The Norwegian Code of Practice for

CORPORATE GOVERNANCE

7 December 2004

This is an English version of the original document “Norsk anbefaling – Eierstyring og selskapsledelse (Corporate Governance)”, prepared in Norwegian and dated 7 December 2004.

FOREWORD

This document presents the Norwegian Code of Practice for corporate governance.

The Code of Practice is supported by the following nine organisations. Their representatives in the working group that produced the code are shown in brackets:

- Norwegian Shareholders Association
- Norwegian Institute of Public Accountants (Per Hanstad, CEO -Chief Executive Officer)
- Institutional Investor Forum[1] (Arild Orgland, CEO)
- Norwegian Financial Services Association[2] (Stein Sjølie, Vice President)
- Norwegian Society of Financial Analysts (Ludvik Sandnes, Managing Partner)
- Confederation of Norwegian Business and Industry[2] (Ingebjørg Harto, Legal Director)
- Norwegian Association of Private Pension Funds (Håkon Persen, Chairman of the Board)
- Oslo Børs (Catharina Hellerud, State Authorised Public Accountant)
- Norwegian Mutual Fund Association (Lasse Ruud, Managing Director).

The secretariat comprised Cecilie Ask, a solicitor at the law firm Arntzen de Besche, and Harald Elgaaen, independent adviser.

This Code of Practice is based on the provisional national code of practice for corporate governance published in December 2003. The provisional code was the subject of wide consultation, with a deadline for responses from companies and other interested parties of 30 May 2004. The working group received and carefully considered 20 responses to the provisional code. These responses can be viewed (in Norwegian only) at http://www.oslobors.no/ob/horingssvar. In addition a number of interested parties have contributed their comments and suggestions through the organisations represented on the working group.

[1] The members of the Institutional Investor Forum are Alfred Berg Industrifinans, DnB NOR Kapitalforvaltning, Folketrygdfondet, KLP, Nordea Fondene, Odin Forvaltning, Sparebank 1 Gruppen, the Ministry of Trade and Industry (Department of Ownership), Statoil Kapitalforvaltning, Storebrand, Vital Forsikring.

[2] The Norwegian Financial Services Association and the Confederation of Norwegian Business and Industry also represent the Næringslivets Aksjemarkedsutvalg. These two organisations are members of the Næringslivets Aksjemarkedsutvalg together with the Federation of Norwegian Commercial and Service Enterprises and the Norwegian Shipowners’ Association.

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INTRODUCTION

The purpose of a national code of practice

With the assistance of this Code of Practice, listed companies will be expected to practice corporate governance that regulates the division of roles between shareholders, the board of directors and executive management more comprehensively than is required by legislation. Listed companies manage a significant proportion of the country's assets and generate a major part of value creation. It is therefore in the interests of society as a whole that companies are directed and controlled in an appropriate and satisfactory manner.

The Code of Practice is intended to strengthen confidence in listed companies among shareholders, the capital market and other interested parties. It is important that companies enjoy good relationships with society as a whole, and particularly with the stakeholder groups that are affected by their business activities. Companies should therefore pay careful attention to establishing guidelines for their activities that take into account these issues.

Confidence in Norwegian companies and the Norwegian stock market plays an important role in ensuring a continuing supply of risk capital to the Norwegian corporate sector, both from within Norway and from abroad. There is considerable international competition to attract the interest of both Norwegian and international investors, and this makes it essential that Norwegian companies and the Norwegian stock market are seen to maintain high standards in the area of corporate governance.

This Code of Practice is principally intended for companies whose shares are listed on the Norwegian stock exchange. The code also applies to savings banks with listed primary capital certificates to the extent that it is appropriate.[3]

Unlisted companies with broadly held ownership whose shares are the subject of regular trading may also find the Code of Practice appropriate for their circumstances.

Norwegian corporate governance in an international perspective

International interest in corporate governance first emerged in the USA during the 1980s as a reaction by institutional investors to high-handed and autonomous business leaders. Interest in corporate governance in Europe first took hold in the early 1990s in response to a number of corporate scandals, principally in the United Kingdom where these events led to the publication of the Cadbury report in 1992. More recent corporate scandals in the USA and Europe have served to underline the need to develop formal principles for corporate governance.

The introduction of a Norwegian Code of Practice for corporate governance brings Norway into line with other European countries that either have, or are about to introduce, a national code of practice. Extensive work is underway throughout the EU on such central issues as shareholder rights, the role of non-executive and supervisory directors, directors' remuneration and auditing. The EU has recommended that member states should establish their own national codes of practice which take account of specific national factors and reflect the diversity of corporate governance practices and systems within EU. The OECD published revised principles for corporate governance in 2004. The Norwegian Code of Practice has been drawn up with reference to international developments and other national codes of practice, while taking into account Norwegian legislation and practice.

Any comparison of the Norwegian Code of Practice with international codes of practice should take into account some principal features of Norwegian company law:

- In the absence of any agreement with employees to the contrary, companies with more than 200 employees must elect a corporate assembly with at least 12 members of which 2/3 are elected by shareholders and 1/3 are elected by the employees. The main duty of the corporate assembly is the election of the board of directors. In addition, the corporate assembly has certain duties in respect of supervision, issuing opinions and decision-making.
- In any company with more than 30 employees, the employees have the right to be represented on the board of directors. If a company has more than 200 employees but has not elected a corporate assembly, employees must be represented on the board.

[3] The Code of Practice also applies to foreign companies with a primary listing on a Norwegian stock exchange or authorised marketplace to the extent that the provisions of the code do not conflict with the legislation of the company's national jurisdiction. It is assumed that foreign companies with a secondary listing on a Norwegian stock exchange or authorised marketplace will adhere to the guidelines for corporate governance that apply to the stock exchange or authorised marketplace on which the company maintains its primary listing. Such companies should in any case provide information in the annual report on the guidelines that apply. If there are no such guidelines, or if the company does not follow its national guidelines, this Code of Practice will apply to the extent that it does not conflict with the legislation of the company's national jurisdiction.

- The Norwegian Public Limited Liability Companies Act (hereinafter the "Public Companies Act") stipulates that the chief executive of a company may not be the chairman of its board of directors.

A further significant feature when comparing Norwegian practice is that representatives of the executive management are not normally elected to the board of directors.

