

# **HIGH COMMITTEE FOR CORPORATE GOVERNANCE**

## **APPLICATION GUIDE OF THE AFEP-MEDEF CORPORATE GOVERNANCE CODE OF LISTED COMPANIES**

June 2022



## Preface

The purpose of this guide is to clarify the interpretation adopted by the French High Committee for Corporate Governance (Haut Comité de Gouvernement d'Entreprise) for certain recommendations of the AFEP-MEDEF corporate governance Code for listed companies and to provide tools to facilitate its application. It does not present new general recommendations that would be subject to the "comply or explain" principle.

This edition concerns the version of the Afep-Medef Code updated in January 2020. The guide is intended to evolve in the future as the work of the High Committee progresses.

The positions taken by the High Committee, some of which are included in this guide, are explained in the first part of its activity reports published since October 2014 and available on its website [www.hcge.fr](http://www.hcge.fr).

The High Committee reminds us that Article 28.2 of the AFEP-MEDEF Code states that the High Committee is "responsible for monitoring the application of the Corporate Governance Code for listed corporations that refer to it and ensures the actual application of the fundamental of corporate governance rule which is the "comply or explain" principle". The High Committee is responsible for issuing recommendations to companies that consult it or to which it investigates. To this end, it makes the interpretations required for the application of the Code's recommendations.

As provided for in the AFEP-MEDEF Code, companies may not comply with the recommendations of the Code or of the High Committee, but in this case, they must provide an explanation that is "substantiated and adapted to the company's specific situation and must convincingly indicate, why this specific aspect justifies an exemption" (§ 28.1).

For companies that, despite the requests of the High Committee, have persisted in deviating from the significant recommendations of the Code, the High Committee may resort to the "*name and shame*" practice. This may be the case when companies have not responded to a letter of investigations from the High Committee within two months. The same applies when companies, upon consultation or investigation by the High Committee, have neither followed the opinion of the High Committee, which rejects the justifications provided by the company, nor indicated in their corporate governance report the opinion received from the High Committee and the reasons why they decided not to comply with it, nor made a commitment to rectify this situation. Depending on the situation, the High Committee makes its opinions public on its website or in its annual report.

The comments in this guide are presented in the order of the Code provisions to which they refer.

The remarks applicable to Directors apply to members of Supervisory boards, unless otherwise specified.

Patricia Barbizet

Chairman of the High Committee for Corporate Governance

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## I - POSITION AND INTERPRETATIONS OF THE HIGH COMMITTEE ON THE RECOMMENDATIONS OF THE AFEP-MEDEF CODE

The recommendations of the AFEP-MEDEF Code are applicable to financial years ending after the publication of the revision of the Code at the time of their introduction, subject to a certain number of specificities which are specified, where applicable, in the paragraphs below.

### Tasks entrusted to non-executive directors - § 3.2

Code Reminder:

- 1.1. *"In the event of the separation of the offices of Chairman and Chief Executive Officer, any tasks entrusted to the Chairman of the Board in addition to those conferred upon him or her by law must be described. "*

This description is especially necessary when the tasks entrusted to the Chair are particularly important or specific, and duly justified (while bearing in mind that there can be no task that encroaches on the responsibilities of the executive or is contrary to the principle of collegiality of the board).

### "Motivations and justifications" for the choice of the mode of governance - § 3.4

Code Reminder:

- 1.2. *"French public limited companies are therefore able to choose between three forms of organisation of management and supervisory powers. The chosen formula and the reasons for this decision are communicated to shareholders and third parties. "*

It is recommended that companies, in particular when the functions of Chairman and Chief Executive Officer are combined, present this information carefully, if possible by highlighting the means used by the Board of directors to ensure the balance of power, such as, for example: the list of decisions submitted to the board for approval, the role and independence of committees, the nomination of a Lead Director, the practice of holding meetings without the presence of executive officers, etc.

## Advice and communication with shareholders and markets - § 4.4

Code Reminder:

1.3. *"Shareholder relations with the Board of Directors, particularly with regard to corporate governance aspects, may be entrusted to the Chairman of the Board of Directors or, if applicable, to the Lead Director. He or she shall report on this task to the Board of Directors "*

It is recommended that:

- the terms and scope of the tasks of the director responsible for participating directly in the company's dialog with its shareholders and/or potential investors be specified in the internal rules and that the annual report should mention this;
- if the company's mode of governance is a form of separated presidency (or supervisory board), the task naturally fall to the Chairman of the board: in this case, it is part of the "tasks entrusted in addition to those conferred by law" which must be described in accordance with § 3.2 of the AFEP-MEDEF Code; failing that, it may be entrusted to a Lead Director. It is indeed desirable not to disperse responsibilities by multiplying the interlocutors representing the board;
- the person so chosen should preferably have experience in institutional communication and should receive appropriate training, if necessary;
- the mission consist first in explaining the positions taken by the Board in its areas of competence (in particular in the areas of strategy, governance and executive compensation), which have been previously communicated;
- this mission entail close coordination with the CEO or his staff in charge of relations with shareholders, and that meetings or telephone contacts, unless explicitly required by the parties, be conducted in their presence;
- the director report on the execution of his mission to the board.

## Disposal of significant assets - § 6.3 and 6.4

Code Reminder:

*"If a disposal is contemplated, in one or more transactions, concerning at least half of the company's assets over the past two financial years, the Board of Directors and the executive management must assess the strategic merits of the transaction and ensure that the process takes place in accordance with the corporate interest, in particular by putting in place resources and procedures to identify and manage any conflicts of interest. To this end, they may seek external opinions, in particular concerning the merits of the transaction, its valuation and the contemplated arrangements. It is also recommended that the Board should set up an ad hoc committee, at least two-thirds of which is made up of independent directors, from which executive officers are excluded.*

*Before carrying out this disposal, the Board must present the shareholders' meeting with a report about the context and the progress of the transactions. This presentation shall be followed by an advisory vote by the shareholders subject to the same quorum and majority conditions as for ordinary shareholders' meetings. If the meeting issues a negative opinion, the Board shall meet as soon as possible and immediately publish on the company's website a notice detailing how it intends to proceed with the transaction. "*

The Code foresees a shareholder consultation when a transfer of at least half of the company's assets is contemplated, in one or more transactions. In accordance with the AMF recommendation (position-recommendation DOC no. 2015-05 of June 15, 2015), this threshold is deemed to have been reached when two of the following five ratios reach or exceed half of the consolidated amount calculated for the transferring company over the previous two financial years:

- the revenue generated by the asset(s) or business(es) sold as a proportion of consolidated turnover;
- the sale price of the asset(s) in relation to the total market capitalisation;
- the net value of the asset(s) sold in relation to the consolidated balance sheet total;
- the pre-tax current income generated by the assets or activities disposed of as a proportion of the consolidated pre-tax current income;
- the number of employees in the divested business as a proportion of the Group's worldwide workforce.

