

*Corporate Governance Committee*

# CORPORATE GOVERNANCE CODE

| *July~~December~~ 2014*

TRANSLATION FOR REFERENCE PURPOSES ONLY

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## ***Main Principles and temporary regime***

- I. Adoption of and compliance with this Corporate Governance Code (the “Code”) is voluntary.
- II. Each article of the Code is divided into *principles*, *criteria* and a *comment*. The *criteria* set out the recommended conduct typically necessary in order to reach the objectives set out in the *principles*. *Comments* instead pursue two goals: *i)* clarification, also through examples, of the relevant *principles* and *criteria*; *ii)* description of additional positive conduct, intended as possible desirable methods to pursue the objectives set out in the *principles* and *criteria*.
- III. Each Italian company with listed shares (the “issuer”) adopting the Code shall provide in its corporate governance report and proprietary shareholdings (“Corporate Governance Report”) accurate, concise, ~~and~~ exhaustive and easily understandable information on the manner through which each single recommendation contained in the *principles* and *criteria* has been effectively implemented during the period covered by the report.
- IV. ~~If the issuer has not implemented, in whole or in part, one or more recommendations, it shall supply adequate information with regard to the reasons for the omitted or partial application. Consistent with the EU Recommendation n. 208/2014, issuers clearly state in their Corporate Governance Report which specific recommendations, laid down in *principles* and *criteria*, they have departed from and, for each departure: (a) explain in what manner the company has departed from a recommendation; (b) describe the reasons for the departure, avoiding vague and formalistic expressions; (c) describe how the decision to depart from the recommendation was taken within the company; (d) where the departure is limited in time, explain when the company envisages complying with a particular recommendation; (e) if it is the case, describe the measure taken as an alternative to the relevant non-complied recommendations and explain how such alternative measure achieves the underlying objective of the recommendation or clarify how it contributes to their good corporate governance.~~

As for the *principles* and *criteria* aimed at providing definitions, unless otherwise indicated and explained by the issuer, the issuer is supposed to be in compliance with them. ~~In the event that the *principles* and *criteria* relate to optional conduct, a description of the line of conduct followed is required, though it is not necessary to provide the reasons for the choices made.~~

The Code framework – patterned after the principle of flexibility – allows issuers not to comply, in whole or in part, with some of its recommendations. In line with the comply or explain principle, explicitly set out in art. 123-bis of the legislative decree no. 58/1998 (hereinafter

CLF), issuers must, however, explain the reasons of each non-compliance: the Committee believes that the decision not to comply with some Code's recommendations does not involve a negative evaluation a priori, being aware of the fact that this may be contingent on several factors: the company may not have reached the structure that allows the full implementation of all recommendations (e.g. in case of a recently listed company) or it may evaluate that some recommendations are less useful for/incompatible with their corporate governance model or with the legal and financial features of the company, or, otherwise, it might have adopted other governance solutions, as an alternative to the non-complied recommendation, which enable the company to reach the same underlying objective.

~~III.V.~~ In case of either laws or regulations that are inconsistent with certain recommendations of this Code, no information is required on the omitted or partial implementation of such recommendations.

~~IV.VI.~~ For the purposes of this Code, an issuer is deemed to belong to the FTSE-Mib index if its shares were included in the list of such an index (or of an index that might replace it in the future) in the last trading day of the fiscal year before the fiscal year covered by the Corporate Governance annual Report.

VII. The Corporate Governance Committee (the "Committee") shall monitor the implementation of this Code by the issuers and the development of the related regulatory framework.

V. \*\*\*

~~VI.VIII.~~ This Code, as approved by the Corporate Governance Committee in March 2006, was amended in March 2010, by replacing article 7 (now article 6), and was updated in December 2011 and July 2014, ~~also to repeal overlaps with certain law provisions.~~

IX. Issuers are invited to implement the amendments to this Code as approved in December 2011 by the end of the fiscal year beginning in 2012, informing the market through the Corporate Governance Report to be published in the following fiscal year. The amendments relating to the composition of the Board of Directors or the relevant committees, and notably the amendments to *principles* 5.P.1, 6.P.3 and 7.P.4 as well as to *criteria* 2.C.3. and 2.C.5. shall apply commencing with the first renewal of the Board of Directors taking place after the end of the fiscal year beginning in 2011. ~~The second paragraph of *criterion* 3.C.3. applies commencing starting from~~ with the first renewal of the Board of Directors taking place after the end of the fiscal year beginning in 2012, and the amendments to *criterion* 6.C.1., f) to the new remuneration policy approved as of January 1<sup>st</sup>, 2015.

Issuers are invited to implement the *principle* 6.P.5. and the *criterion* 6.C.8. as of August 1<sup>st</sup>, 2014.

~~VII.~~ Issuers belonging to FTSE Mib index are invited to provide information relating to *criterion* 5.C.2. in the Corporate Governance Report to be published in 2012.

## **Article 1 - Role of the Board of Directors**

### ***Principles***

**1.P.1.** Listed companies are governed by a Board of Directors that meets at regular intervals, adopts an organisation and a modus operandi which enable it to perform its functions in an effective manner.

**1.P.2.** The directors act and make decisions with full knowledge of the facts and autonomously pursuing and placing priority on the objective of creating value for the shareholders over a medium-long term period.

### ***Criteria***

**1.C.1.** The Board of Directors shall:

- a) examine and approve the strategic, operational and financial plans of both the issuer and the corporate group it heads, monitoring periodically the related implementation; it defines the issuer's corporate governance and the relevant group structure;
- b) define the risk profile, both as to nature and level of risks, in a manner consistent with the issuer's strategic objectives;
- c) evaluate the adequacy of the organizational, administrative and accounting structure of the issuer as well as of its strategically significant subsidiaries in particular with regard to the internal control system and risk management;
- d) specify the frequency, in any case no less than once every three months, with which the delegated bodies must report to the Board on the activities performed in the exercise of the powers delegated to them;
- e) evaluate the general performance of the company, paying particular attention to the information received from the delegated bodies and periodically comparing the results achieved with those planned;
- f) resolve upon transactions to be carried out by the issuer or its controlled companies having a significant impact on the issuer's strategies, profitability, assets and liabilities or financial position; to this end, the Board shall establish general criteria for identifying the material transactions;
- g) perform at least annually an evaluation of the performance of the Board of Directors and its committees, as well as their size and composition, taking into account the professional competence, experience, (including managerial experience) gender of its members and number of years as director. Where the Board of Directors avails of consultants for such a self-assessment, the Corporate Governance Report shall provide information on

- their identity and other services, if any, performed by such consultants to the issuer or to companies having a control relationship with the issuer;
- h) taking into account the outcome of the evaluation mentioned under the previous item g), report its view to shareholders on the professional profiles deemed appropriate for the composition of the Board of Directors, prior to its nomination;
  - i) provide information in the Corporate Governance Report on (1) its composition, indicating for each member the qualification (executive, non-executive, independent), the relevant role held within the Board of Directors (including by way of example, chairman or chief executive officer, as defined by article 2), the main professional characteristics as well as the duration of his/her office since the first appointment; (2) the application of article 1 of this Code and, in particular, on the number and average duration of meetings of the Board and of the executive committee, if any, held during the fiscal year, as well as the related percentage of attendance of each director; (3) how the self-assessment procedure as at previous item g) has developed;
  - j) in order to ensure the correct handling of corporate information, adopt, upon proposal of the managing director or the chairman of the Board of Directors, internal procedures for the internal handling and disclosure to third parties of information concerning the issuer, having special regard to price sensitive information.

**1.C.2.** The directors shall accept the directorship when they deem that they can devote the necessary time to the diligent performance of their duties, also taking into account the commitment relating to their own work and professional activity, the number of offices held as director or statutory auditor in other companies listed on regulated markets (including foreign markets) in financial companies, banks, insurance companies or companies of a considerably large size. The Board shall record, on the basis of the information received from the directors, on a yearly basis, the offices of director or statutory auditor held by the directors in the above-mentioned companies and include them in the Corporate Governance Report;

**1.C.3.** The Board shall issue guidelines regarding the maximum number of offices as director or statutory auditor for the types of companies referred to in the above paragraph that may be considered compatible with an effective performance of a director's duties, taking into account the attendance by the directors to the committees set up within the Board. To this end, the Board identifies the general criteria, differentiating them according to the commitment entailed by each role (executive, non-executive or independent director), as well as the nature and size of the companies in which the offices are performed, plus whether or not the companies are members of the issuer's group.

**1.C.4.** If the shareholders' meeting, when dealing with organisational needs, authorises, on a general, preventive basis, derogations from the rule prohibiting competition, as per Article 2390 of the Italian Civil Code, then the Board of Directors shall evaluate each such issue, reporting, at the next

shareholders' meeting, the critical ones if any. To this end, each director shall inform the Board, upon accepting his/her appointment, of any activities exercised in competition with the issuer and of any effective modifications that ensue.

