regulated market of any Member State within the meaning of point 14 of Article 4(1) of Directive 2004/39/EC and which has, in a continuous or repeated manner, issued only debt securities, provided that the total nominal amount of all such debt securities remains below EUR 100 000 000 and that it has not published a prospectus under Directive 2003/71/EC.

Article 42

Independence

1. In addition to the provisions laid down in Articles 22 and 24, Member States shall ensure that statutory auditors or audit firms that carry out the statutory audit of a public-interest entity:

- (a) confirm annually in writing to the audit committee their independence from the audited public-interest entity;
- (b) disclose annually to the audit committee any additional services provided to the audited entity; and
- (c) discuss with the audit committee the threats to their independence and the safeguards applied to mitigate those threats as documented by them pursuant to Article 22(3).

(以下略)

オーストリア

(1) 株式法

Listed companies and companies, whose supervisory boards (excluding employees' representatives) consist of more than five persons, must install an audit committee; there must be at least one financial expert on this committee. The committee shall be charged with the tasks of auditing and preparing the approval of the financial statements by the entire supervisory board and of preparing a proposal for the appointment of an auditor for the financial statements. The chairperson of the audit committee or financial expert may not be a

person who in the past three years has served as member of the management board or as management-level staff or auditor of the company or has signed an auditor's opinion.

(2) コーポレートガバナンス原則

・ In the case of listed companies, the supervisory board shall set up an audit committee irrespective of the size of the supervisory board. The audit committee shall be responsible for the auditing and preparation of the approval of the financial statements, for the proposal for the distribution of profits and for the directors' report. The audit committee shall also audit any consolidated financial statements and shall make a proposal for the appointment of an auditor and shall report to the supervisory board on its findings. A person with special knowledge and practical experience in the area of finance and accounting and reporting must belong to the audit committee (financial expert). The chairperson of the audit committee or financial expert may not be a person who in the past three years has served as member of the management board or as senior management staff or auditor of the company or has signed an auditor's opinion.

・ Depending on the size of the enterprise, a separate staff unit is to be set up for internal auditing, which shall report to the management board, or the task of conducting internal audits may be contracted out to a competent institution. At least once a year, a report on the auditing plan and any material findings is to be presented to the audit committee.

・ In addition, the auditor shall make an assessment of the effectiveness of the company's risk management based on the information and documents presented and shall report the findings to the management board. This report shall also be brought to the notice of the chairperson of the supervisory board. The chairperson shall be responsible for ensuring that the report is dealt with by the audit committee and reported on to the supervisory board.

ベルギー

コーポレート・ガバナンス原則

5.2. The board should set up an audit committee to assist the board in fulfilling its monitoring responsibilities in respect of control in the broadest sense. The audit committee should follow the provisions set out in appendix C.

Appendix C

5.2./1. The board should set up an audit committee composed exclusively of non-executive directors. At least a majority of its members should be independent. The chairman of the board should not chair the audit committee. The board should satisfy itself that the committee has sufficient relevant expertise to fulfil its role effectively, notably in financial matters.

5.2./2. The board should determine the role of the audit committee. The audit committee should report regularly to the board on the exercise of its duties, identifying any matters in respect of which it considers that action or improvement is needed, and making recommendations as to the steps to be taken.

5.2./3. Parent companies should ensure that the audit review and the reporting on that review cover the group as a whole.

Financial reporting

5.2./4. The audit committee should monitor the integrity of the financial information provided by the company, in particular by reviewing the relevance and consistency of the accounting standards used by the company and its group. This includes the criteria for the consolidation of the accounts of companies in the group. This review involves assessing the correctness, completeness and consistency of financial information. The review should cover periodic information before it is made public. It should be based on an audit programme adopted by the committee.

5.2./5. Management should inform the audit committee of the methods used to account for significant and unusual transactions where the accounting treatment may be open to different approaches. In this respect, particular attention should be paid to both the existence of, and the justification for, any activity carried out by the company in offshore centres and/or through special purpose vehicles.

5.2./6. The committee should discuss significant financial reporting issues with both executive management and the external auditor.

Internal controls and risk management

5.2./7. At least once a year, the audit committee should review the internal control and risk management systems set up by executive management, with a view to ensuring that the main risks (including those relating to compliance with existing legislation and regulations) are properly identified, managed and disclosed.

5.2./8. The audit committee should review the statements included in the annual report on internal control and risk management.

5.2./9. The audit committee should review the specific arrangements made, by which staff of the company may, in confidence, raise concerns about possible improprieties in financial reporting or other matters. If

deemed necessary, arrangements should be made for proportionate and independent investigation of such matters, for appropriate follow-up action and arrangements whereby staff can inform the chairman of the audit committee directly.

Internal audit process

5.2./10. An independent internal audit function should be established, with resources and skills adapted to the company's nature, size and complexity. If the company does not have an internal audit function, the need for one should be reviewed at least annually.

5.2./11. The audit committee should review the internal auditor's work programme, having regard to the complementary roles of the internal and external audit functions. It should receive internal audit reports or a periodic summary thereof.

5.2./12. The audit committee should review the effectiveness of the internal audit. In particular, it should make recommendations on the selection, appointment, reappointment and removal of the head of internal audit and on the budget allocated to internal audit, and should monitor the responsiveness of management to the committee's findings and recommendations.

External audit process

5.2./13. The audit committee should make recommendations to the board on the selection, appointment and reappointment of the external auditor and the terms of his or her engagement. In accordance with the Code on Companies, this proposal should be submitted to the shareholders for approval.

5.2./14. The audit committee should monitor the external auditor's independence, in particular in view of the provisions of the Code on Companies and the Royal Decree of 4 April 2003. The committee should obtain a report from the external auditor describing all relationships between the independent auditor and the company and its group.

5.2./15. The audit committee should also keep the nature and extent of non-audit services under review. The committee should set and apply a formal policy specifying the types of non-audit services a) excluded, b) permissible after review by the committee, and c) permissible without referral to the committee, taking into account the specific requirements under the Code on Companies.

5.2./16. The audit committee should be informed of the external auditor's work programme. The committee should obtain timely information about any issues arising from the audit.

5.2./17. The audit committee should review the effectiveness of the external audit process, and the responsiveness of management to the recommendations made in the external auditor's management letter.

5.2./18. The audit committee should investigate the issues giving rise to the resignation of the external auditor, and should make recommendations as to any required action.

Operation of the audit committee

5.2./19. The audit committee should meet at least three times a year. It should review annually its terms of reference and its own effectiveness and recommend any necessary changes to the board.

5.2./20. At least twice a year, the audit committee should meet the external and internal auditors, to discuss matters relating to its terms of reference and any issues arising from the audit process.

5.2./21. The audit committee should decide whether, and if so, when the CEO, the chief financial officer (or

senior employees responsible for finance, accounting, and treasury matters), the internal auditor and the external auditor should attend its meetings. The committee should be entitled to meet with any relevant person without any executive manager present.

5.2./22. In addition to maintaining an effective working relationship with management, the internal and external auditors should be guaranteed free access to the board. To this effect, the audit committee should act as the principal contact point for the internal and external auditors. The external auditor and the head of the internal audit should have direct and unrestricted access to the chairman of the audit committee and the chairman of the board.

デンマーク

10. Use of supervisory board committees

The Committee **recommends** that the supervisory board consider and decide whether to establish committees, including nomination, remuneration and audit committees.