Future development of the Code of Practice

The organisations that have collaborated to publish this Code of Practice intend to review and update the code as required. Such revisions will be considered in response to changes in legislation and regulations as well as the experience gained from the operation of the Code of Practice. International developments in corporate governance will also be taken into account.

Any questions or comments in respect of the code can be submitted to esl@oslobors.no.

Adherence to the Code of Practice – "comply or explain"

Norwegian corporate governance is based on company, accounting, stock exchange and securities legislation. This Code of Practice includes provisions and guidance that in part elaborate on existing legislation and in part cover areas not addressed by legislation.

Adherence to the Code of Practice will be based on the "comply or explain" principle whereby companies will be expected to either comply with the Code of Practice or explain why they have chosen an alternative approach.

The Code of Practice is targeted in the first instance at the board of directors of a company. It is the responsibility of the board to consider each section of the code and decide how the company will meet the requirements. The board is expected to include a corporate governance report in the company's annual report, including an explanation of how the company adheres to this Code of Practice.

Companies should apply this Code of Practice with effect from the 2005 financial year.

Structure and form of the Code of Practice

Companies must adhere to the requirements set out in bold type in the text boxes, or alternatively explain why they do not fulfil the requirements.

The commentary provided in each section is intended to provide greater detail and explanation of the requirements, and to explain the reason for their inclusion. The commentary also provides information on the relationship between the requirements of the Code of Practice and the relevant legislation.

References to the appropriate legislative provisions can be found in the footnotes.

This Code of Practice has the status of a “recommendation”, and the terminology used reflects this status. The Code of Practice uses the term “should” when describing its requirements. Where the requirement in question is already the subject of legislation, the term “must” is used. In addition, the Code of Practice uses “must” in Section 1 on adherence to the code. This is because the overall statement of a company’s policy on corporate governance and the “comply or explain” principle are fundamental to the Code of Practice.

PURPOSE

The purpose of this Code of Practice is to ensure that listed companies implement corporate governance that clarifies the respective roles of shareholders, the board of directors and executive management more comprehensively than is required by legislation.

The Code of Practice is intended to strengthen confidence in companies, and help to ensure the greatest possible value creation over time in the best interests of shareholders, employees and other stakeholders.

1 IMPLEMENTATION AND REPORTING ON CORPORATE GOVERNANCE

The board of directors must ensure that the company implements sound corporate governance.

The board of directors must provide a report on the company's corporate governance in the annual report. If the company does not fully comply with this Code of Practice, this must be explained in the report.

The board of directors should define the company's basic corporate values and formulate ethical guidelines in accordance with these values.

Commentary:

The requirement for reporting corporate governance is based on the principle that companies must either comply with the Code of Practice or explain any deviations from its principles ("comply or explain"). The report must cover every section of the Code of Practice. It is possible that a company's specific circumstances will render some sections inappropriate. Any deviations from the Code of Practice must be explained.

Publishing such an overview of all aspects of corporate governance will make it easier for shareholders and other interested parties to evaluate the extent to which the company follows the principles of good corporate governance. However, the overview may refer to more detailed information elsewhere in the annual report or on the company's web site.

Corporate values represent an important foundation for corporate governance. A company's corporate values and ethical guidelines may play a significant role in the way the company is perceived.

This Code of Practice for corporate governance applies in addition to any other guidelines for the company's activities, cf. the Public Limited Liability Companies Act (Allmennaksjeloven – hereinafter "Asal." or the "Public Companies Act") § 6-12 and any formal instructions for executive management, cf. Asal. § 6-13.

2 BUSINESS

The company's business should be clearly defined in its articles of association.

The company should have clear objectives and strategies for its business within the scope of the definition of its business in its articles of association.

The annual report should include the business activities clause from the articles of association and describe the company's objectives and principal strategies.

Commentary:

The Public Companies Act requires that the articles of association state the nature of a company's business. A company's articles of association, together with its publicly declared objectives and principal strategies, provide the information needed to help ensure that shareholders can anticipate the scope of the company's activities. In many cases, the business activities clause in the articles of association is expressed in relatively general terms. This may permit the company considerable freedom to change its actual activities and risk profile. The business activities clause should provide a clear statement of the nature of the company's business. This is not intended to restrict the board of directors' ability to take strategic decisions within the overall scope of the company's business as defined by its owners through the articles of association. The question of appropriate balance between room for manoeuvre on the part of the board and executive management and any wish by the shareholders to limit their freedom in this respect is a matter for the general meeting.

The purpose of publishing information on these matters in the annual report is to provide shareholders and the capital markets in general with a degree of predictability. It is for the board of directors to decide how much detail should be provided in this respect after taking into account the need to protect the company's commercial interests.

The company's business activities and the scope of the board of directors' authority are restricted to the objectives specified in its articles of association, cf. Asal. § 2-2.

3 EQUITY AND DIVIDENDS

The company should have an equity capital at a level appropriate to its objectives, strategy and risk profile.

The board of directors should establish a clear and predictable dividend policy as the basis for the proposals on dividend payments that it makes to the general meeting. The dividend policy should be disclosed.

Mandates granted to the board of directors to increase the company's share capital should be restricted to defined purposes and should be limited in time to no later than the date of the next annual general meeting. This should also apply to mandates granted to the board for the company to purchase its own shares.

Commentary:

The Public Companies Act includes provisions to ensure that companies maintain a sound level of equity at all times. If it must be assumed that the company's equity has fallen below an appropriate level in relation to the scale and risk profile of its business activities, the board of directors is required to call a general meeting within a reasonable time in order to report the company's financial condition and the measures proposed to rectify the situation. The requirement that a company should maintain its equity capital at a level appropriate to its objectives, strategy and risk profile also implies that if a company retains capital which is surplus to these requirements, it must justify why it is not distributing the surplus to shareholders through dividend payments or a capital reduction.

The Public Companies Act requires that a mandate granted to the board of directors to increase a company's share capital must specify whether the mandate extends to an increase in capital for contributions other than cash or a resolution on a merger. The Code of Practice goes further than the Act by specifying that such mandates should be limited to a defined purpose, such as the acquisition of companies within a specific sector or a similar definition of purpose. Share option programs for employees must always be approved by means of a specific board mandate, cf. Section 11.