**1.C.5.** The chairman of the Board of Directors shall ensure that the documentation relating to the agenda of the Board is made available to directors and statutory auditors in a timely manner prior to the Board meeting. The Board of Directors shall provide information in the Corporate Governance Report on the promptness and completeness of the pre-meeting information, providing details, *inter alia*, on the prior notice usually deemed adequate for the supply of documents and specifying whether such prior notice has been usually observed.

**1.C.6.** The chairman of the Board of Directors, also upon request of one or more directors, may request to the managing directors that certain executives of the issuer or the companies belonging to its group, in charge of the pertinent management areas related to the Board agenda, attend the meetings of the Board, in order to provide appropriate supplemental information on the items on the agenda.

### ***Comment***

The Committee believes that the Board of Directors has the primary responsibility for determining and pursuing the strategic objectives of the issuer and of the group of which it is a member or which it heads. The chairman is responsible for promoting the constant performance of such duty.

The decisions of each director are autonomous, to the extent he/she makes his/her choices with free judgement, doing so in the interest of the issuer and the generality of the shareholders. Therefore, even when management choices have been evaluated, addressed or otherwise influenced in advance, within the limits and in compliance with the applicable provisions of law, by those exercising management and coordination activities, or by subjects participating in a syndication agreement, each director shall pass resolutions in autonomy, adopting resolutions which may, reasonably lead – primarily – to the creation of value for the generality of the shareholders in the medium-long term.

The appointment of one or more managing directors, or of an executive committee, plus the fact that the business activity is exercised through several subsidiaries, does not relieve the Board of the tasks entrusted to it hereunder. Notwithstanding the absence of precise statutory restrictions on this subject, the Board is required to delegate powers in such a way that the Board does not appear to be divested of its prerogatives. Moreover, the issuers shall adopt adequate measures to ensure that subsidiaries submit to the Board of the parent company, for prior review, material transactions, without prejudice to the principle of autonomous management, in the event that the subsidiary is also a listed company.

Among the matters reserved to the competence of the Board, this article mentions the evaluation of the adequacy of the organizational, administrative



and accounting structure of the issuer and of its subsidiaries having strategic relevance; it is pointed out that such relevance should be evaluated with reference to criteria that do not concern only the size, to be mentioned in the Corporate Governance Report. The board evaluation process could be related to the three-year long mandate of the Board of Directors, with differentiated procedures during the three-year period.

The Board of Directors is also required to carry out a self-assessment, mainly on the size, composition and functioning of both itself and its committees.

In carrying out such an assessment, it is required to verify that, according to issuer's business, the various members (executive, non executive, independent) and the professional and managerial competences, including international experience, are adequately represented, taking into account also the benefits that could stem from the presence of different genders, age and seniority.

The Committee recommends that issuers adopt internal procedures for handling, safely and confidentially, information relating to them, notably price sensitive information. Such a procedure is also aimed at preventing that its disclosure occurs in an untimely manner or selectively (*i.e.* anticipated only to certain persons, such as shareholders, journalists or analysts) or in an incomplete or inadequate manner.

In carrying out their duties, the directors shall review the information received from the delegated bodies, ask the same for any clarifications, elaborations or supplements that are deemed necessary or appropriate for a complete and correct evaluation of the facts submitted to the review of the Board.

The chairman of the Board of Directors shall endeavour to ensure that the necessary time is devoted to an effective discussion of the items on the agenda during the meetings, and shall promote contributions from the directors; furthermore, he/she shall ensure, also with the help of the Secretary of the Board, that pre-meeting information is supplied in a timely and accurate manner, adopting all the necessary measures for ensuring confidentiality of the provided information and data; when, in specific cases, it has not been possible to provide pre-meeting information with adequate prior notice, the Chairman ensures that adequate sessions take place during the BoD meeting. If the documents supplied are voluminous and complex, they can be accompanied by a summary setting out the most significant areas in order to effectively resolve upon the items on the agenda, provided that such a summary cannot be deemed to replace in any manner the complete documentation supplied to directors.

In order to enhance the Board meetings which represent moments for directors (and, particularly, non executive ones) to collect adequate information on the company's management, managing directors shall ensure that executives in charge of the pertinent management areas related to the Board agenda are available to attend such meetings, upon request.

## **Article 2 – Composition of the Board of Directors**

### ***Principles***

**2.P.1.** The Board of Directors shall be made up of executive and non-executive directors, who should be adequately competent and professional.

**2.P.2.** Non-executive directors shall bring their specific expertise to Board discussions and contribute to the adoption of fully informed decisions paying particular care to the areas where conflicts of interest may exist.

**2.P.3.** The number, competence, authority and time availability of non-executive directors shall be such as to ensure that their judgement may have a significant impact on the taking of Board's decisions.

**2.P.4.** It is appropriate to avoid the concentration of corporate offices in one single individual.

**2.P.5.** Where the Board of Directors has delegated management powers to the chairman, it shall disclose adequate information in the Corporate Governance Report on the reasons for such organisational choice.

### ***Criteria***

**2.C.1.** The following are qualified executive directors for the issuer:

- the managing directors of the issuer or a subsidiary having strategic relevance, including the relevant chairmen when these are granted individual management powers or when they play a specific role in the definition of the business strategies;
- the directors vested with management duties within the issuer or in one of its subsidiaries having strategic relevance, or in a controlling company when the office concerns also the issuer;
- the directors who are members of the executive committee of the issuer, when no managing director is appointed or when the participation in the executive committee, taking into account the frequency of the meetings and the scope of the relevant resolutions, entails, as a matter of fact, the systematic involvement of its members in the day-to-day management of the issuer.

The granting of deputy powers or powers in cases of urgency to directors, who are not provided with management powers is not enough, *per se*, to cause them to be identified as executive directors, provided however, that such powers are not actually exercised with considerable frequency.

**2.C.2.** The directors shall know the duties and responsibilities relating to their office.

The chairman of the Board of Directors shall use his best efforts to allow the directors and the statutory auditors, after the election and during their

mandate, to participate in initiatives aimed at providing them with an adequate knowledge of the business sector where the issuer operates, of the corporate dynamics and the relevant evolutions, as well as the relevant regulatory and self-regulatory framework.

**2.C.3.** The Board shall designate an independent director as lead independent director, in the following circumstances: (i) in the event that the chairman of the Board of Directors is the chief executive officer of the company; (ii) in the event that the office of chairman is held by the person controlling the issuer.

The Board of Directors of issuers belonging to FTSE-Mib index shall designate a lead independent director whether requested by the majority of independent directors, except in the case of a different and grounded assessment carried out by the Board to be reported in the Corporate Governance Report.

**2.C.4.** The lead independent director:

(a) represents a reference and coordination point for the requests and contributions of non-executive directors and, in particular, those who are independent pursuant to Article 3 below;

(b) cooperates with the Chairman of the Board of Directors in order to guarantee that directors receive timely and complete information.

**2.C.5.** The chief executive officer of issuer (A) shall not be appointed director of another issuer (B) not belonging to the same corporate group, in the event that the chief executive officer of issuer (B) is a director of issuer (A).

### ***Comment***

The Committee wishes that the shareholders, when preparing the lists and subsequently appointing directors, evaluate, also in light of the opinion expressed by the Board on such an item, the professional characteristics, the experience, including managerial competencies, and the gender of the candidates, in relation to the size of the issuer, the complexity and specificity of the business sector in which the issuer operates, as well as the size of the Board of Directors.

The non-executive directors enrich the Board's discussion with competences formed outside the company, having a general strategic character or a specific technical one. Such competences permit to analyse the different matters under discussion from different standpoints and, therefore, contribute to nourish the dialectics that is the distinctive precondition for a meditated informed corporate decision.

The contribution of non-executive directors appears to be useful on such subject matters in which the interests of executive directors and those of the shareholders may not coincide, such as the remuneration of the executive directors and in relation to the internal control and risk management systems.

With particular reference to the efficiency of the committees set up within the Board of Directors, issuer's shareholders may consider the need to ensure management continuity through a diversification of the expiry of all or part of the Board members, provided that this does not jeopardize the different shareholders' rights.

Within the Board of Directors, the figure of the chairman, to whom law and practice entrust duties of organization of the Board's works and of liaison between executive and non-executive directors, takes up a fundamental importance.

The international best practice recommends to avoid the concentration of offices in one single individual without adequate counterbalances; in particular, the separation is often recommended of the roles of chairman and chief executive officer, the latter meant as a director who, by virtue of the delegations of powers received and the concrete exercise of these, is the main responsible officer for the management of the issuer (CEO). The Committee is of the opinion that, also in Italy, the separation of the above-mentioned roles may strengthen the characteristics of impartiality and balance that are required from the chairman of the Board of Directors. The Committee, in acknowledging that the existence of situations of accumulation of the two roles may satisfy, in particular in issuers of smaller size, valuable organizational requirements, recommends that, should this be the case, the figure of the lead independent director be created.