7. Audit committee

In companies with complex accounting and audit conditions, the Committee **recommends** that the supervisory board consider establishing an audit committee to assist the supervisory board in accounting and audit matters.

Audit committees

The majority of the members of an audit committee should be independent persons. Between them, the members of an audit committee should possess such an amount of expertise and experience as to provide an updated insight into and experience in the financial, accounting and audit conditions of listed companies.

An audit committee should have the following responsibilities:

- Checking the accuracy of financial information disclosed in annual, semi-annual and quarterly reports, etc., issued by the company, including ensuring that accounting policies are relevant and applied consistently.
- Reporting to the supervisory board on its activities in connection with the adoption of annual, semi-annual and quarterly financial statements or any other important financial report issued.
- Assessing the expediency of the accounting policies applied as well as the methods of recognition and measurement used in connection with material and unusual transactions if it is possible to base the accounting treatment on alternative accounting policies.
- At least once a year, reviewing and assessing internal control and risk management systems as well as the management's guidelines in this respect and supervising the systems for the purpose of identifying and managing the most important risks.
- At least once a year, assessing the need for an internal audit. The committee should submit recommendations on selecting, employing and dismissing the head of any internal audit as well as recommendations on the budget of the internal audit department. The committee should be notified of the internal auditor's work programme and should receive material internal audit opinions or periodical summaries. Finally, the committee should supervise the executive board's follow-up on the conclusions and recommendations of the internal audit.

As regards the company's external auditor, an audit committee should:

- submit recommendations to the supervisory board for the board's nomination of a candidate as the company's external auditor at the general meeting.
- make a specific and critical assessment of the independence, objectivity and competence of the external auditor, for example by checking that current guidelines for partner rotation are

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met and by checking the size and composition of fees paid to the auditor, etc.

- submit proposals to the supervisory board for the audit and the auditor's fee.
- submit proposals to the supervisory board as regards the overall, general scope of the auditor's provision of non-audit services. The committee should check the nature and extent of non-audit services provided by the external auditor for the purpose of ensuring the auditor's independence and objectivity.
- be notified of the external auditor's audit plan, etc., and also be informed in due time of any important questions raised as a result of the audit.
- review and discuss the result of the audit, including the auditor's observations and opinion, possibly on the basis of a long-form audit report.
- check that the company's management follows up the recommendations contained in the external auditor's report to the management.
- look into the matters surrounding any resignation of the external auditor and submit recommendations on the steps to be taken as result of such resignation.

An audit committee should be offered an introduction programme to be followed up, to the extent necessary, by regular relevant supplementary briefing.

An audit committee must be able to seek advice and help from external legal advisers, accounting consultants and other advisers when this is deemed necessary to enable the committee to perform its duties. The company should provide all the resources needed for this purpose.

フィンランド

コーポレート・ガバナンス原則

Recommendation 27

Establishment of the audit committee

The audit committee shall be established, if the extent of the company's business requires preparation of matters relating to financial reporting and control to be dealt with by a group with more compact composition than the entire board.

The extent of the operations of the company may require some directors to concentrate particularly on matters relating to financial reporting and control. The audit committee has better possibilities than the entire board to review questions connected with the financial administration and control of the company and ensure contacts with auditors and the internal audit function.

Recommendation 28

Appointment of the members of the audit committee

The audit committee shall comprise at least three members. The members shall have the qualifications necessary to perform the responsibilities of the audit committee.

To ensure the effective implementation of the duties of the audit committee, it shall comprise at least three members. The members must have sufficient knowledge of the accounting practices and preparation of financial statements, because the audit committee deals with matters relating to the financial reporting and control of the company.

Recommendation 29

Independence of the members of the audit committee

The members of the audit committee shall be independent of the company.

Due to the nature of the matters dealt with by the audit committee, its members must be independent of the company as specified in Recommendation 18.

Recommendation 18

Evaluation of independence

The board shall evaluate the independence of the directors and report which directors it determines to be independent.

A director is not independent of the company if

- a) the director has an employment relationship with, or holds a position in, the company;**
- b) the director has had an employment relationship with, or held a position in, the company during the last three years prior to the inception of the board membership;**
- c) the director receives from the company or from a member of its operative management not insignificant compensation for services or other advice not connected with the duties of the board, e.g. if the director works on consulting assignments for the company;**
- d) the director belongs to the operative management of another company, and the two companies have a customer, supplier or cooperation relationship significant to the other company; or**

e) the director belongs to the operative management of another company whose director is a member of the operative management in the first company (interlocking control relationship).

In addition, the board can on the basis of its overall evaluation determine that a director is not independent of the company if

f) the director participates in a performance-based or share-related compensation system of the company. The financial significance of the compensation system shall be taken into account; or

g) the company is aware of other factors that may compromise the independence of the director and the directors ability to impartially represent all shareholders.

A director is not independent of a significant shareholder of the company if

h) the director exercises dominant influence such as referred to in Chapter 1, Section 3 of the Companies Act1), in the company, or has a relationship such as referred to in sub-sections a) – b) above to a party who exercises dominant influence in the company; or

i) the director is a significant shareholder of, or has a relationship such as referred to in sub-sections a) – b) above to, a significant shareholder of the company. Significant shareholder means a shareholder who holds at least 10 % of all the shares or of the aggregate votes in the company.

In all situations, when evaluating independence, also the circumstances of private individuals or legal entities closely affiliated to the member, such as referred to in Chapter 1, Section 4 of the Companies Act2), shall be taken into consideration. Companies belonging to the same group with the company are comparable to the company.

There is no internationally prescribed form for the independence criteria. The above-mentioned criteria are divided into three categories. In the first category, the existence of even one of the circumstances cited in sub-sections a) – e) above means that the director cannot be determined to be independent of the company. Sub-sections f) – g) deal with issues on the basis of which the board may after the evaluation determine that the director is not independent. Sub-sections h) – i) present the criteria on the basis of which board members are determined not to be independent of significant shareholders of the company.

Recommendation 30

Duties of the audit committee

The board shall define the duties of the audit committee.

The duties of the audit committee shall be defined in the charter approved for the committee and tailored to the particular circumstances of the company. The duties of the audit committee may include e.g.:• follow-up of the financial position of the company• supervision of financial reporting (financial statements, interim reports)• evaluation of the adequacy and appropriateness of internal control and risk management• handling of internal audit plans and reports• evaluation of compliance with laws and regulations• preparation of the decision concerning appointment of external auditor• contacts with the auditor, and examination of the auditor's reports• evaluation of the advisory services supplied by the external auditor

The duties of the audit committee shall be disclosed in accordance with recommendation 23.

Recommendation 23

Charter of the committee

The board shall approve a written charter for the committee's work and describe its essential content.

A written charter helps to clarify the role of the committee in the company. Its duties and operating principles must be defined in a way enabling the effective function of the committee.

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フランス

コーポレート・ガバナンス原則(MEDEF and Association Française des Entreprises Privées (AFEP))

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.

ドイツ

コーポレート・ガバナンス原則

5.2 Tasks and Authorities of the Chairman of the Supervisory Board

The Chairman of the Supervisory Board coordinates work within the Supervisory Board, chairs its meetings and attends to the affairs of the Supervisory Board externally.

The Chairman of the Supervisory Board shall also chair the committees that handle contracts with members of the Management Board and prepare the Supervisory Board meetings. He should not be Chairman of the Audit Committee.....

