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Proposal for changes to the Norwegian Code of Practice for Corporate Governance

The Norwegian Corporate Governance Board (NCGB) is pleased to circulate for consultation proposed changes to the Norwegian Code of Practice for Corporate Governance. The current Code can be read [here](#).

All interested parties are invited to provide any comments they have on the proposals or on any other aspect of the Code by 1 March 2025. NCGB requests that all comments are sent to info@nues.no.

The proposed changes stem from legislative and regulatory changes, international developments, and issues that have arisen through use of the Code. Several of the proposals also aim to make the recommendation clearer.

The most significant changes being proposed are as follows:

- In chapter 4 on equal treatment of shareholders, it is proposed to clarify which recommendations apply to justifications when justifying the deviation from shareholders' preferential rights. It should be specifically stated how shareholder interests are safeguarded in the issue compared to a rights issue.
- In Chapter 6 on general meetings, it is proposed to clarify the board's responsibility to facilitate shareholder participation in general meetings, including shareholder voting.
- In Chapter 7 on the nomination committee, it is proposed to clarify shareholders' access to propose candidates.
- In Chapter 9 on the board of directors, composition, and independence, it is proposed to clarify that recommendations on the board's reporting responsibilities also include sustainability reporting.
- In Chapter 12 on salaries and other remuneration for executive personnel, it is proposed to remove one of the recommendations, as its wording is almost identical to Public Limited Liability Companies Act section 6-16a (3). Furthermore, it is clarified that remuneration schemes should be comprehensive and transparent. It is also proposed to replace the term "performance-related remuneration" with "variable remuneration" to align the wording with the regulations on guidelines and reporting for executive personnel's remuneration. Additionally, it is proposed to clarify that variable remuneration should be based on objective, definable, and measurable criteria and tied to factors that the senior executive can influence.

NUES

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- In Chapter 13 on information and communication, it is proposed to replace the recommendation that the board should establish guidelines for the company's reporting of financial and other information with a recommendation on the publication of financial and other information.
- In Chapter 15 on auditor, it is proposed to clarify that the board's summoning of the auditor for a meeting to discuss the annual financial statements should also include sustainability reporting.

This consultation paper does not include specific proposals for changes to the commentaries that accompany the Code's recommendations. NCGB's analysis of the changes will be reflected in the commentaries where appropriate. Consultation parties are welcome to provide their thoughts on what the commentaries should contain.

The consultation parties are also welcome to provide feedback if there is a need for changes to the recommendation beyond what NUES has proposed.

Best regards

The Norwegian Corporate Governance Board

Christina Stray
Chair

Stine Winger Minde
Secretariat

1. Equal Treatment of Shareholders (Chapter 4)

Background and current recommendation

Chapter 4 deals with the equal treatment of shareholders in relation to waive the pre-emption rights of existing shareholders and transactions in own shares. The chapter states that the board "should" justify any decision to waive the pre-emption rights of existing shareholders to subscribe for shares in the event of an increase in share capital.

NCGB's analysis

In the NCGB's view, reasons should always be given for waiving shareholders' pre-emption rights, regardless of how the capital increase is adopted. The justification should specifically state why the shareholders' interests are safeguarded in the specific case compared to a preferential rights issue.

The requirement for justification is relevant in three situations:

- 1) The board of directors proposes that the general meeting shall adopt a resolution on a issue decision, cf. Public Limited Liability Companies Act section 10-3,
- 2) The board of directors proposes that the general meeting shall authorize the board of directors to waive pre-emptive rights, cf. Public Limited Liability Companies Act section 10-15 of the, and
- 3) The Board of Directors makes its own issue decision on the basis of the authorization, cf. Public Limited Liability Companies Act section 10-17.

The Norwegian Public Limited Liability Companies Act regulates the requirements for justification in the first and second situations. If the board of directors proposes a waiver of shareholders' preferential rights to the general meeting, the proposal must be specifically stated and justified, cf. Public Limited Liability Companies Act section 10-3 (2). A requirement for justification also applies if the board of directors proposes that the general meeting shall authorize the board of directors to waive pre-emption rights, cf. Public Limited Liability Companies Act section section 10-15. The reasons must be documented in a case document for the general meeting.

A similar requirement for justification when waiving preferential rights is also included in the Code. In NCGB's view, however, it is unfortunate that the Code only states that the board of directors "should" justify such waiver of preferential rights, as the Public Limited Liability Companies Act states that the board of directors "shall" justify such waiver. NCGB therefore proposes to change the wording of the Code of Practice so that it reflects the statutory requirement that reasons "shall" be given. This is otherwise in line with the recommendation's other terminology.