The Committee also recommends the designation of a lead independent director in either the event that the chairman is the person controlling the issuer - a circumstance which, *per se*, takes up no negative characteristics, but which requires, however, the creation of adequate counterweights - or, as far as companies belonging to FTSE-Mib index are concerned, it is requested by the majority of directors.

The lead independent director is granted, *inter alia*, with the power to convene, autonomously or upon demand of other directors, appropriate meetings of independent directors only for the discussion of subject matters judged of interest regarding the functioning of the Board of Directors or the company's operations.

Finally, the Committee recommends that the chief executive officer of an Italian company listed on a regulated market (the "issuer") (A) shall not be appointed director of another issuer (B) not belonging to the same corporate group, in the event that the chief executive officer of issuer (B) is a director of the issuer (A). Such circumstances may cause potential conflicts of interests; however, it is not possible to exclude that, depending on the circumstances, sometimes they may be justified.

## **Article 3 – Independent directors**

### ***Principles***

**3.P.1.** An adequate number of non-executive directors shall be independent, in the sense that they do not maintain, directly or indirectly or on behalf of third parties, nor have recently maintained any business relationships with the issuer or persons linked to the issuer, of such a significance as to influence their autonomous judgement.

**3.P.2.** The directors' independence shall be assessed by the Board of Directors after the appointment and, subsequently, on a yearly basis. The results of the assessments of the Board shall be communicated to the market.

### ***Criteria***

**3.C.1.** The Board of Directors shall evaluate the independence of its non-executive members having regard more to the substance than to the form and keeping in mind that a director usually does not appear independent in the following events, to be considered merely as an example and not limited to:

- a) if he/she controls, directly or indirectly, the issuer also through subsidiaries, trustees or third parties, or is able to exercise a dominant influence over the issuer, or participates in a shareholders' agreement through which one or more persons can exercise a control or dominant influence over the issuer;
- b) if he/she is, or has been in the preceding three fiscal years, a significant representative of the issuer, of a subsidiary having strategic relevance or of a company under common control with the issuer, or of a company or entity controlling the issuer or able to exercise over the same a considerable influence, also jointly with others through a shareholders' agreement;
- c) if he/she has, or had in the preceding fiscal year, directly or indirectly (e.g. through subsidiaries or companies of which he is a significant representative, or in the capacity as partner of a professional firm or of a consulting company) a significant commercial, financial or professional relationship:
  - with the issuer, one of its subsidiaries, or any of its significant representatives;
  - with a subject who, also jointly with others through a shareholders' agreement, controls the issuer, or – in case of a company or an entity – with the relevant significant representatives;or is, or has been in the preceding three fiscal years, an employee of the above-mentioned subjects;

- d) if he/she receives, or has received in the preceding three fiscal years, from the issuer or a subsidiary or holding company of the issuer, a significant additional remuneration (compared to the “fixed” remuneration of non-executive director of the issuer and to remuneration of the membership in the committees that are recommended by the Code) also in the form of participation in incentive plans linked to the company’s performance, including stock option plans;
- e) if he/she was a director of the issuer for more than nine years in the last twelve years;
- f) if he/she is vested with the executive director office in another company in which an executive director of the issuer holds the office of director;
- g) if he/she is shareholder or quotaholder or director of a legal entity belonging to the same network as the company appointed for the auditing of the issuer;
- h) if he/she is a close relative of a person who is in any of the positions listed in the above paragraphs.

**3.C.2.** For the purpose of the above, the chairman of the entity, the chairman of the Board of Directors, the executive directors and key management personnel of the relevant company or entity, must be considered as “significant representatives”.

**3.C.3.** The number and competences of independent directors shall be adequate in relation to the size of the Board and the activity performed by the issuer; moreover, they must be such as to enable the constitution of committees within the Board, according to the indications set out in the Code.

As for issuers belonging to FTSE-Mib index, at least one third of the Board of Directors members shall be made up of independent directors. If such a number is not an integer, it shall be rounded down.

Anyway, independent directors shall not be less than two.

**3.C.4.** After the appointment of a director who qualifies himself/herself as independent, and subsequently, upon the occurrence of circumstances affecting the independence requirement and in any case at least once a year, the Board of Directors shall evaluate, on the basis of the information provided by the same director or available to the issuer, those relations which could be or appear to be such as to jeopardize the autonomy of judgement of such director.

The Board of Directors shall notify the result of its evaluations, after the appointment, through a press release to the market and, subsequently, within the Corporate Governance Report.

In the documents mentioned above, the Board of Directors shall:

- disclose whether they adopted criteria for assessing the independence which are different from the ones recommended by the Code, also with reference to individual directors, and if so, specifying the reasons;

- describe quantitative and/or qualitative criteria used, if any, in assessing the relevance of relationships under evaluation.

**3.C.5.** The Board of statutory 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 of Directors for evaluating the independence of its members. The result of such controls is notified to the market in the Corporate Governance Report or in the report of the Board of statutory auditors to the shareholders' meeting.

**3.C.6.** The independent directors shall meet at least once a year without the presence of the other directors.

### ***Comment***

Independence of judgement is required of all directors, executive and non-executive alike: directors who are conscious of the duties and rights associated with their position always bring independent judgement to their work.

In particular, non-executive directors may provide an independent unbiased judgement on the proposed resolutions, since they are not directly involved in the operational running of the company.

The most delicate aspect in issuers with a broad shareholder base consists in aligning the interests of executive directors with those of the shareholders. In such companies, therefore, the predominant aspect is their independence from the executive directors.

In issuers with concentrated ownership, or where a controlling group of shareholders can be identified, the problem of aligning the interests of the executives directors with those of the shareholders continues to exist, but there emerges the need for some directors to be independent also from the controlling shareholders, or shareholders which are, in any case, able to exercise a dominant influence.

The qualification of a non-executive director as independent director does not express a judgement of value, but it rather indicates an actually existing situation: the absence, as the rule states, of any relation with the issuer, or with subjects linked to the issuer, such as to actually affect, due to their importance, to be evaluated in relation to the individual subject, the independence of judgement and the unbiased assessment of the management activity.

The criteria set out some of the most common elements that are symptomatic of absence of independence. Such elements are set out by way of example and are not binding on the Board of Directors, which may adopt, for the purpose of its evaluations, additional or different, in whole or in part, criteria from those mentioned above, giving adequate information to the market together with the relevant reasons. The Board of statutory 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.

The non-exhaustive or mandatory character of the events set out in the criteria implies the need to review also additional circumstances, not expressly contemplated, which might appear, however, likely to negatively affect the independence of directors.

For example, the ownership of a (direct or indirect) shareholding of such an amount as not to determine the control or dominant influence over the issuer and not subjected to a shareholders' agreement, could be considered suitable to jeopardize, in particular circumstances, the independence of a director.

The appointment of an independent director of the issuer in companies controlling it or controlled by it does not cause the loss of independence requirement: in such cases, it should be considered, amongst other things, whether the holding of several offices could determine a total remuneration such as to hinder the independence of the director; however, it is appropriate to assess on a case-by-case basis the extent of any additional fee received by reason of each of such offices.

Significant representatives of a company controlling the issuer or controlled by the issuer (if it is strategically significant) or under common control could be considered not independent irrespective of the amount of the relevant remunerations, by reason of the duties entrusted to them. Also in this event, the Board of Directors is required to make a substantial evaluation: therefore, by way of example, a director who is vested with the office of non-executive chairman of the controlling company or of a subsidiary, could be considered independent in the issuer, if he had received such appointment because he is "*super partes*"; vice-versa, a director could appear to be non-independent, if he actually plays, also in absence of formal delegations of powers, a guidance role in the definition of strategies of the issuer, of a controlling company or a subsidiary having strategic relevance or he is the chairman of a shareholders' agreement through which one or more entities can control or have a significant influence on the issuer.

As regards commercial, financial and professional relations directly or indirectly entertained by the director with the issuer or other subjects linked to the issuer, the Committee does not deem it useful to set out in the Code precise criteria, on the basis of which their materiality must be judged. The issuer is required to disclose to the market quantitative and/or qualitative criteria used, if any.

In any event, the Board of Directors should evaluate such relationships on the basis of their significance, both in absolute terms and with reference to the economic-financial situation of the party concerned. Any agreement in favour of the director (or subjects linked to the directors) containing any financial or contractual conditions not aligned with those of the market, is to be considered material. Moreover, the fact that the relationship is governed at market conditions does not entail, *per se*, a judgement of independence, since it is, however, necessary, as already mentioned, to evaluate the relevance of the relationship.