5.3.2 The Supervisory Board shall set up an Audit Committee which, in particular, handles issues of accounting, risk management and compliance, the necessary independence required of the auditor, the issuing of the audit mandate to the auditor, the determination of auditing focal points and the fee agreement. The chairman of the Audit Committee shall have specialist knowledge and experience in the application of accounting principles and internal control processes. He should not be a former member of the Management Board of the company.

7.2.1 Prior to submitting a proposal for election, the Supervisory Board or, respectively, the Audit Committee shall obtain a statement from the proposed auditor stating whether, and where applicable, which business, financial, personal and other relationships exist between the auditor and its executive bodies and head auditors on the one hand, and the enterprise and the members of its executive bodies on the other hand, that could call its independence into question. This statement shall include the extent to which other services were performed for the enterprise in the past year, especially in the field of consultancy, or which are contracted for the following year.

The Supervisory Board shall agree with the auditor that the Chairman of the Supervisory Board/Audit Committee will be informed immediately of any grounds for disqualification or impartiality occurring during the audit, unless such grounds are eliminated immediately.

7.2.2 The Supervisory Board commissions the auditor to carry out the audit and concludes an agreement on the latter's fee.

7.2.3 The Supervisory Board shall arrange for the auditor to report without delay on all facts and events of importance for the tasks of the Supervisory Board which arise during the performance of the audit.

The Supervisory Board shall arrange for the auditor to inform it and/or note in the Auditor's Report if, during the performance of the audit, the auditor comes across facts which show a misstatement by the Management Board and Supervisory Board on the Code.

7.2.4 The auditor takes part in the Supervisory Board's deliberations on the Annual Financial Statements and Consolidated Financial Statements and reports on the essential results of its audit.

イタリア

The Board of Auditors shall ascertain, in the framework of the duties attributed to it by the law, the correct application of the assessment criteria and procedures adopted by the board for evaluating the independence of its members. The result of such controls is notified to the market in the report on corporate governance or in the report of the Board of Auditors to the shareholders' meeting.

The Board of Auditors, in its control of the modalities of concrete implementation of the corporate governance rules, is demanded to verify the correct application of the criteria adopted by the board and of the procedures of assessment utilized by it.

Such procedures make reference to the information provided by the single parties concerned or, however, at disposal of the issuer, since no appropriate investigation activity aimed at identifying any material relations is demanded from the issuer.

When the board deems that the independence requirement exists, in concrete, even in the presence of situations that may be considered as being without independence

– e.g., defining a commercial relationship as not significant in relation to its economic value – it will be sufficient to notify the market of the result of the evaluation, subject to the control of the Board of Auditors on the adequacy of the relevant reasons.

8.P.4. The Board of Directors shall ensure that its evaluations and decisions relating to the internal control system, the approval of the balance sheets and the half yearly reports and the relationships between the issuer and the external auditor are supported by an adequate preliminary activity. To such purpose the Board of Directors shall establish an internal control committee, made up of non-executive directors, the majority of which are independent. If the issuer is controlled by another listed company, the internal control committee shall be made up exclusively of independent directors.

At least one member of the committee must have an adequate experience in accounting and finance, to be evaluated by the Board of Directors at the time of his/her appointment.

Criteria

8.C.1. The Board of Directors, with the assistance of the internal control committee, shall:

- a) define the guide-lines of the internal control system, so that the main risks concerning the issuer and its subsidiaries are correctly identified, as well as adequately measured, managed and monitored, determining, moreover, the criteria for determining whether such risks are compatible with a sound correct management of the company;
- b) identify an executive director (usually, one of the managing directors) for supervising the functionality of the internal control system;
- c) evaluate, at least on an annual basis, the adequacy, effectiveness and actual functioning of the internal control system;
- d) describe, in the report on corporate governance, the essential elements of the internal control system, expressing its evaluation on the overall adequacy of the same. Moreover, the Board of Directors shall, upon proposal of the executive director in charge of supervising the functionality of the internal control system and

after consulting with the internal control committee, appoint and revoke one or more persons in charge of internal control and define their remuneration in line with the company's Policies.

8.C.2. The Board of Directors shall exercise its functions relating to the internal control system taking into due consideration the reference models and the best practices existing on the national and international fields.

Particular attention shall be devoted to the organization and management models adopted pursuant to legislative decree no. 231 of 8th June 2001.

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

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

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

8.C.5. The executive director responsible for supervising the functionality of the internal control system, shall:

- a) identify the main business risks, taking into account the characteristics of the activities carried out by the issuer and its subsidiaries, and submit them periodically to the review of the Board of Directors;
- b) implement the guidelines defined by the Board of Directors, through the design, implementation and management of the internal control system, constantly monitoring its overall adequacy, effectiveness and efficiency; moreover, it shall adjust such system to the dynamics of the operating conditions and the legislative and regulatory framework;
- c) propose to the Board of Directors the appointment, revocation and remuneration of one or more persons in charge of internal control.

8.C.6. Each person in charge of internal control shall:

- a) ensure that the internal control system is always adequate, fully operating and effective;
- b) not be responsible for any operational divisions and shall not report hierarchically to any manager of operational divisions, including the administration and finance divisions;

- c) have direct access to all useful information for the performance of his/her duties;
- d) have the availability of adequate means for the performance of the functions assigned to him/her;
- e) report about his/her activity to the internal control committee and the board of auditors; moreover, they could be required to report also to the executive director responsible for the supervision of the functionality of the internal control system.

In particular, he/she shall report about the procedures according to which the risk management is conducted, as well as about the compliance with the plans defined for their reduction and express his/her evaluation of the internal control system to achieve an acceptable overall risk profile.

8.C.7. The issuer shall establish an internal audit function. The person responsible for internal control shall usually coincide with the person responsible for the internal audit function.

8.C.8. The internal audit functions may be entrusted, as a whole or by business segments, to persons external to the issuer, provided, however, that they are endowed with adequate professionalism and independence; these persons may also be responsible for the internal control. The adoption of such organizational choices, with a satisfactory explanation of the relevant reasons, shall be disclosed to the shareholders and the market in the report on corporate governance.

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

The Committee is aware that, in addition to the different functions performed, the internal control committee carries out activities the objective scope of which coincides in part with the matters submitted to the supervision of the Board of Auditors.

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

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

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

ARTICLE 10 – MEMBERS OF THE BOARD OF AUDITORS***Principles***

10.P.1. The appointment of auditors shall occur according to a transparent procedure. It shall ensure, inter alia, timely adequate information on the personal and professional characteristics of the candidates.

10.P.2. The auditors shall act with autonomy and independence also vis-a-vis the shareholders, which elected them.

10.P.3. The issuer shall adopt suitable measures to ensure an effective performance of the duties typical of the board of auditors.

Criteria

10.C.1. The lists of candidates to the position of auditor, accompanied by detailed information on the personal traits and professional qualifications of the candidates, shall be deposited at the company's registered office at least fifteen (15) days before the date fixed for the shareholders' meeting. The lists complete of the information on the characteristics of the candidates shall be timely published through the internet site of the issuer.

10.C.2. The auditors shall be chosen among people who may be qualified as independent also on the basis of the criteria provided by this Code with reference to the directors.

The Board of Auditors shall check the compliance with said criteria after the appointment and subsequently on an annual basis, including the result of such verification in the report on corporate governance.