The proposal to change the wording of the Code from "should" to "shall" may initially appear to be superfluous, as the requirement for justification already follows from Section 10-3 (3)

of the Public Limited Liability Companies Act. However, NCGB is of the opinion that it increases readability if it is also stated that the board should justify such proposals to the general meeting. For foreign companies that do not comply with the Norwegian Public Limited Liability Companies Act, but which do comply with the Code, the Code also has an independent value.

The Norwegian Public Limited Liability Companies Act does not regulate requirements for justification for situation three. The central function of the Code is therefore to ensure that the board also justifies the need for any waiver of preferential rights in such cases. If the board of directors approves the capital increase on the basis of a power of attorney, the reasons for waiving pre-emptive rights should also be stated in the stock exchange announcement that publishes the capital increase.

At the same time, NCGB proposes to clarify that the justification must be provided by the board. The recommendation is mainly aimed at the board of directors, and the main rule is that the board of directors submits a proposal to the general meeting, which decides on the capital increase, cf. Public Limited Liability Companies Act sections 10-1 and 10-3.

NCGB's proposal

NCGB proposes that Chapter 4 of the Code should read as follows:

4. Equal treatment of shareholders

Any decision to waive the pre-emption rights of existing shareholders, **either in the general meeting or by granting a power of attorney**, to subscribe for shares in the event of an increase in share capital ~~should~~ **shall** be **specifically stated and** justified.

The justification should also specifically state how the shareholder interests are safeguarded in the issue compared to a rights issue. Where the board of directors resolves to carry out an increase in share capital and waive the pre-emption rights of existing shareholders on the basis of a mandate granted to the board, the justification should be publicly disclosed in a stock exchange announcement issued in connection with the increase in share capital.

Any transactions the company carries out in its own shares should be carried out either through the stock exchange or at prevailing stock exchange prices if carried out in any other way. If there is limited liquidity in the company's shares, the company should consider other ways to ensure equal treatment of all shareholders.

2. General meetings (Chapter 6)

Background and current recommendation

Chapter 6 deals with the conduct of general meetings. The recommendation supplements the Public Limited Liability Companies Act and associated regulations with regard to how general meetings should be prepared and conducted.

NCGB's analysis

The current recommendation states that the board of directors should ensure that shareholders can participate in the company's general meeting. NCGB proposes to clarify that this should also include the shareholders' right to vote. As a consequence of the change, the NCGB proposes to delete the recommendation that shareholders who cannot be present at the general meeting should be given the opportunity to vote. A right to participate digitally if the general meeting is held as a physical meeting already follows from the Public Limited Liability Companies Act section 5-8 (3) letter b.

Furthermore, NCGB proposes to delete the recommendation on proxy forms. Instead, the NCGB proposes that the comments clarify that the recommendation that the board of directors should facilitate that the shareholders can vote at the company's general meeting also includes facilitating voting by proxy. If it is not possible to vote in advance, the board should appoint a person to act as a proxy for the shareholders, if the shareholders so wish. However, the voting solution must not limit the shareholders' right to be represented by proxy pursuant to Public Limited Liability Companies Act section 5-5 (2).

In NCGB's view, the proposed changes mean that the Code is more neutral with regard to whether the general meeting is held as a physical or digital meeting. The aim is also to clarify the board's responsibility for facilitating voting solutions that ensure that as many people as possible can participate in the general meeting regardless of whether it is held physically or digitally.

Furthermore, NCGB proposes to move the recommendation that shareholders should be able to vote on each individual matter, so that it is included as the second sentence in Chapter 6. The change is only editorial, but the aim is to highlight the importance of the recommendation.

NCGB's proposal

NCGB proposes that Chapter 6 of the Code should read as follows:

6. General meetings

The board of directors should ensure that the company's shareholders can participate **and vote** in the general meeting.

Shareholders should be able to vote on each individual matter, including on each individual candidate nominated for election.

The board of directors should ensure that:

- the resolutions and supporting information distributed are sufficiently detailed, comprehensive and specific to allow shareholders to form a view on all matters to be considered at the meeting
- any deadline for shareholders to give notice of their intention to attend the meeting is set as close to the date of the meeting as possible
- the members of the board of directors and the chairman of the nomination committee attend the general meeting
- the general meeting is able to elect an independent chairman for the general meeting

~~Shareholders should be able to vote on each individual matter, including on each individual candidate nominated for election. Shareholders who cannot attend the meeting should be given the opportunity to vote. The company should design the form for the appointment of a proxy to make voting on each individual matter possible and should nominate a person who can act as a proxy for shareholders.~~

3. Nomination committee (Chapter 7)

Background and current recommendation

Chapter 7 of the recommendation deals with the composition and work of the nomination committee, including the committee's relationship with the company's shareholders.