Those relations which, even though they are not significant from an economic standpoint, are particularly material for the reputation of the director concerned or relate to important transactions of the issuer (just think to the case of a company or professional, who takes up an important role in an acquisition or listing transaction) should also be taken into consideration.

From a subjective standpoint, in addition to the relations directly entertained with significant representatives (of the issuer, subsidiaries of the issuer or controlling subjects), the relations maintained with subjects however traceable to such representatives, such as, by way of example, companies controlled by them, may also be taken into consideration.

The Committee also believes that, in certain particular circumstances, the existence of relations other than economic ones, may be material. For example, in issuers subject to public control, any political activity performed on a continuing basis by a director could be taken into consideration for the purpose of evaluating his/her independence. However, the so-called courtesy relationships are not relevant.

Also for the definition of the relations of a “family” nature, it is appropriate to rely on the prudent evaluation of the Board of Directors, which might consider as not relevant, taking into account the actual circumstances, the existence of a close family or in-law relationship. Parents, children, the spouse who is not legally separated, the companion living together and family members living together with a person, who could not be considered as an independent director, should be judged theoretically as being not independent.

The customary structure of Italian management bodies entails the possibility that also directors who are members of the executive committee of the issuer are qualified as non-executive and independent, since they are not provided with individual management powers.

A different evaluation appears, however, appropriate when a managing director is not appointed or when the participation in the executive committee, taking into account the frequency of the meetings and the scope of the relevant resolutions, entails, as a matter of fact, the systematic involvement of its members in the current running of the issuer or determines a considerable increase in the relevant remuneration compared to that of the other non-executive directors.

The Committee believes that the presence in the Board of Directors of directors who may be qualified as “independent” is the most suitable solution for guaranteeing the composition of the interests of all the shareholders, both majority and minority ones. In this respect, in the correct exercise of the rights of appointment of directors, it is possible that the independent directors are proposed by the same controlling shareholders. On the other side, the circumstance that a director is expressed by one or more minority shareholders does not imply, *per se*, a judgement of independence of such director: these characteristics must be verified in concrete, according to the principles and criteria outlined above.

## **Article 4 – Internal committees of the Board of Directors**

### ***Principle***

**4.P.1.** The Board of Directors shall establish among its members one or more committees with proposing and consultative functions according to what set out in the articles below.

### ***Criteria***

**4.C.1.** The establishment and functioning of the committees governed by the Code shall meet the following criteria:

- a) committees shall be made up of at least three members. However, in those issuers whose Board of Directors is made up of no more than eight members, committees may be made up of two directors only, provided, however, that they are both independent. The committees' activities shall be coordinated by a chairman;
- b) the duties of individual committees are provided by the resolution by which they are established and may be supplemented or amended by a subsequent resolution of the Board of Directors;
- c) the functions that the Code attributes to different committees may be distributed in a different manner or demanded from a number of committees lower than the envisaged one, provided that for their composition the rules are complied with those indicated from time to time by the Code and is ensured the achievement of the underlying objectives;
- d) minutes shall be drafted of the meetings of each committee;
- e) in the performance of their duties, the committees have the right to access the necessary company's information and functions, according to the procedures established by the Board of Directors, as well as to avail themselves of external advisers. The issuer shall make available to the committees adequate financial resources for the performance of their duties, within the limits of the budget approved by the Board;
- f) persons who are not members of the committee, including other Board members or persons belonging to issuer's structure, may participate in the meetings of each committee upon invitation of the same, with reference to individual items on the agenda;
- g) the issuer shall provide adequate information, in the Corporate Governance Report, on the establishment and composition of committees, the contents of the mandate entrusted to them, as well as, on the basis of the indications provided for by each committee, the activity actually performed during the fiscal year, the number of meetings held, their average duration and the relevant percentage of participation of each member.

**4.C.2** The establishment of one or more committees may be avoided and the relevant duties may be assigned to the Board of Directors, under the coordination of the Chairman and provided that: (i) independent directors are at least half of the Board of Directors members; if the number of the Board members is odd, a rounding down to the lower unit shall be carried out; (ii) adequate time is dedicated during the Board meetings to actions that the Code requires the Committees to carry out, and this circumstance is disclosed in the Corporate Governance Report; (iii) as far as the control and risk committee is concerned, the issuer is neither controlled by another listed company nor it is subject to direction and coordination.

The Board of Directors describes in detail in the Corporate Governance Report the reasons underlying the choice not to establish one or more committees; in particular, it provides adequate grounds for the choice not to establish the risks and control committee in consideration of the complexity level of the issuer and the sector in which it operates. In addition, the Board shall periodically reassess the choice made.

### ***Comment***

The Board of Directors shall perform its duties collectively.

An organizational procedure that may increase the efficiency and effectiveness of its works is represented by the establishment among its members of specific committees having consultative and proposing functions. Such committees, as it appears from the best Italian and international practices, far from replacing the Board in the performance of its duties, may usefully carry out a preliminary role – which is represented by the formulation of proposals, recommendations and opinions – for the purpose of enabling the Board to adopt its decisions with a better knowledge of the facts.

Such role may be particularly effective in relation to the handling of matters, which appear to be delicate also because they are a source of potential conflicts of interest.

For this reason, in the articles below, the Code recommends the establishment of a nomination committee (Article 5), a remuneration committee (Article 6) and a control and risk committee (Article 7), defining their composition and competences.

This article contains general indications concerning the three committees mentioned above.

Such indications are inspired by the need of flexibility, which takes into account the features of each issuer, in relation, for example, to the size of its Board of Directors.

With regard, in particular, to the number of committees, it is clarified that, in the presence of organizational requirements, the Board may group or distribute the functions assigned to the committees provided by the Code in the manner that it deems more appropriate, in compliance with the rules relating to the compositions of each committee. By way of example, a nomination committee and a remuneration committee complying with the

composition requirements set forth for both the committees may be established.

In cases of ~~both~~ combining the various duties in a unique committee, allocating such duties in a different manner, or reserving such duties to the *plenum* of the Board of Directors, the Board is required to explain in its Corporate Governance Report the reasons that led it to choose an alternative approach and how this approach permits to achieve anyway the goals fixed by the Code for each committee.

If the choice is not to establish the control and risk committee, factors to be taken into special account relate to the complexity and the business sector of the issuer, including by way of example the following ones: the nature of the business and its belonging to a regulated sector, the turnover or the assets of the financial statements, the number of employees, the market capitalization, the number and location of participated or controlled legal entities, the business operation in regions or countries exposed to certain risk factors, the number of Board of Directors members, their professional qualification and their time availability.

The powers of individual committees, in particular those having for their object the direct access to the necessary company's information and departments for the performance of their duties, are determined by the Board in the framework of the mandate conferred on them.

## **Article 5 – Appointment of directors**

### ***Principle***

**5.P.1.** The Board of Directors shall establish among its members a committee to propose candidates for appointment to the position of director, made up, for the majority, of independent directors.

### ***Criteria***

**5.C.1.** The committee to propose candidates for appointment to the position of director shall be vested with the following functions:

- a) to express opinions to the Board of Directors regarding its size and composition and express recommendations with regard to the professional skills necessary within the Board as well with regard to the topics indicated by articles 1.C.3. and 1.C.4.;
- b) to submit the Board of Directors candidates for directors offices in case of co-optation, should the replacement of independent directors be necessary.

**5.C.2.** The Board of Directors shall evaluate whether to adopt a plan for the succession of executive directors. In the event of adoption of such a plan, the issuer shall disclose it in the Corporate Governance Report. The review on the preparation of the above mentioned plan shall be carried out by the nomination committee or by another committee established within the Board of Directors in charge of this task.

### ***Comment***

The Committee recommends that for the appointment of directors a procedure, which should ensure transparency and a balanced composition of the Board, is followed. In particular, it is appropriate that the slates of candidates for directors offices mention their eligibility, if any, to be qualified as independent pursuant to article 3 of the Code, provided that the Board of Directors remains the competent body for evaluating the independence of its own members. The Committee wishes that a director who has expressed his/her eligibility as independent undertakes to maintain it during his/her office and, if necessary, to resign, it being understood that the Board of Directors has the faculty to resolve upon immediate co-optation.

Issuers are required to establish, within the Board of Directors, a nomination committee, made up for the majority of independent directors, vested with one or more of the functions listed in the criteria.

The Committee is aware of the fact that the nomination committee institution is historically born in systems characterized by a high degree of fragmentation of the shareholding structure, for the purpose of ensuring an adequate level of independence of the directors with respect to the management. Above all, the

Committee acknowledges that in the presence of a large shareholder base it performs a function of particular importance in the identification of the candidates for the office of director. However, as for the issuers that are characterised by a high level of proprietary concentration, the nomination committee may perform a useful consultative and advisory role in the identification of the best composition of the Board, indicating the professional figures whose presence may favour a correct and effective functioning, giving possible contributions for the preparation of the succession plan of executive directors.