The Public Companies Act permits a mandate to the board of directors to be valid for up to two years. However, companies should not take advantage of such an extended period. The company's situation and its shareholders' views may change over the course of a year. For this reason, it is recommended that shareholders be given the opportunity to consider any board mandates at each annual general meeting.

Asal. §§ 3-4 and 3-5 include provisions for companies to maintain a sound level of equity and to take appropriate action if their equity is lost. Asal. § 8-1 stipulates what may be distributed as dividend. The general meeting cannot adopt a resolution to distribute a higher amount of dividend than that recommended or approved by the board of directors, cf. Asal. § 8-2. Asal. § 10-14 stipulates that the general meeting may grant the board of directors a mandate to increase the share capital subject to the same majority as is required for an amendment to the articles of association. Such mandates may not be granted for a period longer than two years at a time.

4 EQUAL TREATMENT OF SHAREHOLDERS AND TRANSACTIONS WITH CLOSE ASSOCIATES

The company should only have one class of shares.

Any decision to waive the pre-emption rights of existing shareholders to subscribe for shares in the event of an increase in share capital must be justified.

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.

In the event of any not immaterial transactions between the company and shareholders, members of the board of directors, members of the executive management or close associates of any such parties, the board should arrange for a valuation to be obtained from an independent third party. This also applies to transactions between companies in the same group where any of the companies involved have minority shareholders.

The company should operate guidelines to ensure that members of the board of directors and the executive management notify the board if they have any material direct or indirect interest in any transaction entered into by the company.

Commentary:

General
The Public Companies Act stipulates that neither the general meeting nor the board of directors may make any decision that is intended to give an unreasonable advantage to certain shareholders at the expense of other shareholders or the company. The Stock Exchange Regulations state that a company may not treat shareholders differently unless there is a factual basis for such discrimination.

Different classes of shares
The basic assumption of the Public Companies Act is that all a company's shares have equal rights unless the articles of association specify that the company is to have more than one class of shares. Holders of each class of shares must be treated equally. The Code of Practice is more restrictive than the Public Companies Act in that the Act does permit different classes of shares.

Share issues
The Public Companies Act allows the pre-emption rights of existing shareholders to subscribe for shares in the event of an increase in share capital to be waived by the general meeting. Such a resolution requires the same majority as is required for a change to the articles of association. If the board of directors proposes that the general meeting should approve such a waiver of pre-emption rights, the reasons for the waiver must be justified by the common interest of the company and the shareholders. An explanation of this must be included as an appendix to the agenda for the general meeting.

Transactions with close associates

The Code of Practice's requirements on independent valuation of material transactions between the company and any shareholder(s) etc. represent an extension of the provisions of the Public Companies Act in respect of transactions with close associates and transactions between companies within the same group. The Act requires that general meeting approval will normally be required for any agreements to acquire assets, services or benefits from a shareholder in return for consideration paid by the company where the value exceeds $1/20^{th}$ of the share capital at the time of the transaction. In such cases, the board of directors must arrange for a report from a state authorised public accountant or registered auditor to include a valuation of the assets etc. involved.

The Code of Practice is more comprehensive than the Public Companies Act in that it applies to all transactions regardless of whether the acquiring party is the company or the shareholder(s) etc. in question. A transaction may be material for the company even if the consideration paid by the company does not exceed $1/20^{th}$ of its share capital. Where a valuation is required as a result of the Code of Practice but is not required by the Act, the third party does not necessarily have to be a state authorised public accountant or registered auditor. The board of directors should report all such transactions in the annual report.

The Code of Practice stipulates that guidelines should be established to ensure that the board of directors is notified of a situation where a member of the board or a member of the executive management has a material interest in a transaction or other matter entered into by the company or binding on the company. This is more comprehensive than the requirements of the Public Companies Act on conflict of interests for members of the board and the requirements of securities legislation on the disclosure of share purchases etc.

All a company's shares carry equal rights unless the articles of association stipulate that there are different types of shares (several classes of shares), cf. Asal. § 4-1. The principle of equal rights is also reflected in Asal. § 10-4 on the pre-emption rights of shareholders and the restrictions in § 5-21 and § 6-28 on a general meeting adopting any resolution which may give certain shareholders or other parties an unreasonable advantage at the expense of other shareholders or the company. See also the requirement in § 23-8 of the Stock Exchange Regulations (Børsforskriften) that an issuer must not expose holders of its financial instruments to differential treatment that lacks a factual basis in the issuer's and the holders' common interest.

When a company carries out transactions in its own shares it must pay due attention to the rules on duty of disclosure, cf. the Stock Exchange Act (Børsloven) § 5-7, cf. Børsforskriften § 5-2, first paragraph, on the requirement for equal treatment of all shareholders, cf. Børsforskriften § 23-8, on the prohibition of misuse of insider information, cf. Securities Trading Act (Verdipapirhandelloven - "Vphl") § 2-1 on the prohibition of unreasonable business methods and of price manipulation, cf. Vphl § 2-6 on notification requirements, cf. Vphl § 3-1. See also Oslo Børs Circular No. 2/99 on transactions in own shares.

Asal. § 3-9 stipulates that transactions between companies in the same group must be based on standard business terms and principles.

Asal. § 3-8 stipulates that any agreement on the acquisition of assets, services or contributions from a shareholder (or a shareholder's close associate) in return for consideration from the company which involves more than $1/20^{th}$ of the share capital must be approved by the general meeting. The board of directors must ensure that an account of the acquisition is prepared pursuant to the rules set out in Asal. § 2-6 A prospectus for shares must include any information of which the company is aware on agreements between shareholders that give the parties involved "control" over the company, cf. Børsforskriften § 15-2, Item 1.2.9.

5 FREELY NEGOTIABLE SHARES

Shares in listed companies must, in principle, be freely negotiable. Therefore, no form of restriction on negotiability should be included in a company's articles of association.

Commentary:

The basic requirement imposed by the Public Companies Act and stock exchange legislation and regulations is that a listed company may only exercise any provisions in its articles of association for transfers of shares to require approval by the board of directors, restrictions on share ownership or other restrictions on the negotiability of shares to the extent that there is sufficient cause to restrict negotiability and that such restriction will not cause disturbances in the market. The Code of Practice is stricter than this, and requires that the company's articles of association are free of any form of restriction on the negotiability of its shares.