If the company does not follow this recommendation, it must provide, in accordance with the "comply or explain" principle, a comprehensible, relevant and detailed explanation specifying in particular why these ratios do not appear to be relevant in light of its situation and the planned transaction. The company must indicate the alternative ratios it has chosen and justify their relevance to this situation.

Companies subject to specific legal or regulatory provisions shall apply the § 6.3 Code recommendations subject to these specificities.

As regards companies whose principal activity is the acquisition and management of equity interests, as indicated by the AMF in its Report on significant asset disposals and acquisitions by listed companies (April 30, 2015, § 2.1.4), *"such a disposal, even if significant, clearly falls within the normal business cycle and is therefore foreseeable by the market and its shareholders. A company that considers that it should not consult the general meeting should explain in a substantiated manner, adapted to its particular situation, why it considers it to be in the company's interest not to consult the general meeting.* This last recommendation is included in the AMF's position-recommendation DOC no. 2015-05.

These companies should therefore explain why the constraints linked to the holding of general meetings are not compatible with the normal cycle of their business, as known by the market and investors, and that it is therefore not contrary to the company's interest to set aside this consultation.

## Gender diversity policy in governing bodies § 8.1

Code Reminder:

*"At the proposal of the executive management, the Board shall determine gender diversity objectives for governing bodies. The executive management shall present measures for implementing the objectives to the Board, with an action plan and the time horizon within which these actions will be carried out. The executive management shall inform the Board each year of the results achieved."*

The notion of governing bodies refers to executive committees, management committees and, more broadly, senior management. It is up to each board to determine the appropriate perimeter. This scope includes at least the executive or management committee or any similar committee.

Companies set percentage targets for the gender diversity of the highest governing bodies and set a target for executive and/or management committees. These objectives are set within a time frame to achieve them and must take into account the current composition of the governing bodies and the human resources available to the company, particularly in terms of moving talent to higher hierarchical levels.

Companies clearly identify in their universal registration document, the governing body or bodies at the level of which objectives are set (executive committee, management committee, other).

The action plans for the gender diversity of governing bodies must be ambitious and quantified, and the time frame in which the actions must be carried out must be justified. The implementation of the plans must be monitored, and the results published, including the reasons why the targets were not met, and the measures taken to correct this.

In partnerships limited by shares, it is up to the partner to set objectives in terms of gender diversity and the timeframe for achieving them, as well as to determine the methods for implementing these objectives and the action plan.

In companies with a management board and a supervisory board, it is up to the management board, after consulting the supervisory board, to set targets in terms of gender diversity and the timeframe for achieving them. The management board determines the terms and conditions for implementing these objectives and the action plan.

The supervisory boards must ensure that the recommendation is respected and followed. They are informed annually of the results obtained by the body responsible for the implementation of the objectives.

## Independent Directors § 10

### – Proportion of independent Directors § 10.3

Code Reminder:

*"The independent Directors should account for half the members of the Board in widely held corporations without controlling shareholders. In controlled companies, independent Directors should account for at least a third of Board members. Directors representing the employee shareholders and Directors representing employees are not taken into account when determining these percentages."*

If the company does not comply with the proportions of independent Directors recommended by the Code within the board or the committees<sup>1</sup>, it should indicate how the proper functioning of the board is nevertheless ensured.

Some situations cannot be resolved immediately. In such cases, it must be planned to remedy the situation, at the time of the next board renewal for instance, and this intention must obviously be mentioned.

### – Independence of Directors who hold executive or non-executive positions in a company that the company consolidates or that its parent company consolidates (§ 10.5.1)

The Code provides that, among the criteria that the Board of Directors must consider in order to exclude the status of independent Director, there are the following:

*"not to be and not to have been within the previous five years:*

- an employee or executive officer of the company;*
- an employee, executive officer or Director of a company consolidated within the corporation;*
- an employee, executive officer or Director of the company's parent company or a company consolidated within this parent company;"*

The expression "*company consolidated* " refers to the various consolidation hypotheses listed in Article L.233-16 of the French Commercial Code.

Indeed, the duty of loyalty that the corporate officer of a subsidiary has towards the subsidiary may create situations of conflict of interest during certain deliberations of the parent company board where he also sits. This must be taken into account when assessing his independence.

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<sup>1</sup> At least two-thirds of the members of the Audit Committee (§ 17.1), and a majority of the members of the Nomination and compensation Committee (§ 18.1 and 19.1).

These recommendations apply when the Director of a company also holds a directorship in a company in which the former holds a non-majority but significant interest, or in a sister company.

At the very least, if the board wishes to maintain the qualification of independence, it could be specified that the person concerned will refrain from participating in the decisions of the parent company's board in the event of a conflict of interest between the parent company and the subsidiary.

– **Application of the criterion relating to the Director's relationship with the company as a "customer, supplier, investment banker, commercial banker or consultant" (§ 10.5.3)**

The Code provides that among the criteria that the Board of Directors must consider in order to exclude the status of independent Director are the following:

*"not to be a customer, supplier, commercial banker, investment banker or consultant\*:*

- that is significant to the corporation or its group;
- or for which the corporation or its group represents a significant portion of its activity.

The evaluation of the significance or otherwise of the relationship with the company or its group must be debated by the Board, and the quantitative and qualitative criteria that led to this evaluation (continuity, economic dependence, exclusivity, etc.) must be explicitly stated in the report on corporate governance

*\* Or be directly or indirectly related to such persons.*

It is up to each company to assess whether or not these links are significant and to present the criteria that it considers relevant according to its own characteristics and those of the relationship in question. The question must be examined on a case-by-case basis and the used criteria must be mentioned. This significance of the links is assessed from the point of view of the company and from the point of view of the Director himself.