Should the issuer adopt a succession plan, the Corporate Governance Report shall disclose whether specific mechanisms are set forth in the succession plan in case of early replacement, the corporate bodies and the persons in charge of the preparation of the plan as well as the manners and timing of its review.

## Article 6 – Remuneration of directors

### **Principles**

**6.P.1.** The remuneration of directors and key management personnel shall be established in a sufficient amount to attract, retain and motivate people with the professional skills necessary to successfully manage the issuer.

**6.P.2.** The remuneration of executive directors and key management personnel shall be defined in such a way as to align their interests with pursuing the priority objective of the creation of value for the shareholders in a medium-long term timeframe. With regard to directors with managerial powers or performing, also *de-facto*, functions related to business management, as well as with regard to key management personnel, a significant part of the remuneration shall be linked to achieving specific performance objectives, possibly including non-economic objectives, identified in advance and determined consistently with the guidelines contained in the policy described in principle 6.P.4.

The remuneration of non-executive directors shall be proportionate to the commitment required from each of them, also taking into account their possible participation in one or more committees.

**6.P.3.** The Board of Directors shall establish among its members a remuneration committee, made up of independent directors. Alternatively, the committee may be made up of non executive directors, the majority of which to be independent; in this case, the chairman of the committee is selected among the independent directors. At least one committee member shall have an adequate knowledge and experience in finance or remuneration policies, to be assessed by the Board of Directors at the time of his/her appointment.

**6.P.4.** The Board of Directors shall, upon proposal of the remuneration committee, establish a policy for the remuneration of directors and key management personnel.

**6.P.5.** In case of the end of office and/or the termination of the employment relationship with an executive director or a general manager, the issuer discloses, through a press release, detailed information, following the internal process leading to the assignment or recognition of indemnities and/or other benefits.

### **Criteria**

**6.C.1.** The policy for the remuneration of executive directors and other directors covering particular offices shall define guidelines on the issues and consistently with the criteria detailed below:

a) the non-variable component and the variable component are properly balanced according to issuer's strategic objectives and risk management policy, taking into account the business sector in which it operates and the nature of the business carried out;

b) upper limits for variable components shall be established;

c) the non-variable component shall be sufficient to reward the director when the variable component was not delivered because of the failure to achieve the performance objectives specified by the Board of Directors;

d) the performance objectives – i.e. the economic performance and any other specific objectives to which the payment of variable components (including the objectives for the share-based compensation plans) is linked – shall be predetermined, measurable and linked to the creation of value for the shareholders in the medium-long term;

e) the payment of a significant portion of the variable component of the remuneration shall be deferred for an appropriate period of time; the amount of that portion and the length of that deferral shall be consistent with the characteristics of the issuer's business and associated risk profile;

f) contractual arrangements shall be provided in order to permit the company to reclaim, in whole or in part, the variable components of remuneration that were awarded (or to hold deferred payments), as defined on the basis of data which subsequently proved to be manifestly misstated;

~~g)~~ indemnities eventually set out by the issuer in case of ~~early termination or non-renewal~~ of directors shall not exceed a fixed amount or fixed number of years of annual remuneration. Termination payments shall not be paid if the termination is due to inadequate performance.

**6.C.2.** In preparing plans for share-based remuneration, the Board of Directors shall ensure that:

a) shares, options and all other rights granted to directors to buy shares or to be remunerated on the basis of share price movements shall have an average vesting period of at least three years;

b) the vesting referred to in paragraph a) shall be subject to predetermined and measurable performance criteria;

c) directors shall retain a certain number of shares granted or purchased through the exercise of the rights referred to in paragraph a), until the end of their mandate.

**6.C.3.** The criteria 6.C.1 and 6.C.2 shall apply, *mutatis mutandis*, also to the definition – by the bodies entrusted with that task – of the remuneration of key management personnel.



Any incentive plan for the person in charge of internal audit and for the person responsible for the preparation of the corporate financial documents shall be consistent with their role.

**6.C.4.** The remuneration of non-executive directors shall not be – other than for an insignificant portion – linked to the economic results achieved by the issuer. Non-executive directors shall not be beneficiaries of share-based compensation plans, unless it is so decided by the annual shareholders' meeting, which shall also give the relevant reasons.

**6.C.5.** The remuneration committee shall:

- periodically evaluate the adequacy, overall consistency and actual application of the policy for the remuneration of directors and key management personnel, also on the basis of the information provided by the managing directors; it shall formulate proposals to the Board of Directors in that regard;

- submit proposals or issues opinions to the Board of Directors for the remuneration of executive directors and other directors who cover particular offices as well as for the identification of performance objectives related to the variable component of that remuneration; it shall monitor the implementation of decisions adopted by the Board of Directors and verify, in particular, the actual achievement of performance objectives.

**6.C.6.** No director shall participate in meetings of the remuneration committee in which proposals are formulated to the Board of Directors relating to his/her remuneration.

**6.C.7.** When using the services of an external consultant in order to obtain information on market standards for remuneration policies, the remuneration committee shall previously verify that the consultant concerned is not in a position which might compromise its independence.

~~**6.C.8.** Issuers are encouraged to apply article 6, as amended in March 2010, by the end of the year that begins in 2011, and to inform the market in the Corporate Governance Report to be published during 2012.~~

~~The recommendations contained in the criteria 6.C.1, 6.C.2 and 6.C.3 shall apply without prejudice to the rights acquired from contracts or regulations adopted before March 31, 2010. The issuer shall inform the market in the Corporate Governance Report (or with the different formalities which may be provided by applicable law) of any case in which those recommendations are not applicable due to the contractual arrangements referred to above.~~

According to principle 6.P.5., the press release should provide:

a) adequate information on the indemnity and/or other benefits, including their amount, timing of disbursement – distinguishing both between the component immediately paid out and the one subject to deferral mechanisms and between the component received as director

from the other one related to an employment relationship, if any – and “claw-back” clauses, if any, in particular with reference to:

- indemnities for the end of office or termination of the employment relationship, specifying the circumstances of its accrual (for example, expiry, revocation or settlement agreement);

- maintenance of rights related to any incentive plans, monetary or financial instruments based;

- benefits (monetary and non monetary ones) subsequent to the end of office;

- non-competition commitments, describing their main contents;

- any other payment assigned for any reason and in any form;

b) information about the compliance or non-compliance of the indemnity and/or other benefits with the remuneration policy and, in case of even a partial non-compliance with the remuneration policy, information about internal procedures applied according to Consob related party transactions’ regulation;

c) information about the application, or non-application, of any mechanism that provides restrictions or corrections to the indemnity in case of termination due to the achievement of objectively inadequate results, as well as whether requests have been formulated for the reclaim of remuneration already paid out;

d) information as whether the replacement of the ceased executive director or general manager is governed by any succession plan adopted by the company and, in any case, information about procedures that have been or will be applied for the replacement of the director or manager.

### **Comment**

The remuneration policy establishes the guidelines according to which the remunerations shall be determined by the Board of Directors with reference to the remuneration of executive directors and other directors covering particular offices, and by the managing directors with reference to the key management personnel. The statutory auditors, in expressing the opinion pursuant to article 2389, paragraph 3, of the Italian Civil Code, shall also verify the consistency of the proposals with the policy on remuneration.

The structure of the remuneration of executive directors and key management personnel should promote the sustainability of the issuer in the medium-long term and ensure that the remuneration is based on results actually delivered. To this end, it is recommended that the variable components are linked to predetermined and measurable criteria; the remuneration policy may not determine in detail the formula expressing the correlation between variable component and objectives: it is sufficient that the policy indicates the elements (in particular the

economic variables) to which the variable components are linked and their methods of measurement.

The Committee also recommends that the remuneration policy establishes limits on the variable component, which need not necessarily be construed as caps expressed in absolute values.

A reference to the average remuneration for similar offices may be useful to define the level of remuneration; however it should also be consistent with adequate parameters linked to the performance of the company.

With reference to *criterion* 6.C.1., letter f), contractual arrangements with executive directors, or directors covering particular offices, envisage criteria in order to define the conditions for the reclaim of the variable components of remuneration.

The Committee considers that transparency of termination indemnities is functional to bring forward the disclosure of information that will be published in the remuneration report and that such disclosure regards any type of termination, both in case of the natural expiry and in case of early termination.

The Committee believes that the share-based compensation plans, if properly structured, can also be a suitable way to align the interests of executive directors and key management personnel with those of the shareholders. The Code recommends the adoption of certain measures aimed at discouraging their beneficiaries from seeking to increase the short term market value of the shares, undermining the creation of value in the medium-long term.