Shares may change owners by transfer or in some other way unless otherwise provided for by law, the company's articles of association or an agreement between the shareholders, cf. Asal. § 4-15. If the articles of association contain provisions on a requirement for consent to a change of ownership or pre-emption rights for other shareholders, change of ownership is subject to the rules set out in Asal. § 4-16 to 4-23. Shares quoted on a stock exchange must, in principle, be freely transferable, cf. Børsforskriften § 2-4. If the company has been given a discretionary right to bar a share acquisition or to impose other trading restrictions, such right may only be exercised if there is sufficient cause to bar the acquisition or to impose other trading restrictions and such imposition does not cause disturbances in the market. The Financial Institutions Act (Finansieringsvirksomhetsloven) § 2-2 lays down rules on the prior approval of acceptable owners of a financial institution. See also the Act of 14 December 1917 relating to acquisition of waterfalls, mines and other real estate.

6 GENERAL MEETINGS

The board of directors should take steps to ensure that as many shareholders as possible may exercise their rights by participating in general meetings of the company, and that general meetings are an effective forum for the views of shareholders and the board. Such steps should include:

- ***sending shareholders the supporting information on the resolutions to be considered at the general meeting, including the recommendations of the nomination committee, no later than two weeks prior to the date of the general meeting***
- ***ensuring that the resolutions and supporting information distributed are sufficiently detailed and comprehensive to allow shareholders to form a view on all matters to be considered at the meeting***
- ***setting any deadline for shareholders to give notice of their intention to attend the meeting as close to the date of the meeting as possible***
- ***ensuring that shareholders who cannot attend the meeting in person can vote by proxy***
- ***ensuring that the members of the board of directors and the nomination committee and the auditor are present at the general meeting***
- ***making arrangements to ensure an independent chairman for the general meeting***

Commentary:

Notice calling the annual general meeting
The Public Companies Act stipulates that at least two weeks' notice must be given to call an annual general meeting. Proposals to change the articles of association must be set out in the notice, but the Act does not stipulate any further supporting information. However, companies should provide sufficiently detailed supporting information on all the matters to be considered at an annual general meeting or extraordinary general meeting in order to allow shareholders to form a view.

Participation by shareholders in absentia
The Public Companies Act allows shareholders to appoint a proxy by electronic means so long as a satisfactory method is used to authenticate the sender. However, legislation does not currently permit shareholders to participate in or vote at a meeting by electronic means. Companies should be ready to make arrangements for electronic voting if there is a change in legislation to permit this.

Shareholders should be offered the opportunity to vote by proxy, and arrangements should be made for shareholders voting by proxy to give voting instructions on each matter to be considered at the meeting.

Attendance by the board of directors, nomination committee and auditor
The Public Companies Act stipulates that the chairman of the board of directors must attend general meetings. Other members of the board are entitled to attend. The general meeting is the main meeting place for shareholders and the officers they elect, and it is therefore appropriate that all members of the board should attend general meetings. Similarly, the auditor should be present. General meetings should be organised in such a way as to facilitate dialogue between shareholders and the officers of the company.

For the same reasons, the members of the nomination committee should attend the annual general meeting in order to present their recommendations and answer any questions.

Chairman of the meeting and minutes
The Public Companies Act stipulates that a general meeting must be declared open by the chairman of the corporate assembly or the chairman of board of directors. The general meeting elects a chairman for the meeting. Alternatively, the company's articles of association may specify who is to chair general meetings. If this is the case, the chairman of the meeting pursuant to the articles of association will also be responsible for declaring the meeting open. In practice, responsibility for resolving any questions in respect of voting rights will fall to whoever declares the meeting open.

The Code of Practice stipulates that the board of directors should make arrangements to ensure an independent chairman for the general meeting. The board should consider how the objective of an independent chairman can best be achieved given the company's organisation and shareholder structure. It is for the board to decide whether this can best be achieved through proposals for appropriate changes to the articles of association or by arranging for the person responsible for declaring the meeting open to put forward a specific proposal for an independent chairman for the meeting.

The Public Companies Act requires that the minutes of general meetings must be made available for inspection by shareholders at the company's offices. These minutes should also be made available on the company's web site.

A shareholder is entitled to participate in a general meeting if the shareholding is registered in the register of shareholders or has been reported to the company and documented without this being prevented by any provisions in the articles of association on consent or pre-emption rights in respect of change of ownership, cf. Asal. § 4-2, cf. § 5-2 on participation through a proxy. Written and dated powers of attorney can be delivered by electronic means of communication if a satisfactory method is used to authenticate the sender. The notice convening a general meeting must be sent no later than two weeks before the meeting is to be held, unless the articles of association stipulate a longer deadline, cf. Asal. § 5-10. The articles of association may stipulate that shareholders wishing to attend a general meeting must give the company prior notice thereof subject to a deadline that may not be set earlier than five days prior to the meeting, cf. Asal § 5-3.
The notice convening the general meeting must state the business to be transacted at the meeting. Any proposed amendments to the articles of association must be reproduced in the notice, cf. Asal. § 5-10. The chairman of the board of directors must be present at a general meeting, cf. Asal. § 5-5. Other members of the board of directors may attend a general meeting. The auditor must attend the general meeting if the business that is to be transacted is of such a nature that his or her attendance must be regarded as necessary, cf. Asal. § 7-5. The general meeting is declared open by the chairman of the board of directors or a person appointed by the board of directors, cf. Asal. § 5-12. If the company has a corporate assembly, the general meeting is declared open by the chairman of the corporate assembly or a person appointed by the corporate assembly. If the articles of association stipulate who shall be chairman of the general meeting, the general meeting is declared open by the chairman so appointed.

7 NOMINATION COMMITTEE

The company should have a nomination committee, elected by the general meeting.

The nomination committee should be laid down in the company's articles of association.

The members of the nomination committee should be selected to ensure broad representation of shareholder interests. The majority of the committee should be independent of the board of directors and the executive management. At least one member of the nomination committee should not be a member of the corporate assembly, committee of representatives or the board. No more than one member of the nomination committee should be a member of the board, and any such member should not offer himself for re-election. The nomination committee should not include the company's chief executive or any other representative of the company's executive management.

The nomination committee's duties are to propose candidates for election to the corporate assembly and the board of directors and to propose the fees to be paid to members of these bodies.