The corporate governance report must give a transparent account of the independence assessment procedure followed, specify the existing business relationships between the company and the Director and explain the qualitative and quantitative data that led the Board of Directors to qualify the Director as independent.

Finally, in case of absence of business relations, it must be mentioned in the said report.

– **Directors serving on the Board for more than twelve years (§ 10.5.6)**

The Code provides the criteria that the board of Directors must consider, in order to exclude the status of independent Director, are the following:

*"not to have been a Director of the corporation for more than twelve years. Loss of the status of independent Director occurs on the date when this twelve years is reached."*

If the board wishes to maintain the independence of a member who does not meet this criterion, it should explain this position, which should be based on the particular situation of the company and the Director concerned, and not on a questioning of the relevance of the rule.

## Evaluation of the board of Directors: assessment of the effective contribution of Directors to the work of the board § 11.2

Code Reminder:

*"The evaluation has three objectives:*

- to assess the way in which the Board operates;*
- to check that the important issues are suitably prepared and discussed;*
- to measure the actual contribution of each Director to the Board's work."*

Evaluation is essential to the ongoing improvement of the board's operations and must address all three of these objectives.

This assessment of the individual contribution of each Director is essential to guide the Nomination Committee in its proposals for renewals or successions within the Board, and thus strike a good balance in its composition. It also meets the legitimate requirements of shareholders, who are very attentive to the competence, complementarity and independence of the Directors they nominate be proved. However, this assessment must be reported individually by the Chairman or the Lead Director. Thus, as part of a process of progress, each Director must be able to be informed of his colleagues' perception of his involvement in the work of the Board. In addition, the Chair must himself be subject to such an evaluation.

The shareholders are informed in the annual report that this exercise has taken place.

## Board meetings without the presence of executive Directors § 12.3

Code Reminder:

*"It is recommended that at least one meeting not attended by the executive officers should be organised each year."*

This recommendation applies to companies whose executive Directors are members or, though not members, attend board meetings. For two-tier formula companies, the same rule applies when members of the Management Board attend Supervisory Board meetings.

Only non-executive members of the Board may attend these meetings. The executive Directors (Chairman and Chief Executive Officer, Chief Executive Officer and Deputy Chief Executive Officers of public limited companies with a Board of Directors, Chairman and members of the Management Board of Directors of public limited companies with a Management Board and a Supervisory Board) may not be present.

It is up to each Board to define who attends these meetings. The Board will be made up of all its members, with the exception of the executive Directors, when the evaluation of the performance of executive Directors referred to in Article 27.1.1 of the Code is carried out.

Companies choose how to organise these meetings: they may devote one or more dedicated sessions to them or organize them, for example, before or after a Board meeting.

The topics discussed at these meetings are freely defined by the Boards and are shaped by current events and the specific functioning of each Board. The free expression of the participants must be guaranteed.

### **Percentage of independent Directors on the Nomination Committee and the Compensation Committee § 18.1 and § 19.1**

Code Reminder:

*18.1 "It (the nomination committee) must not include any executive officer and must mostly consist of independent Directors."*

*19.1 "It (the compensation committee) must not include any executive officer and must mostly consist of independent Directors. It is recommended that the Chairman of the committee should be independent and that one of its members should be an employee Director."*

When the Chairman of the committee is independent, the presence of 50% independent Directors instead of a majority constitute a relevant explanation for not applying the recommendation of the Code. It is then imperative to indicate the unapplied recommendation, as well as the related explanations in the specific section or table provided for by the Code. It must be specified that this derogation can only be temporary.

### **Special selection procedure for future Directors § 18.2.1**

Code Reminder:

*"This committee (the Nomination Committee) is responsible for submitting proposals to the Board after reviewing in detail all of the factors to be taken into account in its proceedings, in particular with regard to the make-up and changes in the corporation's shareholding structure, in order to arrive at a desirable balance in the membership of the Board: gender representation, nationality, international experience, expertise, etc. In particular, it should organise a procedure for the nomination of future independent Directors and perform its own review of potential candidates before the latter are approached in any way."*

In order to respond to the legitimate wishes of shareholders and stakeholders to have more complete information on the procedure for the selection of Directors, the High Committee invites companies to communicate on this procedure for the selection of future Directors by describing it in the internal rules and by reporting each year on its practical application in the corporate governance report.

## Succession plans for company officers § 18.2.2

Code Reminder:

*"The nominations committee (or an ad hoc committee) should design a plan for replacement of company officers. This is one of the committee's most important tasks, even though it can, if necessary, be entrusted by the Board to an ad hoc committee. The Chairman may or may not contribute to the committee's work during the conduct of this task."*

As this is one of the board's core tasks, the corporate governance report should indicate whether these plans are within the remit of the Nomination committee or an "ad hoc" committee and whether they have actually been prepared and reviewed by the committee and the board. The report will indicate whether the plan exists, whether it is regularly reviewed and whether it was reviewed during the last fiscal year (if not, the date of the last review).

## Operating procedures of the Nomination Committee and the Compensation Committee § 18.3 and § 19.2

Code Reminder:

18.3 *"The Chief Executive Officer contributes to the work of the nominations committee. If the functions of Chairman and Chief Executive Officer are separated, the non-executive Chairman can be a member of this committee."*

19.2 *"The compensation committee is responsible for reviewing and proposing to the Board all of the elements determining the compensation and entitlements accruing to the company officers. The Board of Directors in its entirety is responsible for making the corresponding decisions. It also issues recommendations concerning the global amount of and methods used for the distribution of the compensation awarded to Directors.*

*Furthermore, the committee must be informed of the compensation policy applicable to the principal managers who are not company officers. To this end, the compensation committee involves the executive officers in its work."*

Paragraph 18.3 provides that "the Chief Executive Officer contributes to the work of the nominations committee". This means that the executive officer is consulted by the Nominations committee, without being a member, especially when the committee is responsible for both compensation and nominations. The same applies to the Compensation Committee, which, according to § 19.2, "must be informed of the compensation policy applicable to the principal managers who are not company officers" and, in this context, "involves the executive officers in its work".