10.C.3. The auditors shall accept the appointment when they believe that they can devote the necessary time to the diligent performance of their duties.

10.C.4. An auditor who has an interest, either directly or on behalf of third parties, in a certain transaction of the issuer, shall timely and exhaustively inform the other auditors and the chairman of the board about the nature, the terms, origin and extent of his/her interest.

10.C.5. The board of auditors shall monitor the independence of the auditing firm, verifying both the compliance with the provisions of law and regulation governing the subject matter thereof, and the nature and extent of services other than the accounting control provided to the issuer and its subsidiaries by the same auditing firm and the entities belonging to the network of the same.

10.C.6. In the framework of their activities, the auditors may demand from the internal audit function to make assessments on specific operating areas or transactions of the company.

10.C.7. The board of auditors and the internal control committee shall timely exchange material information for the performance of their respective duties.

Comment

As provided in Article 6 for the appointment of directors, the Committee recommends that the members of the board of auditors should similarly be elected by means of a transparent procedure and that shareholders should receive the information they need to exercise their voting rights in an informed manner.

Also in the event of shareholders' meetings for the appointment of auditors the same observations as set out in the comment to Article 6 on the appointment of directors apply, in particular regarding the need for transparency of the votes expressed by qualified shareholders, also in the presence of a voting system by

secret ballot, if it is considered applicable to the matter under review. Therefore, reference is made to such observations.

The Committee believes that in a correct system of Corporate Governance the interests of the generality of shareholders must all be put on the same footing and equally protected and safeguarded.

The Committee is convinced that the interests of the majority and those of the minority shall be both be taken into consideration in the election of the governing bodies; subsequently, the governing bodies, and hence also the members of the board of auditors, must work exclusively in the interest of the company and to create value for the generality of shareholders.

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

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

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Principle 9 – Financial reporting, internal control and risk management

The board will establish strict rules, designed to protect the company's interests, in the areas of financial reporting, internal control and risk management.

Recommendation 9.1. The board should establish an audit committee from among its members to assist in the discharge of its responsibilities in the areas of financial reporting, internal control and risk management. It should define the committee's internal regulations.

If the company does not have an audit committee, the need to create one should be assessed annually. Until an audit committee has been set up, the board should deal with these tasks and responsibilities, in close collaboration with the internal and external auditors.

Guideline

Until such time as the board sets up an audit committee, it should meet at least twice a year with the internal and external auditors to discuss issues connected with financial reporting, internal control and risk management.

Recommendation 9.2. The board or, where relevant, the audit committee, should regularly examine the effectiveness of the financial reporting, internal control and risk management system adopted by the company. It should make sure that the audits carried out and the subsequent audit reports conform to the audit plan approved by the board or the audit committee.

Recommendation 9.3. The audit committee should be composed exclusively of non-executive directors. It should contain a sufficient number of independent directors.

The chairman of the board should not chair the audit committee.

The board should ensure that the audit committee has access to the necessary skills to effectively fulfil its role, in particular in the area of finance.

The chairman of the audit committee should prepare minutes of its meetings.

Guideline

The audit committee should be chaired by an independent director.

The audit committee should be composed of a majority of independent directors.

At least one of the members of the audit committee should have had training in finance or accounting.

Recommendation 9.4. The audit committee may invite any other person whose collaboration it deems to be advantageous to assist it in its work and to attend its meetings. In addition, it should be authorised to meet with individuals without the presence of any executives. It should meet with the internal and external auditors at least once a year without the presence of any executives.

Recommendation 9.5. The audit committee should regularly evaluate its own effectiveness and make recommendations to the board for the necessary adjustments in its internal regulations.

Recommendation 9.6. The audit committee should meet as often as it deems necessary, but at least twice a year.

Guideline

The audit committee should normally meet four times a year. Two of its meetings should deal with the half-yearly and yearly results and their disclosure to the shareholders and the public.

Recommendation 9.7. After each meeting of the audit committee, its chairman should make a report to the board, identifying the issues in respect of which he considers that action or improvement is called for and making recommendations on the measures that should be taken.

Recommendation 9.8. An independent internal audit function should be established. Its resources and skills should be appropriate to the nature, size and complexity of the company.

Recommendation 9.9. The audit committee should assist the board in monitoring the reliability and integrity of the financial information provided by the company, in particular by reviewing the relevance and consistency of the accounting standards applied by the company (including the consolidation criteria).

Recommendation 9.10. The audit committee should assist the board at least once a year to review the internal control and risk management systems, with a view to ensuring that the main risks have been correctly identified, managed and disclosed.

Recommendation 9.11. The internal and external auditors should, in addition to maintaining an effective working relationship with management, have free access to the board. To this end, the audit committee should act as principal contact point.

The internal and external auditors may at all times approach the chairman of the audit committee or the chairman of the board directly.

The audit committee should receive timely information regarding any issue raised by the internal or external auditor.

Recommendation 9.12. The audit committee should be informed of the internal auditor's work programme and should receive periodic summaries of his work. It may make recommendations regarding the internal auditor's work programme.

It should monitor the effectiveness of the internal audit function and make sure that the internal auditor has adequate resources for the performance of the tasks entrusted to him.

In the event of the resignation of the internal auditor it should investigate the issues leading to this and make recommendations concerning any measures that are needed.

Recommendation 9.13. The audit committee should be informed of the external auditor's work programme and receive a report from the auditor describing all existing relationships between the external auditor on the one hand and the company and its group on the other hand. It may make recommendations regarding the external auditor's work programme.

The audit committee should make recommendations to the board regarding the selection, appointment, reappointment and removal of the external auditor and, in addition, the terms and conditions of their remuneration.

It should monitor the independence and objectivity of the external auditor, in particular by monitoring the rotation of the partners of the audit firm.

It should examine the nature and scope of non-audit services provided, with a view to avoiding any conflict of interest. To this end, the audit committee should establish an official policy specifying which non-audit services shall be (a) prohibited (b) authorised after consideration by the committee and (c) authorised ex officio without the need for consultation of the committee.

In addition, the audit committee should monitor the effectiveness of the external audit process and check that the executive management acts on the letter of recommendations submitted to it by the external auditor.

In the event of the resignation of the external auditor, it should investigate the issues leading to this and make recommendations concerning any measures that are needed.

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Board committees

There is a clear international trend for more extensive use of board committees and for the board of directors to provide information on its use of sub-committees, their mandates, membership and working processes. In many countries the prevalence of board committees reflects structures for managing and directing companies that differ appreciably from the Norwegian model.

Under Norwegian law, the members of the board of directors are jointly responsible for its decisions. Accordingly, where board committees are appointed, their role must be seen as preparing matters for final decision by the board as a whole. Material information that comes to the attention of board committees should also be communicated to the other members of the full board. If the chief executive is a member of the board, an audit committee and a compensation committee should be established in order to ensure the greatest possible independence for the board's deliberations, cf. Section 8.

However, consideration should also be given to appointing an audit committee and/or a compensation committee even where the executive management is not represented on the board of directors. Appointing such committees will serve to increase the focus on the board's responsibility for remuneration, financial reporting and internal control, and create opportunities for board members to develop greater specialist expertise in these areas.