The nomination committee should justify its recommendations.

The company should provide information on the membership of the committee and any deadlines for submitting proposals to the committee.

Commentary:

The use of a nomination committee is not regulated by legislation, and should therefore be laid down in the articles of association. The articles of association or separate written guidelines should set out how elections to the nomination committee are to be prepared, the criteria for eligibility, the term of office for which members are appointed, the fees to which they are entitled etc.

The provisions of the Code of Practice on the composition of the nomination committee seek to balance differing aspects. On the one hand, the Code reflects the principles of independence and the avoidance of any conflict of interest between the nomination committee and the candidates it puts forward for election. On the other hand, the Code takes into account that elected officers of the company with experience from the corporate assembly and board of directors contribute an understanding of the company’s situation.

The nomination committee is required to present its recommendations to the general meeting (or corporate assembly as appropriate) and provide a report on its work. In accordance with Section 6 above, the nomination committee’s recommendations and report should be distributed to shareholders no later than two weeks before the relevant elections are to take place. The committee’s recommendation should include relevant information on the candidates, cf. Section 8 on the composition of the corporate assembly and board of directors.

The nomination committee is expected to monitor the need for any changes in the composition of the board of directors and to maintain contacts with shareholder groups, members of the corporate assembly and board and with the company’s executive management. The nomination committee should pay particular attention to the board’s report on its own performance, cf. Section 9 on the work of the board.

The remuneration paid to members of the nomination committee should reflect the character of their duties and the time commitment involved, taking into account the central importance of the nomination committee.

The company should provide information on the membership of the committee and give notice of any deadlines for submitting proposals to the committee on its web site.

The Public Companies Act does not regulate nomination committees, and the nomination committee is therefore a ‘voluntary’ corporate body. However, financial institutions are subject to specific rules on nomination committees.

8 CORPORATE ASSEMBLY AND BOARD OF DIRECTORS: COMPOSITION AND INDEPENDENCE

The composition of the corporate assembly should be determined with a view to ensuring that it represents a broad cross-section of the company's shareholders.

The composition of the board of directors should ensure that the board can attend to the common interests of all shareholders and meets the company's need for expertise, capacity and diversity. Attention should be paid to ensuring that the board can function effectively as a collegiate body.

The composition of the board of directors should ensure that it can operate independently of any special interests. At least half of the shareholder-elected members of the board should be independent of the company's executive management and material business contacts. At least two of the members of the board elected by shareholders should be independent of the company's main shareholder(s).

The board of directors should not include representatives of the company's executive management. If the board does include members of the executive management, the company should provide an explanation for this and implement consequential adjustments to the organisation of the work of the board, including the use of board committees to help ensure more independent preparation of matters for discussion by the board, cf. Section 9.

The chairman of the board of directors should be elected by the general meeting unless the corporate assembly is responsible for this election.

The term of office for members of the board of directors should not be longer than two years at a time.

The annual report should provide information to illustrate the expertise and capacity of the members of the board of directors and identify which members are considered to be independent.

Members of the board of directors should be encouraged to own shares in the company.

Commentary:

<u>*Composition of the corporate assembly*</u>
A company with more than 200 employees is required to have an elected corporate assembly in the absence of any agreement to the contrary. Shareholders elect 2/3 of the members of a corporate assembly through the general meeting, and 1/3 are elected by and from among the employees. The shareholder-elected representatives on the corporate assembly represent the interests of shareholders in the election of the board of directors. The corporate assembly is also charged with supervising the management of the company by the board and the executive management. It is therefore important that the shareholder-elected members of the corporate assembly represent a broad cross-section of shareholders in order to protect the interests of shareholders in general.

Composition of the board of directors

In addition to having the appropriate expertise, it is important that the board of directors has sufficient capacity to carry out its duties. In practice, this means that each member of the board must have sufficient time available to devote to his or her appointment as a director. Holding a large number of other board appointments, for example, may mean that a director does not have the capacity necessary to carry out his or her duties in the particular company. The commitment involved in being a member of a board can vary from company to company, and it is therefore not appropriate to set an absolute limit for the number of board appointments an individual should hold. However, directors who hold a number of board appointments should at all times bear in mind the risk of conflicts of interest between such appointments.

The composition of the board of directors as a whole should represent sufficient diversity of background and expertise to help ensure that the board carries out its work in a satisfactory manner. In this respect due attention should be paid to the balance between male and female members of the board. The board is responsible as a collegiate body for balancing the interests of various stakeholders in order to promote value creation by the company. The board should be made up of individuals who are willing and able to work as a team.

Independence of the board of directors

It is important that the board of directors, as required by the Public Companies Act, operates as a collegiate body when carrying out its duties. Members of the board must not operate as individual representatives for specific shareholders, shareholder groups or other stakeholders. In order to support the stock market's confidence in the independence of the board, at least two of its members should be independent of the company's main shareholder. This principle is particularly important for companies where one or more controlling shareholders could, in practice, decide the outcome of elections to the board.

At least half of the members elected to the board of directors by shareholders should be independent of the company's executive management and its main business connections. It is important that the composition of the board ensures that it is able to evaluate the performance of the executive management and consider material agreements entered into by the company in an independent manner. Particular attention should be paid to ensuring that the board is capable of independently evaluating the company's performance and specific matters put forward by the executive management.

In general terms, a member of the board of directors may be defined as independent when the individual in question has no business, family or other relationships that might be assumed to affect his or her views and decisions. It is difficult to provide an exhaustive summary of all the matters that might affect the independence of a member of the board. When evaluating whether a member of the board is independent of the company's executive management or its main business connections, attention should be paid to ensuring, inter alia, that the individual:

- has not been employed by the company (or group where appropriate) in a senior position at any time in the last five years
- does not receive any remuneration from the company other than the regular fee as a board member (does not apply to payments from a company pension)
- does not have, or represent, business relationships with the company

- is not entitled to any fees as a board member that are dependent on the company's performance or to any share options
- does not have any cross-relationships with members of the executive management, other members of the board of directors or other shareholder elected representatives
- has not at any time in the last three years been a partner or employee of the accounting firm that currently audits the company.