Furthermore, § 18.3 specifies that "if the functions of Chairman and Chief Executive Officer are separated, the non-executive Chairman can be a member of this committee": his participation in the work of the committee is desirable, even if he is not a member.

## Presence of an employee Director on the Compensation Committee § 19.1

Code Reminder:

*"It (the Compensation committee) must not include any executive officer and must mostly consist of independent Directors. It is recommended that the chairman of the committee should be independent and that one of its members should be an employee Director."*

In the event of the first nomination of a Director representing employees to the Board, this recommendation shall apply in the year in which the employee Director(s) takes office.

The presence in the Compensation Committee of a Director representing employee shareholders does not satisfy the recommendation.

## Number of corporate directorships § 20.2 and 20.4

Code Reminder:

20.2 *"An executive officer should not hold more than two other directorships in listed corporations, including foreign corporations, outside of his or her group\*. He or she must also seek the opinion of the Board before accepting a new directorship in a listed corporation."*

20.4 *"A director should not hold more than four other directorships in listed corporations, including foreign corporations, outside of the group. This recommendation will apply at the time of appointment or for the next renewal of the director's term of office."*

\* *The above limit does not apply to directorships held by an executive officer in subsidiaries and holdings, held alone or together with others, of companies whose main activity is to acquire and manage such holdings.*

Paragraph 20.2 of the Code provides that an executive officer (of a company that refers to the AFEP-MEDEF Code) may not hold more than two other directorships in listed companies outside his group, including foreign companies<sup>2</sup>.

In the presentation of the corporate offices held by the Directors, the company must clearly indicate whether or not the directorships concerned are held outside its group and whether or not the companies in which these offices are held are listed.

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<sup>2</sup> This rule may have a different scope from the one following the wording of Article L.225-94-1 of the French Commercial Code, which also applies to executive officers in large listed companies, but which only takes into account French public limited companies.

Paragraph 20.4 of the Code provides that a Director may not hold more than four other directorships in listed corporations, including foreign corporations, outside of the group. It states that *"this recommendation will apply at the time of appointment or for the next renewal of the Director's term of office"*. This clarification should be interpreted as meaning that "offending" corporate officers are not obliged to resign during their term of office, but that they must refrain from accepting the renewal of an external mandate that would keep them in excess of the limit. This clarification also applies to the two-term limit for executive officers.

In addition, the footnote under § 20.2 of the Code specifies that the two-term limit does not apply to directorships held by an executive Director of a company whose principal activity is to acquire and manage subsidiaries and affiliates, in those same subsidiaries and affiliates, held alone or in concert.

This waiver shall be understood as follows:

- As it is motivated by the particular situation of these executive officers with regard to the time they are able to devote to the exercise of their directorships, this exemption is bound to their person. It only applies to people who hold a position of corporate officer in a listed company whose main activity is to acquire or manage equity interests;
- Consequently, this exemption is intended to be implemented and applied at the level and in each of the listed companies (i) in which these people hold a directorship and (ii) which constitute direct or indirect subsidiaries or holdings, held alone or in concert by the company whose principal activity is to acquire and manage such holdings and in which they hold their executive office<sup>3</sup>;
- It therefore does not apply to executive officers of companies that do not have this activity as their main activity, even for directorship they may hold in companies in which a subsidiary of the company they direct, and which itself has as its main activity the acquisition and management of shareholdings, holds a stake.

## Ethical rules for Directors § 21

Code Reminder:

*"Any director of a listed corporation should consider himself or herself as being bound by the following obligations: (excerpt):*

- *The director is bound to report to the Board any conflict of interest, whether actual or potential, and abstain from attending the debate and taking part in voting on the related resolution; The director should be regular in his or her attendance and take part in all meetings of the Board and of any committees of which he or she is a member."*

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<sup>3</sup> Thus, if an executive officer of company X, whose main activity is to acquire and manage shareholdings in other companies, holds directorships in such subsidiaries or shareholdings of company X, which are themselves listed, these latter mandates are eligible for exemption. It should be noted that this exemption is now also provided for in Article L.225-94-1 of the French Commercial Code.

A Director who finds himself or herself in a potential or actual conflict of interest situation is obliged to inform the Board of his conflict of interest situation and must abstain from attending the debate and participating in the vote on the corresponding deliberation. The file relating to the agenda item that generates the conflict of interest is not disclosed to the Board.

In addition, the Director who, due to a situation of general and lasting conflict of interest, is no longer able to simultaneously comply with the abstention and attendance obligations mentioned in Article 21 is exposed to a serious breach of the rules of the Afep-Medef Code and must draw the consequences by relinquishing his mandate.

Code Reminder:

*"Any director of a listed corporation should consider himself or herself as being bound by the following obligations: (excerpt):*

- *With regard to any non-public information obtained in the discharge of his or her duties, the director should consider that he or she is bound by a strict duty of confidentiality that goes beyond the mere duty of discretion provided for by law;"*

Article L.225-37 of the French Commercial Code provides that *"Directors, as well as any person called upon to attend meetings of the Board of Directors, are required to exercise discretion with respect to information of a confidential nature and given as such by the Chairman of the Board of Directors"* . The Afep-Medef Code also provides that, with respect to non-public information, Directors are bound by a genuine obligation of confidentiality that goes beyond the simple obligation of discretion provided for in the texts (Article 21).

Although the permanent representative, who plays a personal role in the Board of Directors, is at the same time the shareholder's representative and, as such, wishes to pass on some of the information communicated to the Directors in the context of the execution of his or her mandate, the obligation of discretion<sup>4</sup> and confidentiality must be imposed on each Director, without distinction. There is no reason to apply this obligation differently to the permanent representative of a legal entity insofar as the law is careful to specify that the permanent representative is *"subject to the same conditions and obligations and incurs the same civil and criminal liability as if he were a director in his own name, without prejudice to the joint and several liability of the legal entity he represents"* (Article L.225-20 of the French Commercial Code).

Thus, in compliance with the rules governing the communication and use of inside information, each Board of Directors shall specify the practical terms of the obligation of confidentiality expected of its members in the Board's internal rules, as provided in Article 13.1 of the Afep-Medef Code.