The duties of an audit committee will typically include:

- preparations for the board's quality control of the company's financial reporting
- monitoring the company's internal control arrangements and its risk evaluation systems, as well as monitoring the internal audit function where this exists
- maintaining regular contact with the company's auditor in respect of the audit of the company's annual accounts/consolidated accounts
- reviewing with the auditor and monitoring the independence of the auditor/accounting firm used by the company, including monitoring non-audit services provided by the auditor/accounting firm.
- to make recommendations for the election of the auditor.

Companies that have a corporate assembly should seek recommendations from the audit committee.

The members of the audit committee should have accounting expertise.

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The management board is responsible for complying with all relevant legislation and regulations, for managing the risks associated with the company activities and for financing the company. The management board shall report related developments to and shall discuss the internal risk management and control systems with the supervisory board and its audit committee.

II.1.4 The management board shall declare in the annual report that the internal risk management and control systems are adequate and effective and shall provide clear substantiation of this. In the annual report, the management board shall report on the operation of the internal risk management and control system during the year under review. In doing so, it shall describe any significant changes that have been made and any major improvements that are planned, and shall confirm that they have been discussed with the audit committee and the supervisory board.

III.5 Composition and role of three key committees of the supervisory board

Principle

If the supervisory board consists of more than four members, it shall appoint from among its members an audit committee, a remuneration committee and a selection and appointment committee. The function of the committees is to prepare the decision-making of the supervisory board. If the supervisory board decides not to appoint an audit committee, remuneration committee or selection and appointment committee, best practice provisions III.5.4, III.5.5, III.5.8, III.5.9, III.5.10, III.5.13, V.1.2, V.2.3 and V.3.1 shall apply to the entire supervisory board.

In its report, the supervisory board shall report on how the duties of the committees have been carried out in the financial year.

III.5.4 The audit committee shall in any event focus on supervising the activities of the management board with respect to:

- a) the operation of the internal risk management and control systems, including supervision of the enforcement of the relevant legislation and regulations, and supervising the operation of codes of conduct;
- b) the provision of financial information by the company (choice of accounting policies, application and assessment of the effects of new rules, information about the handling of estimated items in the annual accounts, forecasts, work of internal and external auditors, etc.);
- c) compliance with recommendations and observations of internal and external auditors;
- d) the role and functioning of the internal audit department;
- e) the policy of the company on tax planning;
- f) relations with the external auditor, including, in particular, his independence, remuneration and any non-audit services for the company;
- g) the financing of the company;
- h) the applications of information and communication technology (ICT).

III.5.5 The audit committee shall act as the principal contact for the external auditor if he discovers

irregularities in the content of the financial reports.

III.5.6 The audit committee shall not be chaired by the chairman of the supervisory board or by a former member of the management board of the company.

III.5.7 At least one member of the audit committee shall be a financial expert within the meaning of best practice provision III.3.2.

III.5.8 The audit committee shall decide whether and, if so, when the chairman of the management board (chief executive officer), the chief financial officer, the external auditor and the internal auditor, should attend its meetings.

III.5.9 The audit committee shall meet with the external auditor as often as it considers necessary, but at least once a year, without management board members being present.

V.1.2 The audit committee shall determine how the external auditor should be involved in the content and publication of financial reports other than the annual accounts.

V.2 Role, appointment, remuneration and assessment of the functioning of the external auditor

Principle

The external auditor is appointed by the general meeting of shareholders. The supervisory board shall nominate a candidate for this appointment, for which purpose both the audit committee and the management board advise the supervisory board. The remuneration of the external auditor, and instructions to the external auditor to provide non-audit services, shall be approved by the supervisory board on the recommendation of the audit committee and after consultation with the management board.

Best practice provisions

V.2.1 The external auditor may be questioned by the general meeting of shareholders in relation to his statement on the fairness of the annual accounts. The external auditor shall therefore attend and be entitled to address this meeting.

V.2.2 The management board and the audit committee shall report their dealings with the external auditor to the supervisory board on an annual basis, including his independence in particular (for example, the desirability of rotating the responsible partners of an external audit firm that provides audit services, and the desirability of the same audit firm providing non-audit services to the company). The supervisory board shall take this into account when deciding its nomination for the appointment of an external auditor, which nomination shall be submitted to the general meeting of shareholders.

V.2.3 At least once every four years, the supervisory board and the audit committee shall conduct a thorough assessment of the functioning of the external auditor within the various entities and in the different capacities in which the external auditor acts. The main conclusions of this assessment shall be communicated to the general meeting of shareholders for the purposes of assessing the nomination for the appointment of the external auditor.

V.3 Internal auditor function

Principle The internal auditor, who can play an important role in assessing and testing the internal risk management and control systems, shall operate under the responsibility of the management board .

Best practice provision

V.3.1 The external auditor and the audit committee shall be involved in drawing up the work schedule of the internal auditor. They shall also take cognizance of the findings of the internal auditor.

V.4 Relationship and communication of the external auditor with the organs of the company

Principle

The external auditor shall, in any event, attend the meeting of the supervisory board, at which the annual accounts are to be adopted or approved. The external auditor shall report his findings in relation to the audit of the annual accounts to the management board and the supervisory board simultaneously.

Best practice provisions

V.4.1 The external auditor shall in any event attend the meeting of the supervisory board, at which the report of the external auditor with respect to the audit of the annual accounts is discussed, and at which annual accounts are to approved or adopted. The external auditor shall receive the financial information underlying the adoption of the quarterly and/or half-yearly figures and other interim financial reports and shall be given the opportunity to respond to all information.

V.4.2 When the need arises, the external auditor may request the chairman of the audit committee for leave to attend the meeting of the audit committee.

V.4.3 The report of the external auditor pursuant to article 2:393, paragraph 4, Civil Code shall contain the matters which the external auditor wishes to bring to the attention of the management board and the supervisory board in relation to his audit of the annual accounts and the related audits. The following examples can be given:

A. with regard to the audit:

- information about matters of importance to the assessment of the independence of the external auditor;
- information about the course of events during the audit and cooperation with internal auditors and/or any other external auditors, matters for discussion with the management board, a list of corrections that have not been made, etc.

B. with regard to the financial figures:

- analyses of changes in shareholders' equity and results, which do not appear in the information to be published, and which, in the view of the external auditor, contribute to an understanding of the financial position and results of the company;
- comments regarding the processing of one-off items, the effects of estimates and the manner in which they have been arrived at, the choice of accounting policies, when other choices were possible, and special effects of such policies;
- comments on the quality of forecasts and budgets.

C. with regard to the operation of the internal risk management and control systems (including the reliability and continuity of automated data processing) and the quality of the internal provision of information:

- points for improvement, gaps and quality assessments;
- comments about threats and risks to the company and the manner in which they should be reported in the particulars to be published;
- compliance with articles of association, instructions, regulations, loan covenants, requirements of external supervisors, etc.

V. The audit of the financial reporting and the position of the internal auditor function and of the external auditor

V.1.2

The financial reports and press releases issued by the management board often have considerable influence on the financial markets, indeed sometimes even greater influence than the annual report and the annual accounts. However, the supervision exercised by the supervisory board, audit committee and external auditor at present often focuses to a large extent on the annual accounts rather than on other financial reports and press releases. The Committee has therefore included a provision to ensure that such reports and press releases are included in the supervision, without providing a rigid specification of the role of the external auditor. This means among other things that the supervisory board / audit committee will receive such reports and press releases before they are issued, and be given the opportunity to ask questions and make comments. Furthermore, it is up to the audit committee to determine how and to what extent the external auditor should perform specific duties in relation to such reports and press releases.

