

Matters that require minor amendments and adjustments to the current Code of Practice

1. Introduction

NCGB considers it appropriate to harmonise the requirements in the Code of Practice in respect of the publication of a report on corporate governance with Section 3-3b of the Accounting Act, which stipulates that a report on the company's policies and practice for corporate governance must be included in the management report section of the annual report. Furthermore, the Code of Practice currently provides guidelines on the scope and format for reporting any deviations from its recommendations as part of the introduction, and NCGB would like to make it clear that these guidelines form part of the recommendations of the Code by including them as part of Section 1. It is also the case that there have been certain changes to legislation and regulations that cause a small number of amendments to the wording of the Code of Practice. The amendments and adjustments mentioned in this paragraph are explained in more detail in sections 2-4 below.

NCGB is of the view that neither the scope nor the content of the amendments and adjustments in question make it necessary to produce a new version of the Code of Practice for publication and distribution in 2011. NCGB's provisional conclusion is accordingly that, to the extent that only the changes mentioned in this consultation are carried out, it will be sufficient for the changes to be announced in a separate document that is published on the NCGB website, with the changes coming into effect from the date that this document is made available.

2. Harmonisation of the procedure for public disclosure of the Corporate Governance report, cf. Accounting Act, Section 3-3b

Section 3-3b of the Accounting Act introduces a statutory requirement whereby enterprises that are obliged to keep accounts and have Norway as their home state, and that have securities listed on a regulated market, must provide a report on their policies and practice for corporate governance.

This requirement comes into force for annual reports and annual accounts issued in respect of annual accounting periods commencing on or after 1 August 2010, and the wording in the Accounting Act is as follows:

"An enterprise that is obliged to keep accounts pursuant to the Accounting Act that is an issuer with Norway as its home state pursuant to Section 5-4 of the Securities Trading Act that has securities listed on a regulated market, shall provide a report on its policies and practices for corporate governance either in its management report included in the annual report or in a document referred to in the management report. The duty to report on corporate governance applies equally to public limited companies whose shares are only listed on an authorized market outside the EEA.

The report on policies and practices for corporate governance pursuant to the first paragraph shall contain, at a minimum, the following information:

- 1. a statement of the code of practice and rules for corporate governance to which the enterprise is subject or which it otherwise chooses to apply,*
- 2. information as to where the code of practice and rules referred to in item 1 are publicly available,*

3. *a justification for any deviation from the code of practice and rules referred to in item 1,*
4. *a description of the main elements of the enterprise's, and also of the group's for enterprises that are required to prepare consolidated accounts, systems for internal control and risk management related to the accounting reporting process,*
5. *any provisions in the articles of association that in whole or in part expand or deviate from the provisions of Chapter 5 of the Public Limited Companies Act,*
6. *the composition of the board of directors, corporate assembly, committee of representatives and control committee, any committee of these bodies, as well as a description of the main features of the current instructions and guidelines for the work of these bodies and of any committees of these bodies,*
7. *any provisions in the articles of association that govern the appointment and replacement of members of the board of directors,*
8. *any provisions in the articles of association and any mandates granted to the board of directors that give the board of directors the right to decide on purchases by the company of its own shares or the issue of new shares or equity certificates.*

Second paragraph, items 1, 2, 3, 5 and 6, shall not apply to enterprises obliged to keep accounts that have not issued shares or equity certificates that are listed on a regulated market or on a multilateral trading facility, cf. Securities Trading Act Section 2-3, fourth paragraph."

The first paragraph of the provision stipulates that the report must be included in the management report section of the annual report or a document referred to in the management report. The concept of 'document' includes a report provided in electronic format and published on the company's website.¹

Section 1 of the current Code of Practice stipulates that the Board of Directors must provide a report on the company's corporate governance in the annual report. NCGB considers it appropriate that the requirements on publication of the Code of Practice should be harmonised with the requirements of the Accounting Act. This implies that there will continue to be a requirement for the report on corporate governance produced in accordance with the requirements of Section 1 of the Code of Practice to be included in the annual report, but now with the opportunity to publish the report on the company's website subject to the management report including a reference to where the report is available. The requirement in Section 1 of the Code of Practice that the report must cover every section of the Code of Practice will continue unchanged.

3. Explanation of any deviation from the Code of Practice – clarification

The introduction to the Code of Practice provides an explanation of the "comply or explain" principle on page 7. This makes it clear that companies must explain how they comply with the recommendations that make up the Code of Practice, *or explain why they have chosen an alternative approach*. NCGB is of the view that an equivalent clarification should be included in Section 1 of the Code of Practice in order to make it clear that in order to give a satisfactory report on any deviation from the Code of Practice, the company must provide an explanation of the reason for the deviation and what alternative solution the company has selected.

¹ Proposition to the Storting 117 L (2009-2010), page 108.

4. Other minor adjustments required as a result of changes in legislation and regulations

4.1 Changes to the Oslo Børs Issuer Rules in respect of the composition of the Board of Directors

The footnote to Section 8 of the Code of Practice (Corporate assembly and board of directors: composition and independence) refers to the requirements in respect of the composition of the Board of Directors in the Oslo Børs Listing Rules. The footnote in the current edition of the Code of Practice states that these rules require that the majority of the shareholder-elected members of the board of directors should be independent of the company's executive personnel and material business contacts, and at least two of the members of the board elected by shareholders should be independent of the company's main shareholder(s). Oslo Børs amended its rules in respect of the composition of the Board of Directors in February 2011, and the rules now stipulate that at least two of the shareholder-elected members of the board of directors shall be independent of the company's executive management, material business contacts and company's larger shareholders. Accordingly, the same change must be made to the footnote. Other than this, it should be noted that the requirements of the Code of Practice continue unchanged, and are accordingly stricter in this area than the rules applied by Oslo Børs.

4.2 New requirements on audit committees in the Stock Exchange Regulations

A change made to Section 1 (2) of the Stock Exchange Regulations on 1 July 2010 means that all issuers of transferable securities listed on a regulated market must have an audit committee or equivalent corporate body. Norwegian public companies were subject to this requirement even before the change in the Stock Exchange Regulations, cf. Section 6-41 of the Public Companies Act. The change is therefore principally relevant to foreign companies and Norwegian companies that are not public companies that have securities listed on a Norwegian regulated market. The Stock Exchange Regulations include exemptions for smaller companies, equivalent to the exemptions at Section 6-41 (2) of the Public Companies Act. Many of the foreign companies that are listed on Oslo Børs have elected to comply with the Norwegian Code of Practice for Corporate Governance. These companies will now also be subject to a requirement to have an audit committee pursuant to the Stock Exchange Regulations. It is therefore desirable to remove the reference to the Public Companies Act in the recommendation at Section 9 of the Code of Practice (The work of the board of directors) by deleting the first sentence of the fourth paragraph.