NCGB's analysis

The current recommendation states that the company should provide information about the members of the nomination committee and deadlines for proposing candidates. In NCGB's view, the recommendation relating to "deadline" is probably impractical for the nomination

committee. Instead, the key issue should be that the company informs the shareholders about how they can propose candidates. Such a clarification will also safeguard the current recommendation that shareholders should be informed of the deadline for proposing candidates, as well as ensuring that shareholders are informed to whom and how to send the proposal, etc.

Furthermore, NCGB proposes an editorial change. The sentence “The nomination committee’s duties should be to propose candidates for election to the board of directors...” is proposed to be moved to be the second sentence in chapter 7. The proposal is based on the fact that the nomination committee's tasks should be stated more clearly in the introduction. Furthermore, a minor linguistic change in the wording is proposed.

It is also proposed to clarify that the nomination committee's contact with shareholders, board members and the CEO regarding proposals for candidates also applies to candidates for the nomination committee.

NCGB’s proposal

NCGB proposes that Chapter 7 of the Code should read as follows:

7.Nomination committee

The company should have a nomination committee, and the nomination committee should be laid down in the company’s articles of association. The nomination committee’s duties should be to propose candidates for election to the board of directors and nomination committee (and corporate assembly where appropriate) and to propose the fees to be paid to members of these bodies.

The general meeting should stipulate guidelines for the duties of the nomination committee, elect the chairperson and members of the nomination committee, and determine the committee's remuneration.

The nomination committee should have contact with shareholders, the board of directors and the company’s executive personnel as part of its work on proposing candidates for election to the board **and nomination committee. Shareholders should be informed about how they can propose candidates.**

The members of the nomination committee should be selected to take into account the interests of shareholders in general. The majority of the committee should be independent of the board of directors and the executive personnel. The nomination committee should not include any executive personnel or any member of the company’s board of directors.

~~The nomination committee’s duties should be to propose candidates for election to the board of directors and nomination committee (and corporate assembly where appropriate) and to propose the fees to be paid to members of these bodies.~~

The nomination committee should justify why it is proposing each candidate separately.

The company should provide information on the membership of the committee ~~and any deadlines for proposing candidates.~~

4. The work of the board of directors (Chapter 9)

Background and current recommendation

Chapter 9 of the recommendation mainly concerns the Board's case management. The comments provide further guidance on how the recommendations should be understood. Among other things, guidance is provided with regard to the company's financial reporting.

NCGB's analysis

In NCGB's view, the comments on financial reporting should be reworded to also include sustainability reporting, as a result of amendments to the Accounting Act. However, this must not be done in such a way that sustainability reporting is emphasized at the expense of financial reporting.

In connection with the audit, NCGB has considered whether the term corporate reporting/company reporting can be used as a common term for both financial reporting and sustainability reporting. Instead, NCGB proposes retaining the term financial reporting and supplementing it with "sustainability reporting". The proposal is based on the fact that the concept of financial reporting is well established and that sustainability reporting has a central place in the Accounting Act. The terms thus do not raise any doubts about what kind of reporting the Code refers to, which the term corporate reporting/company reporting could possibly entail.

As mentioned in the introduction, the NCGB does not put forward specific proposals for changes in the comments in the consultation paper. The above-mentioned considerations will be reflected in the comments to the Code.

5. Remuneration of executive personnel (Chapter 12)

Background and current recommendation

Chapter 12 currently contains three different recommendations. The chapter was amended in 2021, in connection with the introduction of new statutory rules in Public Limited Liability Companies Act section 6-16a on the determination of salaries and other remuneration of senior executives in listed companies and section 6-16b on reports on salaries and other remuneration of senior executives, with associated regulations.

NCGB's analysis

In the Norwegian version of Chapter 12, some linguistic changes are made because of the fact that the term "ledende personer" also includes board members, ch. Prop. 41 L (2023-2024). A corresponding change is not necessary in the English version of the Code.

NCGB proposes to remove the first recommendation that "The guidelines on the salary and other remuneration for executive personnel must be clear and easily understandable, and they must contribute to the company's commercial strategy, long-term interests and financial viability." The recommendation is almost identical to Public Limited Liability Companies Act section 6-16a (3).