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19 The Board of Directors should provide for systems for internal control and risk management suitable for the company.

- The internal control system should be geared to the size, the complexity and risk profile of the company.
- The internal control system should, depending on the specific nature of the company, also cover risk management. The latter should apply to both financial and operational risks.
- The company should set up an Internal Audit function which should report to the Audit Committee or, as the case may be, to the Chairman of the Board.

23 The Board of Directors should set up an Audit Committee.

- The Committee should consist of non-executive, preferably independent members of the Board of Directors.
- A majority of members, including the Chairman, should be financially literate.

24 The Audit Committee should form an independent judgement of the quality of the external auditors, the internal control system and the annual financial statements.

- The Audit Committee should form an impression of the effectiveness of the external audit (the statutory auditors or, if applicable, the group auditors), and the internal audit as well as of their mutual cooperation.
- The Audit Committee should additionally assess the quality of the internal control system, including risk management and should have an appreciation of the state of compliance with norms within the company.
- The Audit Committee should review the individual and consolidated financial statements as well as the interim statements intended for publication. It should discuss these with the Chief Financial Officer and the head of the internal audit and, separately, should the occasion warrant, with the head of the external audit.
- The Audit Committee should decide whether the individual and consolidated financial statements be recommended to the Board of Directors for presentation to the General Shareholders' Meeting.
- The Audit Committee should assess the performance and the fees charged by the external auditors and ascertain their independence. It should examine compatibility of the auditing responsibilities with any consulting mandates.

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3.8.2 The board is to establish an audit committee consisting of at least three directors. The majority of the audit committee members are to be independent of the company and senior management. At least one member of the committee is to be independent of the company's major shareholders. A board member who is part of senior management may not be a member of the committee.

In companies with smaller boards, the entire board may perform the audit committee's tasks, provided that a director who is part of the senior management does not participate in the work.

INSTRUCTION

The board of directors may decide whether the size of the board means that it is more practical to carry out these duties within the board or through a separate committee. If deviation from the main rule occurs for reasons other than the size of the board, this is to be reported and explained.

3.8.3 The audit committee is to:

- be responsible for the preparation of the board's work to ensure the quality of the company's financial statements,⁶
- meet regularly with the company's auditors to keep informed of the aims and scope of the audit work and to discuss co-ordination between external and internal audit and views on the company's risks,
- establish guidelines on other services in addition to audit that the company is allowed to procure from the company's auditors,
- evaluate the audit work and inform the company's nomination committee, or where appropriate, the separate nomination committee appointed to propose auditors, of the result of the evaluation, and
- assist the company's nomination committee in preparing nominations for auditors and recommendations on audit fees.

3.8.4 At least once a year, the board is to meet the company's auditors without the managing director or any other company executive being present.

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C.3 Audit Committee and Auditors

Main Principle

The board should establish formal and transparent arrangements for considering how they should apply the financial reporting and internal control principles and for maintaining an appropriate relationship with the company's auditors.

Code provisions

C.3.1 The board should establish an audit committee of at least three, or in the case of smaller companies¹³ two, members, who should all be independent non-executive directors. The board should satisfy itself that at least one member of the audit committee has recent and relevant financial experience.

C.3.2 The main role and responsibilities of the audit committee should be set out in written terms of reference and should include:

- to monitor the integrity of the financial statements of the company, and any formal announcements relating to the company's financial performance, reviewing significant financial reporting judgements contained in them;
- to review the company's internal financial controls and, unless expressly addressed by a separate board risk committee composed of independent directors, or by the board itself, to review the company's internal control and risk management systems;
- to monitor and review the effectiveness of the company's internal audit function;
- to make recommendations to the board, for it to put to the shareholders for their approval in general meeting, in relation to the appointment, re-appointment and removal of the external auditor and to approve the remuneration and terms of engagement of the external auditor;
- to review and monitor the external auditor's independence and objectivity and the effectiveness of the audit process, taking into consideration relevant UK professional and regulatory requirements;
- to develop and implement policy on the engagement of the external auditor to supply non-audit services, taking into account relevant ethical guidance regarding the provision of non-audit services by the external audit firm; and to report to the board, identifying any matters in respect of which it considers that action or improvement is needed and making recommendations as to the steps to be taken.

C.3.3 The terms of reference of the audit committee, including its role and the authority delegated to it by the board, should be made available. A separate section of the annual report should describe the work of the committee in discharging those responsibilities.

C.3.4 The audit committee should review arrangements by which staff of the company may, in confidence, raise concerns about possible improprieties in matters of financial reporting or other matters. The audit committee's objective should be to ensure that arrangements are in place for the proportionate and independent investigation of such matters and for appropriate follow-up action.

C.3.5 The audit committee should monitor and review the effectiveness of the internal audit activities. Where

there is no internal audit function, the audit committee should consider annually whether there is a need for an internal audit function and make a recommendation to the board, and the reasons for the absence of such a function should be explained in the relevant section of the annual report.

C.3.6 The audit committee should have primary responsibility for making a recommendation on the appointment, reappointment and removal of the external auditors. If the board does not accept the audit committee's recommendation, it should include in the annual report, and in any papers recommending appointment or re-appointment, a statement from the audit committee explaining the recommendation and should set out reasons why the board has taken a different position.

C.3.7 The annual report should explain to shareholders how, if the auditor provides non-audit services, auditor objectivity and independence is safeguarded.

The annual report should also include:

- a separate section describing the work of the audit committee in discharging its responsibilities (C.3.3);
- where there is no internal audit function, the reasons for the absence of such a function (C.3.5);
- where the board does not accept the audit committee's recommendation on the appointment, reappointment or removal of an external auditor, a statement from the audit committee explaining the recommendation and the reasons why the board has taken a different position (C.3.6); and
- an explanation of how, if the auditor provides non-audit services, auditor objectivity and independence is safeguarded (C.3.7).

The following information should be made available (which may be met by placing the information on a website that is maintained by or on behalf of the company):

- the terms of reference of the nomination, remuneration and audit committees, explaining their role and the authority delegated to them by the board (A.4.1, B.2.1 and C.3.3);
- the terms and conditions of appointment of non-executive directors (A.4.4); and
- where remuneration consultants are appointed, a statement of whether they have any other connection with the company (B.2.1).

The board should set out to shareholders in the papers recommending appointment or reappointment of an external auditor:

- if the board does not accept the audit committee's recommendation, a statement from the audit committee explaining the recommendation and from the board setting out reasons why they have taken a different position (C.3.6).

スペイン

(1) オリベンシア報告書[1998]

For this reason, it is recommended that the related sub-committees be formed. The Board is responsible for determining their functions and powers, and in this task it should be guided by the criteria developed in the form of best practices in both Spain and other countries. In any event, it would be appropriate to note the basic missions of the various committees. The mission of the Audit Committee is basically to evaluate the company's accounting verification system, ensure the independence of the external auditor and review the internal control system. ...The Compliance Committee's role is to oversee the observance of the rules comprising the company's governance system, periodically review its results and make proposals for reform to the Board.