In this respect, the High Committee considers that the details to be included in the internal rules of the Board of Directors with regard to confidentiality may, if the Board of Directors consents (this consent may be given on a case-by-case basis, given the circumstances and in particular possible conflicts of interest):

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<sup>4</sup> The obligation of discretion applies both to information communicated and to discussions within the Board of Directors, since the collegiality of decisions is binding on all.

- Provide for the possibility of communicating the information collected by the permanent representative to the legal entity that nominated him;
- To limit such communication to the purpose of fulfilling its mission as a director in the interest of the company;
- Limit the content to information strictly necessary for this purpose; and
- Authorise the communication of such information to the executive officer of the legal entity Director and allow the company to make the communication to other people within the legal entity Director, conditional upon the latter taking all necessary measures to ensure compliance with strict confidentiality, including limiting the number of people within the legal entity Director receiving such information, keeping a list of such people and ensuring that such people comply with the rules governing the communication and use of inside information and, where applicable, with the company's code of conduct with respect to securities trading.

The High Committee considers that the internal rules may also provide that the Board of Directors may apply the same principles, *mutatis mutandis*, to the communication of information between a Director and the legal entity that proposed his or her nomination, in particular pursuant to a shareholders' agreement. In this case, it is recommended that the Board of Directors make the application of these principles, conditional on the shareholder concerned entering into confidentiality commitments governing this communication in accordance with the above-mentioned principles, and on this communication taking place in compliance with the rules applicable to the communication and use of inside information, and in particular with Article 11.1 of the European Regulation on Market Abuse.

Code Reminder:

*"Any director of a listed corporation should consider himself or herself as being bound by the following obligations: (excerpt)*

- *The director is mandated by all the shareholders and should act in all circumstances in the best interests of the corporation; The director is bound to report to the Board any conflict of interest, whether actual or potential, and abstain from attending the debate and taking part in voting on the related resolution;"*

With regard to the compatibility of a service agreement concerning the provision of strategic consultancy and partnership by a non-executive officer, the High Committee considers that the situation of cumulation constitutes a structural conflict of interest which *de facto* hinders the effective exercise of the functions of a non-executive officer as well as compliance with Article 21. This agreement structurally exposes the officer to a conflict of interest that prevents him from performing his duties as an executive in satisfactory conditions. The High Committee considers that the conclusion of such an agreement is incompatible with the recommendations of the Code.

Similarly, the High Committee considers that the exercise by the same person of the function of censor on the supervisory Board and of an consultancy mission to the Management Board clearly creates confusion between the functions of management and supervision within the company and creates a situation of structural conflict of interest.

## Combination of company office and employment contract § 23.1 and 23.2

Code Reminder:

23.1 *"When an employee becomes a company officer, it is recommended to terminate his or her employment contract with the company or with a group company, whether through contractual termination or resignation \*."*

23.2 *"This recommendation applies to the Chairman and Chief Executive Officer or Chief Executive Officer in corporations with Boards of Directors, to the Chairman of the Management Board, to the sole Managing Director in companies with a Management Board and a Supervisory Board and to the statutory managers of partnerships limited by shares."*

*\*When the employment contract is maintained, it is suspended in accordance with case law.*

Paragraph 23.1 of the Code relates to a termination of the employment contract and not its simple suspension, as the case law automatically applies. In § 23.2, the list is exhaustive, so this recommendation does not apply to deputy general Directors and members of the management Board.

If the company considers that the employment contract can nevertheless be maintained (and suspended), the explanations provided must clearly show not only the justifications for this choice, but also the consequences of this choice in terms of compensation linked to the termination of the employment contract. Indeed, the continuation of the employment contract cannot have the effect of derogating from the Code's requirements on these points, unless the "apply or explain" principle is clearly and precisely applied.

Compensation resulting from the termination of an executive officer's employment contract may not exceed an amount corresponding to two years of fixed and variable annual compensation. If compliance with the conditions of the Code is not possible because of commitments made to the executive in the context of the employment contract, this must be brought to the attention of the shareholders.

## Non-competition compensation § 25.3 and 25.4

Code Reminder:

25.3 *"When the agreement is concluded, the Board must incorporate a provision that authorises it to waive the application of this agreement when the officer leaves."*

25.4 *"The Board must also make provision for no non-competition benefit to be paid once the officer claims his or her pension rights. In any event, no benefit can be paid over the age of 65."*

The possibility for the Board to waive the implementation of the non-competition clause upon the departure of the officer, as well as the non-payment in case of retirement or after the age of 65, should be included in the officer's compensation policy established each year.

**CSR criteria in the variable compensation of company officers §26.1.1 last paragraph**

Code Reminder:

*"The compensation of these directors must be competitive, adapted to the company's strategy and context and must aim, in particular, to improve its performance and competitiveness over the medium and long term, notably by incorporating one or more criteria related to social and environmental responsibility."*

The determination of an officer's variable compensation must include at least one environmental criterion.

The High Committee expects CSR criteria to be precisely defined, to be legible, relevant and to integrate the company's own corporate and environmental matters A simple reference to the application of a CSR policy, a reference to an internal CSR program or to general undefined matters are not sufficient. Favouring the presence of quantifiable criteria is considered as a good practice.

**Fixed compensation of executive officers § 26.3.1**

Code Reminder:

*"In principle, fixed compensation may only be reviewed at relatively long intervals.*  
*If, however, the company opts for an annual increase in the fixed compensation, this increase must be modest and must respect the principle of consistency set out in § 26.1.2.*  
*In the event of any significant increase in compensation, the reasons for this increase must be clearly indicated."*

This paragraph of the Code sets out the fixed compensation of executive officers.

The information presented on this subject should show either the date since which the fixed compensation has not changed or the policy followed by the Board in this area, particularly if a significant change has occurred during the financial year.