The Code also proposes that the remuneration schemes should be simple and transparent and contain exhaustive criteria for goal achievement.

In the comments, it is proposed to clarify what is meant by "simple". The comments currently state that "In order to assess whether the arrangements are simple and easily understandable, the board of directors should attach importance to the arrangements being predictable and easy to administer." NCGB believes that the focus should not be on whether the schemes are "easy to administer". The key issue is that the shareholders can assess the consequences of the schemes.

NCGB also proposes replacing the term "performance-related remuneration" with "variable remuneration", so that the wording harmonizes with the regulation on guidelines and report on remuneration of senior executives. Furthermore, NCGB proposes to clarify in the Code that performance-related remuneration must be based on objective, definable and measurable criteria, and be based on conditions that the executive personnel can influence.

NCGB's proposal

NCGB proposes that Chapter 12 of the Code should read as follows:

12. Remuneration of executive personnel

~~The guidelines on the salary and other remuneration for executive personnel must be clear and easily understandable, and they must contribute to the company's commercial strategy, long-term interests and financial viability.~~

The company's arrangements in respect of salary and other remuneration should help ensure the executive personnel and shareholders have convergent interests, ~~and~~ **The remuneration schemes** should be simple, **and transparent, and contain exhaustive criteria for goal achievement.**

~~Performance-related~~ **Variable** remuneration should be subject to an absolute limit. **Variable remuneration should be based on objective, definable and measurable criteria, and be based on conditions that the executive can influence.**

6. Information and communications (Chapter 13)

Background and current recommendation

Chapter 13 concerns several aspects of the board's handling of information and communication with players in the securities market and with shareholders outside the general meeting. The Securities Trading Act, the Accounting Act and stock exchange regulations, etc. impose specific requirements for the reporting of financial and other information to the securities market. The Oslo Stock Exchange has its own IR-recommendation concerning reporting. This recommends that companies publish interim reports for the first and third quarters, in addition to half-yearly and annual reports as required by law.

NCGB's analysis

NCGB believes that the key point should be that the Code focuses on information being shared in a way that ensures transparency and equal treatment of participants in the securities market. NCGB has carried out a "spot check" of selected recommendations, and it appears that the companies understand the Code somewhat differently, as few of the selected companies explain what guidelines they have. It seems that the meaning of the Code relates to how information should be disclosed, and not to the specific guidelines. Against this background, NCGB proposes to amend the Code.

As a result of the fact that it is no longer recommended that companies should have guidelines for the company's reporting of financial and other information, the associated commentary will also be amended. The comments will clarify that the board must ensure that market participants receive correct, clear, relevant and timely information from the company.

NCGB's proposal

NCGB proposes that Chapter 13 of the Code should read as follows:

13. Information and communications

The board of directors should ~~establish guidelines for the company's reporting of~~ **publish** financial and other information based on openness and taking into account the requirement for equal treatment of all participants in the securities market.

The board of directors should establish guidelines for the company's contact with shareholders other than through general meetings.

7. Auditor (Chapter 15)

Background and current recommendation

Chapter 15 applies to several aspects of the auditor's duties, including the annual meeting between the auditor and the board and the board's information about the auditor's remuneration.

NCGB's analysis

In light of companies' increased sustainability reporting obligations, NCGB proposes to amend the recommendation that the board of directors should invite the auditor to meetings where they consider the annual financial statements to include mandatory sustainability reporting that must be certified by the auditor.

However, a recommendation that the auditor should participate in meetings should only cover matters related to sustainability reporting that the auditor must certify (and not any other sustainability reporting). Such a clarification will be included in the comments.

Furthermore, NCGB would like to clarify that the Code applies to all the company's elected auditors, if the company has more than one.

NCGB's proposal

NCGB proposes that Chapter 15 of the Code should read as follows:

15. Auditor

The board of directors should ensure that the auditor submits the main features of the plan for the audit of the company to the audit committee annually.

The board of directors should invite the auditor to meetings that deal with the annual accounts **and sustainability reporting**. At these meetings the auditor should report on any material changes in the company's accounting principles and key aspects of the audit, comment on any material estimated accounting figures and report all material matters on which there has been disagreement between the auditor and the executive management of the company.

The board of directors should at least once a year review the company's internal control procedures with the auditor, including weaknesses identified by the auditor and proposals for improvement.

The board of directors should establish guidelines in respect of the use of the auditor by the company's executive management for services other than the audit.