10.2. Regular financial reporting.

The annual financial information is a fundamental element in the policy of transparency and, consequently, the law surrounds its preparation with all types of safeguards, including verification by an external auditor. Nevertheless, capital markets need more frequent flows of information, hence the obligation imposed by capital market regulations to provide information at half-yearly and even quarterly intervals; moreover, prudence often requires financial information to be disclosed at more frequently still. In all these cases, the maximum homogeneity and reliability should be the guiding principles. Consequently, we recommend that the financial information released to the markets should be drafted under the same principles, criteria and professional practices as used for the annual accounts so as to ensure transparency when conveying to markets and investors the "picture of the activity, results and reasonable continuity" of the company. Experience shows that quarterly or half-yearly reports may suddenly be contradicted by the annual accounts, which can be very detrimental to investors who previously placed reliance on interim information which was not rigorously drafted. Without going so far as to recommend that interim information be subjected to external audit (not even a less rigorous audit), it would be advisable that such information be reviewed beforehand by the Audit Committee.

11.1. The role of the Audit Committee.

The audit of the annual accounts is an element of capital importance within the system of controls over limited companies. Auditors are called upon to verify the financial statements prepared by the management team and, in this connection, they acquire important obligations. The Board of Directors must take the necessary measures to ensure that the auditors discharge their duties correctly and, particularly, that they are free from interference by the executive line. One of the principal measures in this connection is the establishment of an Audit Committee with the features and powers discussed above (3.6). To discharge its duties, the Committee must be given at least the power: (a) to propose the appointment of the auditor, the conditions of his contract, the scope of his professional mandate and, where appropriate, the rescission or non-renewal of the appointment; (b) to review the company's accounts, to oversee compliance with the legal requirements and

the correct application of generally accepted accounting principles, and to issue opinions on proposals by management to modify the accounting principles and criteria; (c) to serve as a channel of communication between the Board of Directors and the auditors, to evaluate the results of each audit and the responses from the management team to its recommendations, and to mediate and arbitrate in the event of discrepancies between management and the auditor in connection with the principles and criteria which are applicable in preparing the financial statements; (d) to check the suitability and integrity of the internal control systems and to review the designation and replacement of the persons in charge of them; (e) to supervise compliance with the audit contract and to procure that the auditor's opinion on the financial statements and the main contents of the auditor's report are drafted clearly and precisely.

RECOMMENDATIONS

The companies to which this report is addressed are recommended to consider the following measures:

8. The Board of Directors should create sub-Committees for control purposes, composed exclusively of non-executive directors, to deal with matters of accounting information and control (Audit Committee), the selection of directors and senior executives (Nomination Committee), the determination and review of remuneration policies (Remuneration Committee) and the evaluation of the governance system (Compliance Committee).
20. All the periodical financial information, in addition to the annual report, which is released to the markets should be drafted under the same professional principles and practices as the annual accounts and should be verified by the Audit Committee before release.
21. The Board of Directors and the Audit Committee should monitor situations which might jeopardise the independence of the company's external auditors and, specifically, they should verify the percentage of the audit firm's total revenues represented by the fees paid to it under all headings, and professional services other than auditing should be publicly disclosed.
23. The Board of Directors should include information about its rules of governance in the annual report, and justify any departures from the recommendations of this Code.

(2) 金融市場法

株式または社債を上場している会社についての監査委員会の設置強制(2002年法律53号による追加規定第18項)

Audit Committee

Issuing companies whose shares or bonds are listed on official secondary securities markets must have an Audit Committee, which must consist of a majority of non-executive directors appointed by the Board of Directors, and which must appoint its Chairperson from among those non-executive directors. The Chairperson must be replaced every four years and may be reappointed one year after termination of his period of office. The number of members, the competencies and the working rules of that Committee shall be laid down by the company's Articles of Association and must foster its independence. Its powers shall include

at least the following:

1. Inform the Shareholders' Meeting on questions raised by shareholders regarding matters under its competence.
2. Make proposals to the Board of Directors to be submitted to the Shareholders' Meeting regarding the appointment of external auditors as envisaged in Article 204 of the Consolidated Text of the Spanish Public Companies Law approved by Legislative Royal Decree 1564/1989, of 22 December.
3. Supervise the internal audit unit if such a body exists within the company's organisation.
4. Be informed of the company's financial reporting process and internal control systems.
 5. Liaise with the external auditors in order to receive information on any matters that may jeopardise their independence and any other matters relating to the audit process and any other communications provided for in the audit legislation and audit technical regulations.

(3) 2006年CNMVコーポレート・ガバナンス原則草案

61. In addition to the Audit Committee, which is mandatory under the Securities Market Law, the Board of Directors will form a Committee, or two separate committees, of Nomination and Remuneration.

The rules governing the make-up and operation of the Audit Committee and the Committee or committees of Nominations and Remuneration will be set forth in the board regulations, and will include the following at least:

- a) The Board of Directors will appoint the members of these committees with regard to the knowledge, skills and experience of its directors and the terms of reference of each committee; will discuss their proposals and reports; and will be formally responsible for overseeing and evaluating their work;
- b) These committees will be composed exclusively of external directors and will have a minimum of three members. This is without prejudice to executive directors or senior officers attending meetings, for informational purposes, at the committees' invitation. However, the Executive Chairman may only attend on exceptional occasions and with the unanimous agreement of committee members.
- c) All committees should have a majority of independent directors and be chaired by one of their number.
- d) They may engage external advisors, when they feel this is necessary for the discharge of their duties.
- e) Meeting proceedings will be minuted and a copy sent to all Board members.

62. The job of supervising compliance with internal codes of conduct and corporate governance rules will be assigned to the Audit Committee, the Nomination Committee or, as the case may be, separate Compliance or Corporate Governance committees.

Audit Committee

63. All members of the Audit Committee, particularly its chairman, will be appointed with regard to their knowledge and experience in accounting and auditing matters.

64. Listed companies will have an internal audit function, under the supervision of the Audit Committee, to ensure the proper operation of internal information and control systems. In the absence of such a function, the company should review the need for one at least annually, with the Audit Committee in the meantime

entrusted with monitoring the integrity of the said systems.

65. The head of internal audit or, where no such function exists, the company's senior internal management control officer shall present an annual work programme to the Audit Committee, report to it directly on any incidents arising during its implementation, and submit an activities report at the end of each year.

66. Control and risk management policy shall specify at least:

- a) The different types of risk (operational, technological, financial, legal, reputational...) the company is exposed to, with the inclusion under financial or economic risks of contingent liabilities and other off-balance-sheet risks;
- b) The probability of risks occurring and the determination of the risk level the company sees as acceptable;
- c) Measures in place to mitigate the impact of risk events should they occur;
- d) The internal reporting and control systems to be used to control and manage the above risks, including contingent liabilities and off-balance-sheet risks.

67. The Audit Committee's role will be:

1. With respect to internal control and reporting systems:

- a) Monitor the preparation and the integrity of the financial information prepared on the company and, where appropriate, the group, checking for compliance with legal provisions and the correct application of accounting principles.
- b) Review internal control and risk management systems on a regular basis, so main risks are properly identified, managed and disclosed.
- c) Oversee the independence and effectiveness of the internal audit function; propose the selection, appointment, reappointment and removal of the head of internal audit; propose the resources to be assigned to the internal audit function; receive regular report backs on its activities; and verify that senior management are acting on the conclusions and recommendations of its reports.
- d) Establish and supervise a mechanism whereby staff can report any irregularities they detect in the course of their work anonymously or confidentially.