## Annual variable compensation of executive officers § 26.3.2

Code Reminder:

*" The Board may decide to award annual variable compensation, the payment of which may be deferred if appropriate.*

*The rules for fixing this compensation must be consistent with the annual review of the performances of the executive officers and the corporate strategy. They depend on the director's performance and the progress made by the company.*

*The terms of the annual variable compensation must be understandable to shareholders, and clear and comprehensive information must be provided each year in the report on corporate governance.*

*The Board defines the criteria that make it possible to determine the annual variable compensation as well as the objectives to be achieved. These must be precise and, of course, predetermined.*

*These criteria must be reviewed regularly, while avoiding overly frequent revisions.*

*The quantifiable criteria are not necessarily financial and must be simple, relevant and suited to the corporate strategy. They must account for the largest share of this compensation.*

*If used, the stock exchange price must not constitute the only quantifiable criterion and may be assessed on a relative basis (comparison with similar companies or indexes).*

*The qualitative criteria must be defined precisely. When qualitative criteria are used within the annual variable compensation, a limit must be set for the qualitative part.*

*The maximum amount of annual variable compensation must be defined as a percentage of the fixed compensation and must be of a magnitude that is proportionate to this fixed part.*

*Except in justified cases, the award of annual variable compensation may not be restricted solely to executive officers."*

This paragraph of the Code sets out detailed rules concerning variable compensation, aimed on the one hand at ensuring that it is aligned with the company's performance and the executive officer's contribution to it, and on the other hand at prohibiting excesses. It is therefore important that the criteria used are defined and communicated as precisely as possible. However, the Code mentions that the presentation of the criteria used must not "*jeopardise the confidentiality that may be linked to certain elements in the determination of the variable part of the compensation*" (§ 27.2), so as not to give indications on the company's strategy that may be exploited by competitors or, where applicable, to create confusion among investors with the forecasts that the company communicates to them within the framework of the market guidance.

Although there is no obligation to communicate the details of the objectives, whether quantified or not, set for each criterion, it is necessary to indicate *at least* the nature of the quantifiable criteria (which may be financial or non-financial), as well as the proportion of the qualitative criteria in relation to the latter.

The corporate governance report must also indicate the conclusions of the Board's assessment of the level of achievement of quantitative and/or qualitative criteria in relation to the objectives set.

These provisions apply to all elements of compensation.

### Compensation of executive officers §26.3.2 and §26.3.3

Code Reminder:

26.3.2 extract *"The Board defines the criteria that make it possible to determine the annual variable compensation as well as the objectives to be achieved. These must be precise and, of course, predetermined."*

26.3.3 extract *"Only under exceptional circumstances (substantial change to scope, unexpected change in the competitive context, loss of relevance of a reference index or a comparison group, etc.) is it permissible to modify the performance conditions during the period in question. In this case, these changes are made public following the Board meeting at which they were decided on. In the event of a change to the performance conditions, the alignment of the interests of the shareholders with those of the beneficiaries must be maintained."*

In all situations, even in times of crisis (e.g., health crisis), the rules of the Code relating to compensation must be applied. If, exceptionally, changes in compensation policies are made, they must be made in accordance with the recommendations of the Code. If companies are unable to comply with the recommendations of the Code, they must, in accordance with the "comply or explain" rule set out in § 28.1 of the Code, provide an explanation and indicate the deviations that occurred and the related explanations in the specific section or table provided for in that same paragraph.

### Stock options and performance shares § 26.3.3

Code Reminder:

*"It is necessary to specify periods preceding the publication of the annual and interim financial statements during which the exercise of the stock options is not possible. The Board of Directors or Supervisory Board must specify these periods and, where applicable, specify the procedure to be followed by the beneficiaries prior to any exercise of the stock options in order to ensure that they do not hold any information likely to prevent them from exercising these options."*

Some companies choose to apply this rule only to option exercises followed immediately by the sale of the shares resulting from the exercise, on the grounds that it is the gain on sale that is most likely to be affected by rapid changes in the share price. As this provision is intended to protect companies and their managers against the risks associated with the regulation of insider dealing, it is up to the Boards to assess the degree of rigor they wish to apply to the supervision of option transactions. In any case, they must clearly present the rules adopted.

The same § 26.3.3 of the Code provides that:

*"Company officers who are beneficiaries of stock options and/or performance shares must make a formal commitment not to engage in any hedging transactions in respect of their own risks with regard to options, shares resulting from the exercise of options or performance shares, and to respect this commitment until the end of the share retention period determined by the Board of Directors."*

The prohibition on hedging is often included in the award plans. However, this prohibition cannot replace a firm commitment by the officer not to engage in hedging.

This recommendation is intended to apply to any allocation of instruments that are settled in securities.

### **Exceptional compensation of executive officers § 26.3.4**

Code Reminder:

*"Only highly specific circumstances may warrant the award of extraordinary compensation (for example, due to their importance for the corporation, the involvement they demand and the difficulties they present).*

*Justified reasons for the payment of this compensation must be given, and the realisation of the event that gave rise to the payment must be explained."*

It is therefore up to the company to give very precise reasons for the use of this form of exceptional compensation, which cannot be used to remunerate tasks inherent to the functions of the officers, such as, for example, ensuring a transition with a successor. In the event that this compensation is split up, e.g. in connection with a transforming acquisition involving integration matters spread over time, and in particular when it replaces variable compensation, it is the company's responsibility to describe each year the steps taken in this operation and the results achieved, justifying the payment of this exceptional compensation.

Exceptional compensation may not be used to indirectly modify the criteria for variable compensation, which must be consistent with the strategy (§26.3.2).

## Benefits for taking up a position § 26.4

Code Reminder:

*"Benefits for taking up a position may only be granted to a new executive officer who has come from a company outside the group.*

*The payment of this benefit, which may take a number of different forms, is intended to compensate the director for the loss of the entitlements from which he or she previously benefited. It must be explicitly indicated and the amount must be made public at the time it is determined, including in the event of periodic or deferred payment."*

This element of compensation must, like the others, respect the principles set out in § 26.1.2 of the Code. Both in the communication issued at the time of the determination of the severance payment and in the corresponding sections of the corporate governance report, it is appropriate to disclose, to the extent that they can be made public, the benefits received by the person concerned in respect of the duties he is leaving.