The rationale for placing such emphasis on the independence of the board of directors is to ensure that the interests of shareholders in general are properly represented. Where a company's ownership is widely held, the independence of the board is principally intended to ensure that the executive management does not play too dominant a role relative to the interests of shareholders. Where a company has controlling shareholders, the independence of the board is principally intended to protect minority shareholders.

Membership of the board of directors by the chief executive
The Public Companies Act stipulates that the chief executive cannot be the chairman of the board of directors. This Code of Practice recommends that neither the chief executive nor any other member of the executive management should be a member of the board.

Term of office and length of service
While the legislation permits a term of office for members of the board of directors of up to four years, this Code of Practice recommends that the term of office should not exceed two years. The situation in respect of both the company's requirements and the demands of independence can change over the course of a two-year period. Shareholders (and the corporate assembly where appropriate) should therefore be given the opportunity to re-evaluate each shareholder-elected member of the board at least every second year. When considering whether to re-elect members of the board, the value of continuity should be balanced against the need for renewal and independence. Where a member of the board has served for a prolonged continuous period, consideration should be given to whether the individual in question is still considered to be independent of the company's executive management. Recruitment of members of the board should be phased so that the entire board is not replaced at the same time.

Information on members of the board of directors and candidates for election to the board
The annual report should provide key information to illustrate the expertise, capacity and independence of members of the board of directors. Information on individual members should include details of their age, education and work experience, and state how long they have been a member of the company's board. Information should also be provided on any additional work a member has carried out for the company, and on any material appointments or assignments with other companies and/or organisations. Detailed information on candidates for election to the board (both new appointments and re-elections) should be distributed in advance, cf. Sections 6 and 7.

Share ownership by members of the board of directors
Ownership of shares in the company by members of the board of directors can contribute to creating an increased common financial interest between shareholders and the members of the board. At the same time, members of the board who do hold shares should take care not to let this encourage a short-term approach which is not in the best interests of the company and its shareholders over the longer term.

Where a company has a corporate assembly, the members of the board of directors are elected by the corporate assembly, cf. Asal. § 6-37. Employees have the right to elect members of the board of directors pursuant to Asal. § 6-4. At least half the members of the board of directors must reside in an EEA country unless the Ministry of Finance grants a specific exemption, cf. Asal. § 6-11. Members of the board of directors serve for a term of two years unless the articles of association stipulate a different term of office, cf. Asal. § 6-6. In certain types of institution, the corporate assembly is replaced by a board of representatives, cf. for example the Commercial Banks Act (Forretningsbankloven) § 11 or the Insurance Activity Act (Forsikringsvirksomhetsloven) § 5-4. The board of representatives has many of the same duties as the corporate assembly in other companies, particularly in electing the members of the board of directors.
Pursuant to Oslo Børs Circular No. 5/2001, at least 50% of the shareholder elected members of the board of companies newly admitted to listing on Oslo Børs must be independent of the company's management and its main business connections. This Circular also requires that at least two of the members of the board must be independent of the company's main shareholder(s). For this purpose, a main shareholder is a shareholder that directly or indirectly owns 10% or more of the shares or votes in the company.
The chief executive cannot be elected as chairman of the board of directors, cf. Asal § 6-1. However for certain types of institution it is a legal requirement that the chief executive is a member of the board of directors, cf. for example Forretningsbankloven § 9.
Members of the board of directors shall serve for a term of two years, cf. Asal § 6-6. The period of office may be fixed for a shorter or longer term in the articles of association, but not for a term of more than four years.
§ 4-2 of the Auditing and Auditors Act stipulates that no one may be appointed as auditor of a company if any other auditor or senior employee of the accounting firm for which he or she works, or any member or deputy member of the accounting firm's corporate bodies, is a member of any corporate body of the company in question.

9 THE WORK OF THE BOARD OF DIRECTORS

The board of directors should produce an annual plan for its work, with particular emphasis on objectives, strategy and implementation.

The board of directors should issue instructions for its own work as well as for the executive management with particular emphasis on clear internal allocation of responsibilities and duties.

The board of directors must ensure that the company has good internal control in accordance with the regulations that apply to its activities, including the company's own corporate values and ethical guidelines.

The board of directors should provide information in the annual report on how the company's internal control procedures are organised.

A deputy chairman should be elected for the purpose of chairing the board in the event that the chairman cannot or should not lead the work of the board.

The board of directors should consider appointing board committees in order to help ensure thorough and independent preparation of matters relating to financial reporting and compensation paid to the members of the executive management. Membership of such committees should be restricted to members of the board who are independent of the company's executive management.

The board of directors should provide details in the annual report of any board committees appointed.

The board of directors should evaluate its performance and expertise annually.

Commentary:

The duties of the board of directors

The Public Companies Act stipulates that the board of directors has the ultimate responsibility for the management at the company and for supervising its day-to-day management and activities in general. The board's responsibility for the management of the company includes responsibility for ensuring that the activities are soundly organised, drawing up plans and budgets for the activities of the company, keeping itself informed of the company's financial position and ensuring that its activities, accounts and asset management are subject to adequate control.

The board of directors should lead the company's strategic planning, and make decisions that form the basis for the executive management to prepare for and implement investments and structural measures. The company's strategy should be reviewed on a regular basis.

Instructions for the board of directors

Where a company's employees are represented on the board of directors, it is required by law to produce written instructions for the board with specific rules on the work of the board and its administrative procedures which determine what matters must be considered by the board. This Code of Practice states that companies should have such instructions whether or not employees are represented on the board.

Instructions for the executive management

Instructions for the executive management of the company should provide a detailed statement of the duties, responsibilities and delegated authorities of the chief executive pursuant to the rules laid down for the company's activities. The chief executive has a particular responsibility to ensure that the board of directors receives accurate, relevant and timely information that is sufficient to allow it to carry out its duties.

Internal control

This Code of Practice clarifies the responsibilities of the board of directors in respect of internal control. A company's internal control arrangements must at the very least address the organisation and implementation of its financial reporting. Where a company has a separate internal audit function, it must establish a system for the board to receive regular and ad hoc internal audit reports. Where a company does not have such an internal audit function, it must pay particular attention to arrangements for the board to receive relevant information.