2. With respect to the external auditor:

- a) Make recommendations to the Board for the selection, appointment, reappointment and removal of the external auditor, and the terms and conditions of his engagement.
- b) Receive regular information from the external auditor on the progress and findings of the audit programme, and check that senior management are acting on its recommendations.
- c) Oversee the independence of the external auditor, to which end:
 - i) The company will notify any change of auditor to the CNMV as a significant event, stating the reasons for its decision.
 - ii) The Committee will ensure that the company and the auditor adhere to current regulations on the provision of non-audit services, the limits on the concentration of the auditor's business and, in general, other requirements designed to safeguard auditors' independence;
 - iii) The Committee will investigate the issues giving rise to the resignation of any external auditor.

68. The Audit Committee may meet with any company employee or manager, even ordering their appearance

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without the presence of any senior officer.

69. The Audit Committee will report on the following points from Recommendation 9 before Board decision-making:

- a) The financial information that listed companies must periodically disclose. The Committee shall ensure that intermediate statements are drawn up under the same accounting principles as the annual statements and, to this end, may ask the external auditor to conduct a limited review.
- b) The creation or acquisition of shares in special purpose vehicles or entities resident in countries or territories considered tax havens, and any other transactions or operations of a comparable nature whose complexity might impair the transparency of the group.
- c) Related-party transactions.

70. The Board of Directors shall present the annual accounts to the General Shareholders' Meeting without reservations or qualifications in the audit report. Should such reservations or qualifications exist, both the Board Chairman and the auditors will give a clear account to shareholders of their scope and content.

ポルトガル

商事会社法及びコーポレート・ガバナンス原則(草案)

II.1.2.1 The management and supervision of the companies may take on a 3 model format: i) Board of Directors, Audit Board and Statutory Auditor; ii) Board of Directors, Audit Committee and a Statutory Auditor; iii) Executive Board of Directors, General and Supervisory Board and a Statutory Auditor.

II.1.2.2. In the first 2 model formats, the Board of Directors is responsible for managing the activities of the company, and shall be subordinate to the resolutions of shareholders or to the intervention of the Supervisory Board or the Audit Committee only in those cases where the Law or the articles of association stipulate it. In the third model format, the Executive Board of Directors is responsible for managing the activities of the company, without prejudice to the articles of association of the company establishing that the Executive Board of Directors is required to obtain prior consent from the General and Supervisory Board before practicing certain categories of acts.

II.1.2.4. The Auditing activities are carried out by the Audit Board and the Statutory Auditor for the first model format, the Audit Committee and the Statutory Auditor for the second model format and the General and Supervisory Board and Statutory Auditor for the third model format. In any of the previous cases, the Statutory Auditor shall proceed with the examination and statutory audits.

II.1.3.2. The rules on incompatibility applicable to members of the Audit Committee are alike for members of the Audit Board and the Statutory Auditor but are not applicable to the exercise of management duties in the company itself⁴⁵. However, the carrying out of executive duties in the company is prohibited.

II.1.3.3. The incompatibilities applicable to members of the Audit Board and the Statutory Auditor are also applicable to members of the General and Supervisory Board, except for those mentioned in point vi) of II.13.1., which apply solely to members of the Financial Matters Committee. Apart from being Director of the company, it is considered incompatible to carry out management duties in another company that finds itself in a controlling or group relationship, whilst carrying out duties in the General and Supervisory Board.

II.1.3.4. The majority of the members of the Audit Board and the Audit Committee shall be independent.

II.1.4.4. The members of the Audit Committee are elected during the General Meeting under the same terms as the other Directors. The proposal lists for the Board of Directors shall name the members that will comprise the Audit Committee. The Chair of the Audit Committee is appointed by the General Meeting or by its peers. The members of the Audit Committee shall include at least one member holding an undergraduate degree suitable for the exercise of his/her functions and be knowledgeable in auditing and accountancy.

II.1.4.5. The members of the Audit Board are elected by the General Meeting for a maximum period of four years and may be re-elected. The members of the Audit Board shall include at least one member holding an undergraduate degree suitable for the exercise of his/her functions and

be knowledgeable in auditing and accountancy. The Chair of the Audit Board is appointed by the General Meeting or in the absence of former, by its members.

II.1.4.6. The Statutory Auditor is elected upon proposal of either, the Audit Board, the Audit Committee or the General and Supervisory Board, depending on the adopted management and supervisory model.

II.1.7.3. The remuneration of the members of the General and Supervisory Board, the Audit Board and the Audit Committee shall consist exclusively of a fixed amount.

II.4.5. The Audit Committee, as a supervisory body which also includes a 'Board of Directors' model, is responsible for: i) overseeing the management of the company; ii) ensuring that the law is upheld and the articles of association are observed; iii) verifying the regularity of the books, accounting records and supporting documents; iv) verifying, when deemed fit and by means considered to be adequate, the extension of cash and stock of any kind of the assets or property belonging to the company or received by it by way of pledge, deposit or to some other end; v) verifying the accuracy of the financial statements; vi) verifying whether the accounting policies and valuing criteria adopted by the company lead to the correct evaluation of the assets and the results; vii) furnishing statements of opinion on the management report and accounts for the financial year; viii) convening the General Meeting whenever the Chair of the Board fails do so; ix) overseeing whether the risk management, internal control and internal audit systems are running smoothly, if any exist; x) receiving reports by shareholders, employees and other persons of the company on irregularities; xi) overseeing the process for preparing and disclosing financial information; m) proposing the appointment of the statutory auditor to the General Meeting; xii) overseeing auditing on documents of the company's financial statements; xiii) overseeing the statutory auditor's independence, particularly as regards additional supply of services; xiv) employing experts that collaborate with one or more of their members during the exercise of their duties, and that the employment and remuneration of these experts must take into account the importance of matters assigned to them as well as the economic situation of the company; and, xv) carrying out any other duties ascribed by Law or by the articles of association.

II.4.6. The Audit Board is responsible for: i) overseeing the management of the company; ii) ensuring that the law is upheld and the articles of association are observed; iii) verifying the regularity of the books, accounting records and supporting documents; iv) verifying, when deemed fit and by means considered to be adequate, the extension of cash and stock of any kind of the assets or property belonging to the company or received by it by way of pledge, deposit or to some other end; v) verifying the accuracy of the financial statements; vi) verifying whether the accounting policies and valuing criteria adopted by the company lead to the correct evaluation of the assets and the results; vii) furnishing statements of opinion on the management report and accounts for the financial year; viii) convening the General Meeting whenever the Chair of the Board fails do so; ix) overseeing whether the risk management, internal control and internal audit systems are running smoothly, if any exist; x) receiving reports by shareholders, employees and other persons of the company on irregularities; xi) employing experts that collaborate with one or more of their members during the exercise of their duties, and that the employment and

remuneration of these experts must take into account the importance of matters assigned to them as well as the economic situation of the company; xii) carrying out any other duties ascribed by Law or by the articles of association; xiii) overseeing the process for preparing and disclosing financial information; xiv) proposing the appointment of the statutory auditor to the General Meeting; xv) overseeing auditing on documents of the company's financial statements; xvi) overseeing the statutory auditor's independence, particularly, as regards additional supply of services.

II.4.7. The General and Supervisory Board, the Financial Matters Committee, the Audit Committee and the Audit Board shall draw up a yearly annual report, so as to inform the shareholders of its supervisory action.

II.4.8. The Audit Board shall meet at least on a quarterly basis.