## Comprehensiveness of information on compensation § 27

Code Reminder:

*"Comprehensive information must be provided to shareholders so that they can have a clear view, not only of the individual compensation paid to company officers, but also of the policy applied in order to determine the compensation."*

Case of service contracts. If the compensation of executive officers is paid by a third party, whether or not it is the parent company or a reference shareholder, and whether or not it is re-invoiced in whole or in part to the listed company, the information on this subject must nevertheless be exhaustive. Indeed, even if the compensation is not a direct expense for the company, the shareholders must be able to ensure that the incentive mechanisms linked to the company's performance are in place and that the overall compensation is not excessive. The information must therefore include the justification for the use of this exceptional procedure, and show, for example, that the officer devotes part of his time to the management of this third-party company, whether the interests of the latter are sufficiently aligned with those of the listed company for there to be no risk of conflict, and whether this management does not significantly reduce the officer's availability. It must also present all the elements that ensure that the conditions specified by the Code are respected.

## Annual information - Ratios on compensation multiples § 27.2

Code Reminder:

*"This chapter must (of the corporate governance report devoted to the compensation of corporate officers) also provide:*

- *information on the ratios for measuring the gaps between the compensation of company officers and that of employees of the corporation<sup>5</sup>. Corporations which have no or not many employees in relation to the global workforce in France must take into account a more significant perimeter<sup>6</sup> in relation to the wage bill or the workforce in France of the corporations over which they have exclusive control within the meaning of Article L.233-16 II of the Commercial Code."*

It is up to companies to clearly state the scope of the entity or entities taken into account, which means specifying the percentage of the group's workforce in France that it represents, explaining the reasons for the choice made and ensuring that the scope adopted is consistent over time.

In addition, the High Committee recommends that companies publish in their corporate governance report, beyond the ratio whose publication is only required by law, the calculation methodology that was used (elements taken into account in the numerator and denominator). To this end, it recommends that companies apply the guidelines published by Afep, in order to provide a common understanding of the compensation elements to be taken into account, and thus facilitate comparisons.

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<sup>5</sup> Article L.22-10-9 of the French Commercial Code refers to the employees of the company preparing the corporate governance report.

<sup>6</sup> 80 % of the workforce in France can be considered as a significant perimeter.

## II - SUMMARY OF INFORMATION TO BE INCLUDED IN CORPORATE GOVERNANCE REPORTS IN ORDER TO COMPLY WITH THE "COMPLY OR EXPLAIN" REQUIREMENT OF ARTICLE L.22-10-10 OF THE COMMERCIAL CODE

To ensure the effective application of the "comply or explain" rule and to take into account changes in the Code, AFEP and MEDEF have updated the summary of information to be included in annual reports (no order of presentation being required, however).

### Reference to a corporate governance Code

#### 1) The implementation of the "comply or explain" rule by companies

- Indication of whether the company refers to the Afep-Medef Code; indication in a specific section or table of the Code's recommendations that the company does not apply, with the related explanations<sup>7</sup>
- If a company that has received a recommendation from the High Committee decides not to follow it, it must mention the opinion of the High Committee in its corporate governance report and the reasons why it has decided not to follow it

### The governance structure

#### 2) Management system

- Management system chosen: company with a Board of Directors (separation or unification of functions) or with a management Board and a supervisory Board, followed by a statement of the reasons and justifications for the choice, in particular in the event of a change in governance
- If the functions of Chairman and chief executive officer are separated, description of the tasks entrusted, if any, to the Chairman of the Board in addition to those conferred by law
- In the event of specific tasks entrusted to a Director, in particular with the title of Lead Director or Vice-Chair, description of the tasks as well as the means and prerogatives at his disposal

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<sup>7</sup> The explanation must be comprehensible, relevant and detailed. It must be substantiated and adapted to the company's particular situation and must convincingly indicate why this specific aspect justifies an exemption. It must state the alternative measures that have been taken, if applicable, and must describe the actions that allow the company to comply with the aims of the relevant provision of the Code. If a company intends to implement a recommendation in the future from which it has provisionally deviated, it must state when this temporary situation will come to an end.

## The Board of Directors

### 3) Independence of Board members

- Number and name of independent Directors
- Criteria of independence
- Assessment of the materiality of business relationships and explanation of the criteria used to make this assessment
- Conclusion of the independence review

### 4) Members of the Board of Directors

- Start date of mandate (current or first mandate) and expiry date of mandate
- Term of office and, if applicable, staggering rules
- Age, gender and nationality of the Director
- Main attribution
- List of directorships and positions held in other French or foreign companies, clearly indicating which are listed and which belong to the same group
- Number of shares of the company held
- Diversity policy applied to the members of the Board (gender representation, nationalities, age, qualifications, professional and international experience) and description of this policy, its implementation and the results obtained
- Origin of election or nomination: L.225-17, L.225-23, L.225-27, L.225-27-1 or other (privatized companies, etc.)
- Use of standardised tables for a synthetic presentation of the Board of Directors

### 5) Information on the Board of Directors' meetings

- Number of sessions
- Individual member participation rate
- Organization of meetings without the presence of the executives

### 6) Evaluation of the Board of Directors

- Carrying out evaluations (discussion at a Board meeting or formal evaluation) and, if necessary, follow-up
- Existence of an assessment of the effective contribution of each Director to the work of the Board

## **7) Internal Rules of the Board of Directors**

- Existence
- Details about:
  - the limitations that the Board of Directors places on the powers of the Chief Executive Officer
  - the principle that any significant transaction outside the announced strategy is subject to prior approval by the Board
  - the rules for informing the Board, in particular on the company's financial situation, cash position and commitments

## **Advice and communication with shareholders and markets**

### **8) Financial rating**

- Ratings of the company by financial rating agencies and changes, or lack thereof, during the year.