In particular, it is recommended that a predetermined portion of the shares granted or purchased should remain locked-in until the end of the mandate. This constraint, however, should not apply to the shares already held by the beneficiaries of the plan. With reference to the key management personnel that have an open-ended contract with the company, the plan should identify an appropriate expiration date of the constraint, for example three years from the date of grant or purchase of shares.

Some share-based compensation plans (e.g. phantom stock plans or phantom stock option plans) do not actually provide the assignment or purchase of shares, but only a cash settlement linked to the shares' performance. In such cases it is necessary to establish appropriate mechanisms for share retention, e.g. by providing that a portion of the cash awarded shall be reinvested into shares of the company that, according with section 6.C.2, letter c), shall be maintained until the end of the mandate.

The complexity of the remuneration issues require that the related decisions of the Board of Directors shall be supported by the preliminary activity and proposals of a remuneration committee.

According to the general recommendations applicable to all committees pursuant to the criterion 4.C.1, e), the remuneration committee, in carrying out its tasks, shall ensure appropriate links with all relevant

functional and operational departments of the issuer. It is also appropriate that the chairman of the Board of statutory auditors or another statutory auditor designated by the chairman of the Board participates in the works of the committee; the remaining statutory auditors are allowed to attend.

In the performance of its duties, the remuneration committee should use the services of external consultants that are experts on compensation policies. Such consultants shall not simultaneously provide the human resources department, the directors or the key management personnel, with significant services which might compromise their independence.

The remuneration committee shall report to the shareholders on the exercise of its functions; for this purpose the chairman or another committee member should be present to the annual shareholders' meeting.

Moreover, it should be noted that, in general, the Board of Statutory Auditors shall, according to art. 149, par. 1, letter c-bis) of the CLF, check the arrangements for implementing corporate governance recommendations provided for in codes of conduct that the company declares to comply with and, therefore, also those recommendations concerning remunerations and other benefits.

## **Article 7 – Internal control and risk management system**

### ***Principles***

**7.P.1.** Each issuer shall adopt an internal control and risk management system consisting of policies, procedures and organizational structures aimed at identifying, measuring, managing and monitoring the main risks. Such a system shall be integral to the organizational and corporate governance framework adopted by the issuer and shall take into consideration the reference model and the best practices that are applied both at national and international level.

**7.P.2.** An effective internal control and risk management system contributes to the management of the company in a manner consistent with the objectives defined by the Board of Directors, promoting an informed decision-making process. It contributes to ensuring the safeguarding of corporate assets, the efficiency and effectiveness of management procedures, the reliability of financial information and the compliance with laws and regulations, including the by-laws and internal procedures.

**7.P.3.** The internal control and risk management system involves each of the following corporate bodies depending on their related responsibilities:

- a) the Board of Directors, that shall provide strategic guidance and evaluation on the overall adequacy of the system, identifying within the Board:
  - (i) one or more directors to be charged with the task of establishing and maintaining an effective internal control and risk management system (hereinafter, the “director in charge of the internal control and risk management system”), and
  - (ii) a control and risk committee in line with the requirements set forth by principle 7.P.4., to be charged with the task of supporting, on the basis of an adequate control process, the evaluations and decisions to be made by the Board of Directors in relation to the internal control and risk management system, as well as to the approval of the periodical financial reports;
- b) the person in charge of internal audit, entrusted with the task to verify the functioning and adequacy of the internal control and risk management system;
- c) the other roles and business functions having specific tasks with regard to internal control and risk management, organised depending on the company’s size, complexity and risk profile;
- d) the Board of statutory auditors, also as “audit committee”, which is responsible for oversight of the internal control and risk management

system.

Each issuer shall provide for coordination methods between the above mentioned bodies in order to enhance the efficiency of the internal control and risk management system and reduce activities overlapping.

**7.P.4.** The control and risk committee is made up of independent directors. Alternatively, the committee can be made up of non executive directors, the majority of which being independent ones; in this case, the chairman of the committee is selected among the independent directors. If the issuer is controlled by another listed company or is subject to the direction and coordination activity of another company, the committee shall be made up exclusively of independent directors. At least one member of the committee is required to have an adequate experience in the area of accounting and finance or risk management, to be assessed by the Board of Directors at the time of appointment.

### **Criteria**

**7.C.1.** The Board of Directors, with the opinion of the control and risk committee, shall:

- a) define the guidelines of the internal control and risk management system, so that the main risks concerning the issuer and its subsidiaries are correctly identified and adequately measured, managed and monitored, determining, moreover, the level of compatibility of such risks with the management of the company in a manner consistent with its strategic objectives;
- b) evaluate, at least on an annual basis, the adequacy of the internal control and risk management system taking into account the characteristics of the company and its risk profile, as well as its effectiveness;
- c) approves, at least on an annual basis, the plan drafted by the person in charge of internal audit, after hearing the Board of statutory auditors and the director in charge of the internal control system;
- d) describe, in the Corporate Governance Report, the main features of the internal control and risk management system, expressing the evaluation on its adequacy;
- e) after hearing the Board of statutory auditors, it assesses the findings reported by the external auditor in the suggestions letter, if any, and in the report on the main issues resulting from the auditing.

The Board of Directors shall, upon proposal of the director in charge of the internal control and risk management system, subject to the favourable opinion of the control and risk committee, as well as after hearing the Board of statutory auditors:

- appoint and revoke the person in charge of the internal audit function;

- ensure that such a person is provided with the adequate resources for the fulfilment of his/her responsibilities;
- define the relevant remuneration consistently with company's policies.

**7.C.2.** The control and risk committee, when assisting the Board of Directors shall:

- a) evaluate together with the person responsible for the preparation of the corporate financial documents, after hearing the external auditors and the Board of statutory auditors, the correct application of the accounting principles, as well as their consistency for the purpose of the preparation of the consolidated financial statements, in any;
- b) express opinions on specific aspects relating to the identification of the main risks for the company;
- c) review the periodic reports of the internal audit function concerning the assessment of the internal control and risk management system, as well as the other reports of the internal audit function that are particularly significant;
- d) monitor the independence, adequacy, efficiency and effectiveness of the internal audit function;
- e) request the internal audit function to carry out reviews of specific operational areas, giving simultaneous notice to the chairman of the Board of statutory auditors;
- f) report to the Board of Directors, at least every six months, on the occasion of the approval of the annual and half-year financial report, on the activity carried out, as well as on the adequacy of the internal control and risk management system.

**7.C.3.** The chairman of the Board of statutory auditors or another statutory auditor designated by this chairman shall participate in the works of the control and risk committee; the remaining statutory auditors are also allowed to participate.

**7.C.4.** The director in charge of the internal control and risk management 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, taking care of the planning, realization and management of the internal control and risk system, constantly monitoring its adequacy and effectiveness;
- c) adjust such system to the dynamics of the operating conditions and the legislative and regulatory framework;
- d) request to internal audit function to carry out reviews of specific operational areas and on the compliance of business operation with rules and internal procedures, giving simultaneous notice to the chairman of the Board of Directors, the chairman of control and risk committee and the chairman of the Board of statutory auditors;

- e) promptly report to the control and risk committee (or to the Board of Directors) issues and problems that resulted from his/her activity or of which he/she became aware in order for the committee (or the Board) to take the appropriate actions.

**7.C.5.** The person in charge of internal audit shall:

- a) verify, both on a continuous basis and in relation to special needs, in conformity with international professional standards, the adequacy and effective functioning of the internal control and risk management system, through an audit plan, to be approved by the Board of Directors. Such a plan shall be based on a structured analysis and ranking of the main risks;
- b) not be responsible for any operational area and be subordinated to the Board of Directors;
- c) have direct access to all useful information for the performance of its duties;
- d) draft periodic reports containing adequate information on its own activity, and on the company's risk management process, as well as about the compliance with the management plans defined for risk mitigation. Such periodic reports contain an evaluation on the adequacy of the internal control and risk management system;
- e) prepare timely reports on particularly significant events;
- f) submit the reports indicated under items d) and e) above to the chairman of the Board of statutory auditors, the control and risk committee and the Board of Directors, as well as to the director in charge of the internal control and risk management system;
- g) verify, according to the audit plan, the reliability of information systems, including the accounting one.

**7.C.6.** The internal audit function may be entrusted, as a whole or by business segments, to a person external to the issuer, provided, however, that it is endowed with adequate professionalism, independence and organization. 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 Corporate Governance Report.

### ***Comment***

Controls system is one of the critical issues of a listed company governance. Its components are rather diversified and range over from the so-called "line control" (or "first level control") carried out by persons in charge of operational areas to the so-called "management control", relating to business planning and controlling, up to internal auditing, that is the global assurance on design and functioning of internal controls.