A company's ethical guidelines should provide information on how employees can communicate illegal or unethical conduct by the company to the board of directors. Clear guidelines for internal communication will serve to reduce the risk that the company finds itself in situations that may damage its reputation or financial standing

Financial reporting

The board of directors' duties and responsibilities for financial reporting are governed by legislation and regulations. When considering the company's accounts, the board can ask that the chief executive and the finance director/head of accounting confirm to the board that the proposed annual accounts which the board is asked to adopt have been prepared in accordance with generally accepted accounting practice, that all the information included is in accordance with the actual situation of the company and that nothing of material importance has been omitted.

Chairman of the board of directors
The Public Companies Act does not impose any particular responsibility on the chairman of the board of directors save for his or her responsibility to direct the work of the board. Matters to be considered by the board are prepared by the chief executive in collaboration with the chairman. In practice, the chairman carries a particular responsibility for ensuring that the work of the board is well organised and that it functions effectively. The chairman should encourage the board to engage in open and constructive debate. The chairman should pay particular attention to the need for members of the board to have appropriate up-to-date professional understanding in order to facilitate high quality work by the board, and he or she should take whatever initiatives are necessary in this respect. This may include holding training programs for new members of the board and arranging for the board as a whole to be regularly updated on specialist matters relevant to the company's activities.

In order to ensure an independent approach by the board of directors, the deputy chairman should take the chair when the board considers matters of a material nature in which the chairman has an active involvement. Such matters might, for example, include negotiations on mergers, acquisitions etc.

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

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

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

The duties of an audit committee will typically include:

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

The members of the audit committee should have accounting expertise.

The duties of a remuneration committee will typically include:

- preparing guidelines for the remuneration of the executive management and preparing for the board's discussion of specific remuneration matters
- preparing matters relating to other material employment issues in respect of the executive management.

Where board committees are appointed, the board of directors should issue specific instructions for their work.

The board of directors' evaluation of its own work

The board of directors' evaluation of its own performance and expertise should include an evaluation of the composition of the board and the manner in which its members function, both individually and as a group, in relation to the objectives set out for its work. Such a report will be more comprehensive if it is not intended for publication. However such reports should be made available to the nomination committee.

Rules on the board of directors' responsibility for the management of the company and its responsibility for supervising the company's activities are set out in Asal. §§ 6-12 and 6-13. Asal. § 6-23 requires that in companies in which the employees are represented on the board of directors, the board of directors must adopt rules of procedure which lay down rules on the work and administrative procedures of the board of directors.
The board of directors must ensure that the company's business activities are soundly organised and that its activities, accounts and asset management are subject to adequate control, cf. Asal. § 6-12.
The board of directors is a collegiate body that reaches decisions subject to the rules set out in Asal. § 6-19 and subsequent.
Asal. § 6-27 sets out rules on excluding members of the board from discussion and decision on issues in which they have a personal interest.
The board of directors must not take any action which may confer on certain shareholders or other parties an unfair advantage at the expense of other shareholders or the company, cf. Asal. § 6-28.
Asal. § 6-13 provides that the board of directors may lay down instructions for the day-to-day management of the company. Day-to-day management does not cover matters which, in relation to the company's affairs, are of an extraordinary nature or of major importance, cf. Asal. 6-14. The chief executive must make a statement on the company's activities, position and profit/loss development to the board of directors at a meeting or in writing at least once a month, cf. Asal. § 6-15. The chief executive prepares matters which are to be discussed with the board of directors in consultation with the chairman of the board, cf. Asal. § 6-21.
Asal. §§ 6-19 and 6-23 set out rules on the preparation of matters for the board and rules of procedure for the board.
The Accounting Act stipulates at § 3-5 that the annual accounts must be signed by all members of the board of directors and the chief executive.

10 REMUNERATION OF THE BOARD OF DIRECTORS

The remuneration of the board of directors should reflect the board's responsibility, expertise, time commitment and the complexity of the company's activities.

The remuneration of the board of directors should not be linked to the company's performance. The company should not grant share options to members of its board.

Members of the board of directors and/or companies with which they are associated should not take on specific assignments for the company in addition to their appointment as a member of the board. If they do nonetheless take on such assignments this should be disclosed to the full board. The remuneration for such additional duties should be approved by the board.

The annual report should provide information on all remuneration paid to members of the board of directors. Any remuneration in addition to normal directors' fees should be specifically identified.

Commentary:

The general meeting approves the remuneration paid to members of the board of directors. Members of the board should be encouraged to own shares in the company, cf. Section 8. Consideration should be given in this respect to arranging for members to invest part of their remuneration in shares in the company at market price.

Members of the board of directors should not participate in any incentive or share option programs that might be made available for the members of the executive management and other employees since this may have the effect of weakening the board's independence.

The remuneration paid to the chairman of the board of directors should be determined separately from that of the other members. Consideration should be given to paying additional remuneration to members of the board who are appointed to board committees.

The stipulation that members of the board of directors should not undertake additional assignments for the company is based on the need for members of the board to be independent of the company's executive management.

Remuneration of the members of the board of directors is decided by the general meeting (or the corporate assembly where appropriate), cf. Asal. § 6-10.
Members of the board of directors must not receive any remuneration from parties other than the company in connection with their work for the company, cf. Asal. § 6-17. Information on the remuneration of members of the board must be provided in the notes to the annual accounts, cf. the Accounting Act (Regnskapsloven) §§ 7-31 and 7-32 as well as in any prospectus produced in respect of a public offer to subscribe for or purchase negotiable securities, cf. Børsforskriften § 15-2 item 5.2.

11 REMUNERATION OF THE EXECUTIVE MANAGEMENT

The board of directors should establish guidelines for the remuneration of the members of the executive management. These guidelines should be communicated to the general meeting for information.

The salary and other remuneration of the chief executive should be decided by a convened meeting of the board of directors.

Share option schemes and arrangements to award shares to employees should be approved in advance by the general meeting. Proposals on share option schemes should include details of the allocation criteria, the actual value of the option schemes, the accounting consequences for the company and the potential share dilution.

The annual report should provide details of all elements of the chief executive's remuneration, together with composite figures for the remuneration of other members of the executive management.

Commentary:

Guidelines
The board of directors' guidelines for the remuneration of the members of the executive management should be communicated to the company's shareholders.

The guidelines should be based on ensuring that the remuneration of the chief executive and other executive management is designed, in terms of both structure and amount, to promote value creation by the company and contribute to shareholders and the executive management sharing a common interest. Remuneration of the members of the executive management should not be of such character or extent as may damage the company's reputation. The definition of the executive management for the purpose of such guidelines is a matter for decision by the individual company.