### **9) Shareholder relations with the Board**

- Existence of relations between shareholders and the Chairman of the Board or, where applicable, the Lead Director, particularly on corporate governance matters

## **The gender diversity policy within the governing bodies**

### **10) Gender policy**

- Description:
  - of the gender diversity policy applied to the governing bodies
  - the objectives of this policy, the procedures for implementing it and the results obtained during the past financial year
- Where applicable, if these objectives are not met, the measures taken to remedy the situation

## Board Committees <sup>8</sup>

### 11) Audit Committee

- Existence
- Clarification of its powers and operating procedures
- Composition
  - nominative composition and number of independent Directors
  - indication of financial or accounting expertise of members
- Activity report
  - number of meetings
  - participation rates
  - a report on the Committee's activities during the past year (review of accounting methods used, effectiveness of internal control systems, significant risks and off-balance sheet commitments of the company, significant transactions, etc.)
  - information on the selection procedure for the renewal of the statutory auditors
- Working methods
  - minimum time for review of accounts prior to Board review
  - hearing of the auditors, financial and accounting Directors, treasury department
  - hearing of the heads of internal audit and risk control
  - existence of a possibility of recourse to external experts

### 12) Nomination Committee

- Existence
- Clarification of its powers and operating procedures
- Composition
  - nominative composition and number of independent Directors
  - terms and conditions for the involvement of executive Directors in the work of the Nomination committee
- Activity report
  - number of meetings
  - participation rates
  - report on the activity during the past year

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<sup>8</sup> If there are other committees of the Board, the same format should be used *mutatis mutandis*.

### **13) Compensation Committee**

- Existence
- Clarification of its powers and operating procedures
- Composition
  - nominative composition and number of independent Directors
  - information on the chairmanship of the committee by an independent director
  - information on the presence of a Director representing employees on the committee
  - procedures for involving executive officers in the presentation to the committee of information on the compensation policy for key non-corporate officers
- Activity report
  - number of meetings
  - participation rates
  - report on the activity during the past year

## **Combining an employment contract with a corporate mandate**

### **14) Employment contract/office**

- Termination of the employment contract (table 11 annexed to the Code)
- In case of continuation of the (suspended) employment contract, indication of the reasons for the Board's decision

## **Shareholding requirements for executive officers**

### **15) Rules set by the Board of Directors for holding a certain number of shares of the company in registered form**

## **Compensation of corporate officers**

### **16) Compensation of the members of the Board of Directors**

- Overall and individual amount of compensation (table 3 annexed to the Code)
- Rules for the distribution of these compensation
- Mention that the variable portion related to attendance or participation in a committee takes precedence over the fixed portion
- Information on any exceptional compensation paid to a Director

## **17) Fixed and variable annual compensation of company officers**

- Policy for determining the compensation of company officers
- Rules for the evolution of the fixed part
- Rules for the allocation of the variable annual portion, indication of the criteria for determining this variable portion: qualitative and quantifiable criteria (subject to confidentiality of certain elements)
  - limits set on the qualitative share when it is used
  - relationship of the annual variable part to the fixed part (maximum percentage of the fixed part)
  - indication of the application of the criteria in relation to what had been planned during the year and mention of the achievement of personal objectives
  - detailed individual compensation of each officer in accordance with the standardised presentation tables for Directors in the appendix to the Code (tables 1 and 2)

## **18) Multi-year variable compensation for company officers**

- Rules for the allocation of the multi-year variable portion
  - indication of the criteria for determining this variable portion: qualitative and quantitative criteria (subject to the confidentiality of certain elements) and their respective weights
  - indication of the group of beneficiaries of the multi-year variable compensation mechanism
  - when the multi-year variable portion is paid, indication of the application of the criteria
  - detailed individual compensation of each company officers in accordance with the standardised presentation table for Directors in the appendix to the Code (table 10)

## **19) Share options**

For corporate officers:

- Allocation policy
- Nature of the options (purchase or subscription options)
- No discount
- Indication of the group of beneficiaries of the option plans
- Periodicity of the plans
- Share of capital allocated to each company officer
- Performance conditions set by the Board for the exercise of the options (internal or relative conditions, i.e. linked to the performance of other companies, a reference sector, etc., these internal and relative conditions being combined where possible and relevant)

- Standardised presentation according to the tables in the appendix to the Code (tables 4 and 5), mentioning the valuation of options granted during the year according to the method used for the consolidated financial statements (table 4)
- Summary table of current option plans according to table 8 in the appendix to the Code
- Mention of the formal undertaking by the officer not to engage in hedging transactions
- Blackout period prior to publication of annual and interim financial statements

## **20) Performance shares**

For corporate officers:

- Allocation Policy
- Indication of the group of beneficiaries of the performance share plans
- Periodicity of the plans
- Share of capital allocated to each executive Director
- Performance conditions set by the Board for the acquisition of shares (internal or relative conditions, i.e. linked to the performance of other companies, a reference sector, etc., these internal and relative conditions being combined where possible and relevant)
- Standardised presentation according to the tables in the appendix to the Code (Tables 6 and 7), with the valuation of shares granted during the year according to the method used for the consolidated financial statements (Table 6)
- Summary table of current share grants according to table 9 in the appendix to the Code
- Mention of the formal undertaking by the Director not to engage in hedging transactions
- Blackout period prior to publication of annual and interim financial statements

## **21) Benefits for taking up a position**

- Mention of a benefit granted to a new company officer on taking up his position and explanations relating thereto

## **22) Severance pay**

- Indication of applicable performance conditions
- Statement that the performance conditions are assessed over at least two financial years
- Indication that indemnification of the officer is only permitted in the event of forced departure
- Two-year limit (fixed and variable annual compensation) and inclusion in this limit, where applicable, of non-competition compensations or compensations related to the termination of the employment contract

### **23) Non-competition compensation**

- Mention of the stipulation in any new agreement authorising the Board to waive the implementation of the agreement upon the departure of the officer
- Mention that the non-competition clause is in line with the recommendations of the Afep-Medef Code. Two-year limit (fixed and variable annual compensation), including in this limit, if applicable, the severance pay and mention of the staggered payment during its duration

### **24) Additional pensions**

- Pension schemes or commitments funded: existence or not of a specific pension scheme for company officers
- Main features of the plan and mention of performance conditions
- For defined benefit plans: the group of beneficiaries must be broader than just corporate officers; the minimum two-year seniority requirement to qualify; where applicable, performance conditions allowing the annual vesting of conditional rights to be defined ; the reference period taken into account for the calculation of benefits, which must be several years; the existence of a 45% cap of fixed and variable annual compensation on the income to which the supplementary pension plan would entitle.

### **25) Ratios on compensation multiples**

- Information on the ratios used to measure the differences between the compensation of the company's officers and that of its employees
- For companies with no or few employees in relation to the total workforce in France, indication of the scope taken into account to establish the ratios