Providing indications concerning the organization of controls architecture is not a task pertaining to a code of conduct, since each organization depends on the specific variables of the relevant issuer, including, by way of example, the kind of activity, the size, the group structure, as well as the regulatory framework that, with reference to specific regulated entities, could impose rules that are not fully consistent with the recommendations of the Code. However, the Committee deems it appropriate to set out certain



recommendations relating to the internal control system governance and thus on the role covered by the various players in building and “managing” (in a broad sense) such a system.

Two general preliminary remarks are deemed appropriate. The first remark is that the modern view of controls revolves around the notion of business risks, their identification, evaluation and monitoring; and this is one of the reasons why regulations and the Code refer to the internal control and risk management system as a global system based essentially on enterprise risk governance. The second preliminary remark, that is connected to the first one, is that a control system must be “integrated” in order to be efficient; this implies that its constituents are to be coordinated and interdependent among themselves and that the system as a whole is, at its own turn, integrated in the general organizational, administrative and accounting structure of the company.

Under the principles set out by article 7 the main players governing the control systems are listed, together with a brief description of their roles; under the application criteria the main duties pertaining to each players are described.

The Board of Directors, being a body entrusted with strategic supervision duties, is charged of defining the guidelines of the control system, consistently with the issuer’s risk profile set out by the Board of Directors.

In addition, the Board of Directors is charged of evaluating the adequacy of controls system, in compliance with law provisions. Such an evaluation is to be carried out periodically, even though the occurrence of unexpected events over the course of the company’s life may require special in depth analysis, aimed at assessing the effectiveness of controls with regard to specific situations.

The Board of Directors usually needs to carry out a preliminary verification activity, when performing such duties as well as when examining annual or half-year reports. This kind of activity is typically carried out by a committee made up of directors that, under the Code, it is identified as “control and risk committee”. Such a name highlights, again, the central position of the risks and distinguish such a body from the Board of statutory auditors as “audit committee”, as imposed by the recent rules in matter of auditing, whose duties remain clearly separate from the Board of Directors’ preliminary needs.

On the other hand, for the purpose of streamlining the governance structures, the Board of Directors may decide to carry out directly such verification activity, without setting up a special committee, where such a choice is consistent with the issuer’s features, as already clarified in detail in the comment under article 4. The reasons for such a choice shall be described in detail in the Corporate Governance Report and shall be subject to a periodic review. Where such duties are collectively performed by the whole Board of Directors, a special effort shall to be required to each director and the Chairman – or any other director eventually appointed for this purpose – shall inform adequately his colleagues on the subject-matters under discussion.

The Board of Directors is also required to identify among its members a director to be charged of establishing and maintaining an internal control and

risk management system. The Board of Directors may also designate more than one directors to be charged with such duties: by way of example, a director charged of duties concerning finance, administration and control may be provided with tasks relating to the control of the risks of such area, while a director charged of duties concerning business management may be provided with tasks relating to the control of the risks of such sector. The director charged with the internal control system might be, alternatively, a director already having operational delegated powers or a director without delegated powers, who is deemed to be specially feasible for carrying out the activity mentioned above and therefore should be qualified as executive director by reason of the assignment so received.

The choice to assign the duties in question to a director provided with delegated operational powers could be advantageous in consideration of the specific knowledge of such a person. In addition, it could be useful, in this case, that the issuer identifies adequate measures regarding the proposals in matter of appointment, revocation or remuneration of the person in charge of the internal audit function, by way of example setting out the previous sharing of such proposals with the chairman of the Board of Directors, where the same is not charged of operational delegated powers.

As far as the main business functions involved in the control system are concerned, a central position is ascribed to the internal audit function, that is charged of the “third level” control. The internal audit function should be absolutely independent, being provided with an autonomous power to drive the preparation of the audit plan and to put into operation single actions; the independency of the function is also linked to the rules set forth in matter of appointment, revocation and remuneration of the relevant person in charge of this office. Powers assigned to the Board of Directors in this subject-matter set out the existence of an effective hierarchical relationship in respect of the person in charge of the internal audit office. However, the above mentioned proposals shall be subject to the favourable opinion of the control and risk committee (or alternatively, as for proposals concerning remuneration, of the remuneration committee), and after hearing the Board of statutory auditors.

Special attention must be paid to information flows coming from the internal audit office; the outcome of the reviews made should be reported, generally simultaneously, to the chairmen of Board of Directors, Board of statutory auditors and control and risk committee, as well as to the director in charge of the internal control and risk management system, who shall not be allowed to receive information in advance on the activities carried out.

Business departments competent for carrying out “second level” controls, charged with the monitoring and management of typical business risks, including operational risk, financial risk, market risk, (non) compliance risk, etc., are at a different level.

Save for the person responsible for the preparation of the corporate financial documents, who is responsible, pursuant to the law, for arranging adequate administrative and accounting procedures for the preparation of financial information documents, no general rules are provided on risk management applicable to all issuers irrespectively from the business sector.

On the contrary, certain special rules applicable to specific regulated entities require the setting up of special business structures and offices vested with the risk management duties, such as the chief risk officer, the compliance function, a risk committee made up of managers and charged with the task to assist the corporate bodies in the risk assessment process.

The Committee believes that each issuer should determine the most suitable organization in order to reach an effective protection from risks, taking into account the features of the company's business: in this way, the monitoring and management of risks may be assigned to managers (or departments) that are not exclusively devoted to this responsibility. Second level control departments are intended to enact a structured process of risk's analysis and are subject to a general review by internal audit function.

The framework of the internal control players is completed by the Board of statutory auditors, that is at the top of the internal control systems of an issuer.

In light of a rationalization of the internal controls system, the issuer shall assess the opportunity to entrust the Board of statutory auditors with the duties pertaining to the surveillance body pursuant to Legislative Decree 231/2001.

## **Article 8 – Statutory auditors**

### ***Principles***

**8.P.1.** The statutory auditors shall act with autonomy and independence also vis-à-vis the shareholders, which elected them.

**8.P.2.** The issuer shall adopt suitable measures to ensure an effective performance of the duties typical of the Board of statutory auditors.

### ***Criteria***

**8.C.1.** The statutory 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 statutory auditors shall check the compliance with said criteria after the appointment and subsequently on an annual basis, including the result of such verification in its Corporate Governance Report, according to manners complying with the ones provided with reference to directors.

**8.C.2.** The statutory auditors shall accept the appointment when they believe that they can devote the necessary time to the diligent performance of their duties.

**8.C.3.** A statutory 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 statutory auditors and the chairman of the Board about the nature, the terms, origin and extent of his/her interest.

**8.C.4.** In the framework of their activities, the statutory auditors may demand from the internal audit function to make assessments on specific operating areas or transactions of the company.

**8.C.5.** The Board of statutory auditors and the control and risk committee shall exchange material information on a timely basis for the performance of their respective duties.

### ***Comment***

The Board of statutory auditors has a central role in the supervisory system of an issuer.

The Committee believes that the supervisory duties of the Board of statutory auditors have to be carried out in a preventive manner and not merely *ex post*, essentially verifying the procedures developed and reporting findings to the directors, in order for them to adopt the necessary remedies, if any.

The subsequent coordination with the management bodies, including the delegated ones, shall be deemed consistent with supervisory role on compliance (with the law, the by-laws, the internal procedures) typically

entrusted to the Board of statutory auditors. Such a role distinguishes it sharply from the Board of Directors and control and risk committee, that basically assess, also from a substantive viewpoint, the adequacy of the organization and the performance of the management process.

Within the Board of statutory auditors, the chairman plays a preeminent role and carries out the coordination of the works of such Board and liaises with the other company's bodies performing supervising functions. The circumstance that the office of the chairman of the Board of statutory auditors is reserved to a member appointed by the minority shareholders represents a further impartiality factor, that may increase the independence requirements, and it should not be deemed as an element "unrelated" to the company organization: the Board of statutory auditors is a body that operates within the company and in a coordinated manner with the management bodies, in order to pursue the sole purpose of value creation for the shareholders in the medium-long term.

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

The issuer shall disclose in the Corporate Governance Report information about the composition of the Board of Statutory Auditors, indicating for each member whether he/she has been qualified as independent according to the criteria provided by this Code, as well as the number and the average duration of its meetings.

## **Article 9 – Relations with the Shareholders**

### ***Principles***

**9.P.1.** The Board of Directors shall take initiatives aimed at promoting the broadest participation possible of the shareholders in the shareholders' meetings and making easier the exercise of the shareholders' rights.

**9.P.2.** The Board of Directors shall endeavour to develop a continuing dialogue with the shareholders based on the understanding of their reciprocal roles.

### ***Criteria***

**9.C.1** The Board of Directors shall ensure that a person is identified as responsible for handling the relationships with the shareholders and shall evaluate from time to time whether it would be advisable to establish a business structure responsible for such function.

**9.C.2.** All the directors usually participate in the shareholders' meetings. The shareholders' meetings are also an opportunity for disclosing to the shareholders information concerning the issuer, in compliance with the rules governing price-sensitive information. In particular, the Board of Directors shall report to the shareholders' meeting the activity performed and planned and shall use its best efforts for ensuring that the shareholders receive adequate information about the necessary elements for them to adopt in an informed manner the resolutions that are the competence of the shareholders' meeting.

**9.C.3.** The Board of Directors should propose to the approval of the shareholders' meeting rules laying down the procedures to be followed in order to permit an orderly and effective conduct of the shareholders' meetings of the issuer, without prejudice, at the same time, to the right of each shareholder to express his or her opinion on the matters under discussion.

**9.C.4.** In the event of significant changes in the market capitalization of the company's shares or in the composition of its shareholders, the Board of Directors shall assess whether proposals should be submitted to the shareholders' meeting to amend the by-laws in respect to the majorities required for exercising actions and rights provided for the protection of minority interests.

### ***Comment***

The Committee believes that it is in the best interests of the issuers to establish a continuing dialogue with the generality of the shareholders, and in particular, with institutional investors, in compliance with rules and

procedures governing the disclosure of price-sensitive information.

In such context, the shareholders' meeting remains an important opportunity of confrontation between shareholders and directors.

Accordingly, the Committee wishes that the Board of Directors uses its best efforts in order to reduce the formalities and fulfilments that make the attendance at the shareholders' meeting and the exercise of the voting rights by the shareholders burdensome and hard. When choosing the place, date and time for shareholders' meetings, as well as when drafting the relevant agenda, directors shall bear in mind the objective of making it as easy as possible for shareholders to attend and vote.

The Committee is aware that the good working of shareholders' meeting can be sometimes threatened by the behaviour of certain "rufflers" who substantially limit the effective attendance of the other shareholders. The Committee wishes that the issuers adopt measures aimed at protecting the effective attendance of the shareholders, respectfully of each single party's needs.

The company shareholders' meeting regulation can specify, among other things, the maximum duration of individual interventions, their order, the procedures for answering to the questions eventually submitted before the meeting, as well as the terms within such questions have to be submitted, the voting procedures, the interventions by directors and members of the Board of statutory auditors, as well as the powers of the chairman, *inter alia* with regard to settling or preventing conflicts in meetings.

Since the shareholders' meeting allows shareholders and directors to have a dialogue, the latter shall attend, especially those who, in consideration of the duties with which they are entrusted in the Board of Directors and/or the committees of the Board, may provide a useful contribution to the shareholders' meeting discussion.

With reference to the legal provisions protecting the rights of minorities that require minimum percentages to be fixed for the exercise of voting rights and the prerogatives of minorities, the Committee recommends that directors should continuously assess the desirability of adapting such percentages in line with the evolution of the company's size and shareholder structure.

The previous timely disclosure to the market by shareholders controlling the issuer (or, if there are not, shareholders who have a significant influence on it) of any proposal to be submitted to the shareholders' meeting in relation to topics on which directors did not formulate proposal, is a good practice. By way of example, shareholders' position in matter of the number of Board of Directors members, as well as duration and remuneration of such a body, could be disclosed to the market at the filing of candidates slate.

The Committee believes that it is not in its responsibility to take into consideration the behaviours of institutional investors. The Committee, moreover, is of the opinion that the acknowledgement by them of the importance of the corporate governance rules contained in this Code may represent a significant element for the purpose of a more convinced widespread application of the principles of the Code by the issuers.

## **Article 10 – Two-tier and one-tier systems**

### ***Principles***

**10.P.1.** In the event of adoption of a two-tier or one-tier management and control system, the above articles shall apply insofar as compatible, adapting individual provisions to the particular system adopted, consistently with the objectives of good corporate governance, transparency of information and protection of investors and the markets pursued by the Code and in the light of the criteria provided by this article.

**10.P.2.** In the event that a new management and control system is proposed, the directors shall inform the shareholders and the market with regard to the reasons for such proposal, as well as on how it is envisaged that the Code will be applied to the new management and control system.

**10.P.3.** In the first Corporate Governance Report published after the modification of the management and control system, the issuer shall describe in detail how the Code has been applied to such system. Such information shall be published also in the subsequent reports, indicating any amendments to the procedure followed in applying the Code to the selected management and control system.

### ***Criteria***

**10.C.1.** In the event of adoption of the two-tier management and control system, the Code shall be applied according to the following criteria:

- a) except as provided in paragraph (b) below, the articles of the Code that make reference to the Board of Directors and the Board of statutory auditors, or their members, are applied, in principle, to the Management Board and Supervisory Board, or their members respectively;
- b) due to the specific options of the by-laws adopted, in the configuration of the management and supervisory bodies - also in relation to the number of their members and the powers and duties attributed to them - as well as of the specific circumstances existing, the issuer may apply the provisions concerning the Board of Directors or directors to the Supervisory Board or its members;
- c) the provisions relating to the appointment of directors provided by Article 5 of this Code shall apply, insofar as compatible, to the appointment of the members of the Supervisory Board and/or the members of the Management Board.

**10.C.2.** In the event of adoption of the one-tier management and control system, the Code shall be applied according to the following criteria:



- a) the articles of the Code that make reference to the Board of Directors and to the Board of statutory auditors, or their members shall be applied, in principle, to the Board of Directors and to the Management Control Committee, or their members respectively;
- b) the duties attributed to the control and risk committee by Article 7 of this Code may be reported to the Management Control Committee provided by Article 2409-eighteenth of the Italian Civil Code, where it complies with the composition criteria set forth by article 7.

### **Comment**

The two-tier and one-tier management and control systems, alternative to the traditional one based on a Board of Directors and Board of statutory auditors, have been recently introduced and have had till now a very limited utilization by the issuers. Therefore, it is not possible to identify, with specific reference to the Italian system and experiences, a consistent significant applicative practice on which a best practice code must be based in order to indicate specific principles and criteria.

Moreover, it must be kept in mind that the alternative systems provide for significant margins of freedom, which allow the statutory autonomy to adjust their characteristics to the specific corporate governance needs of the issuer, with the consequence that the same model applied in different ways may show, in practice, mixed features, which may cause the provision of general abstract rules to become ineffective.

Due to the above reasons, a considerable degree of flexibility must be granted to the issuers, flexibility that they may use – provided that there is full transparency in the choices made – for the purpose of meeting, in the event of adoption of the one-tier or two-tier system, the substantial goals underlying this Code, which appear from the reading of the provisions devoted to the traditional model of corporate governance.

The Committee believes that the acceptance of the Code requires, in general, the application of the principle, followed also by the legislator, according to which the recommendations that make reference to the directors in the traditional model shall apply to the members of the Management Board (in the two-tier model) and Board of Directors (in the one-tier model), and those which make reference to the statutory auditors shall apply to the members of the Supervisory Board (in the two-tier model) and of the Management Control Committee (in the one-tier model).

With specific reference to the two-tier model, however, according to the Committee, also taking into account the main foreign experiences, it is likely – and in principle preferable – that the Management Board does not take up a excessive size, but should rather be a body made up of a limited number of executive directors, or directors who are actively involved in the management activity, and “high level” management powers should be attributed to the Supervisory Board with reference to the strategic transactions and industrial and financial plans of the issuer. In the event that the configuration of the management and control systems follows such criterion, in compliance with

the provisions of the law, it may be appropriate to apply the recommendations of this Code, in particular with regard to the composition of the management body and committees, not to the Management Board, but – insofar as compatible – to the Supervisory Board, as suggested by criterion 10.C.1, letter b). It is pointed out that, should this be the case, in consideration of the composition and nature of the Supervisory Board, such body may also establish that the functions assigned to the committees provided by the Code are performed by the Supervisory Board as a whole, provided that the size of the body allows for an efficient performance of these functions and that adequate information is supplied in this regard.

With specific regard to the event that the one-tier model is adopted, the Committee believes that the functions of the control and risk committee may be performed by the Management Control Committee. The solution indicated satisfies the need to avoid the joint presence, within the Board of Directors, of two committees with duties that are, even though not identical, obviously similar, a solution that is considered poorly functional and a possible source of inefficiency. Moreover, for the purpose of avoiding that such solution may negatively affect the effectiveness of the control functions, the hope is expressed that the choice to adopt the one-tier model, and to accumulate the functions of the control body provided by the legislator and the committee provided by this Code, are always supported by adequate reasons on the part of the issuer. In addition, it is worthwhile that appropriate measures are implemented (starting from the very same qualitative and quantitative composition of the committee) for ensuring that the controlling body may perform its functions effectively and independently.