The disclosure of remuneration guidelines and the actual remuneration paid will give shareholders sufficient information to pose questions and make comments to the board of directors at the general meeting. The information provided should include a breakdown between fixed and variable salary, details of pension arrangements and the terms that will apply in the event of termination of employment.

Performance-related remuneration
Performance-related remuneration in the form of share options, bonus programs, or similar arrangements should be linked to the value created for shareholders or the performance of the company over time. The company should provide information on the conditions that must be satisfied in order for performance-related remuneration to be paid. Remuneration should not be such as might encourage a short-term approach that could be damaging to the company's long-term interests. Consideration should be given to setting an absolute limit on performance-related remuneration.

Great care should be taken when awarding options or similar benefits to members of the executive management. Establishing share option programs in small companies or issuing options with a long maturity involves considerable uncertainty over the actual value of the options granted. Any share option program should contribute to creating a long-term common interest between the executive management and the company's shareholders.

Any share option schemes should be combined with direct ownership of the underlying shares in order to make the interests of members of management more symmetrical with those of the company's other shareholders. In order to reduce the risk of an unrepresentative financial result, the dates of issue and exercise of options should be spaced out over time, and any shares acquired through the exercise of options should be subject to a minimum period of ownership.

Disclosure
The annual report should provide details of all elements of the chief executive's remuneration and total amounts for such elements of the remuneration of other members of the executive management. This means that details must be given of salary, employment benefits, bonus entitlement, option agreements, pension entitlement and any agreements for compensation on termination of employment. The account provided should set out the long-term cost implications for the company of the chief executive's total remuneration package and the total remuneration of other members of the executive management. The discounted current value of pension rights (including the assumptions on which the calculations are based) should be given for the chief executive and the other members of the executive management. If any particular events will trigger changes to pension rights or other benefits, the value of such changed entitlements should be disclosed. The criteria for the payment of any compensation on termination should also be disclosed.

The chief executive is appointed by the board of directors and the board of directors determines his or her remuneration (unless the articles of association delegate this authority to some of the corporate body), cf. Asal. § 6-2. The remuneration of the chief executive must be reported in the notes to the annual accounts, cf. Regnskapsloven §§ 7-31 and 7-32, and also in any prospectus produced for a public invitation to subscribe for or purchase negotiable securities, cf. Børsforskriften §15-2, item 5.2.

12 INFORMATION AND COMMUNICATIONS

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

The company should publish an overview each year of the dates for major events such as its annual general meeting, publication of interim reports, public presentations, dividend payment date if appropriate etc.

All information distributed to the company's shareholders should be published on the company's web site at the same time as it is sent to shareholders.

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

Commentary:

Guidelines for reporting financial and other information

The board of directors' guidelines for reporting financial and other information to the securities market must be defined within the framework established by securities and accounting legislation and the rules and regulations of the stock exchange. The company's ability to provide information to individual participants will be restricted both by the regulatory framework and by the general requirement for equal treatment.

The guidelines for the company's reporting of information must ensure that market participants receive correct, clear, relevant and up-to-date information in a timely manner. A regular flow of information from the company will help shareholders and other investors to make informed decisions on purchases and sales of the company's shares based on equal access to information. The company should provide information on its major value drivers and risk factors.

When publishing annual and interim reports the company should hold public presentations that are simultaneously broadcast over the internet.

The board of directors should have a policy on who is entitled to speak on behalf of the company on various subjects. The company should have a contingency plan for information management in response to events of a particular character or of interest to the media.

Information on the company should be available to shareholders in both Norwegian and English where this is appropriate in view of the composition of the company's shareholders.

Dialogue with shareholders

In addition to the dialogue with the company's owners in the form of general meetings, the board of directors should make suitable arrangements for shareholders to communicate with the company at other times. This will increase the board's understanding of which matters affecting the company from time to time are of particular concern to shareholders. The guidelines should make clear to what extent the board has delegated this task to the chairman of the board, the chief executive or any other member of the executive management.

See Børsforskriften Chapter 5, particularly § 5-2 on the content of the information requirement and § 5-4 on profit warnings. Oslo Børs Circular No. 4/2003 sets out guidelines for the management of information on companies' future prospects. The Norwegian Society of Financial Analysts has issued recommended guidelines for additional information on value creation, dated November 2002. Representatives of listed companies must not pass information that is likely to affect the price of the company's shares to any unauthorised person, cf. Vphl § 2-2. Further provisions are included on the management of such insider information. The company must manage the information it releases within the framework imposed by the equality principle, cf. Asal. § 4-1.

13 TAKE-OVERS

The board of directors should not seek to hinder or obstruct take-over bids for the company's activities or shares unless there are particular reasons for this.

In the event of a take-over bid for the company's shares, the company's board of directors should not exercise mandates or pass any resolutions that obstruct the take-over bid unless this is approved by the general meeting following announcement of the bid.

Any transaction that is in effect a disposal of the company's activities should be decided by a general meeting, except in cases where such decisions are required by law to be decided by the corporate assembly.

Commentary:

The Securities Trading Act regulates the situation that arises when a company receives a mandatory offer. The Code of Practice covers the situation prior to this, which is not regulated by legislation. The Code states that the board of directors should similarly not seek to hinder or obstruct any take-over bid unless there are particular reasons for this. The rationale is to ensure that individual shareholders are given the opportunity to form their own view of any offer for the company regardless of the board's view on the bidder, pricing etc.

The Securities Trading Act stipulates that the board of directors must respond to both voluntary and mandatory offers (a mandatory offer must be made by any party when exceeding a holding of 40 % of the company's shares) by issuing a statement on the offer before it expires. The statement must according to law include information on the employees' views and other factors of significance for assessing whether the offer should be accepted by the shareholders. Shareholders will find it particularly useful if the board uses its insight into the company's future to produce estimates of the discounted current value of the company's expected future earnings and compares this to the bid received. Such an evaluation should be the main item in the board's statement. The Code of Practice extends these requirements to voluntary bids that are not subject to regulation by the Securities Trading Act.

Openness in respect of take-over situations will help to ensure equal treatment of all shareholders. The board of directors and the executive management are expected to refrain from implementing any measures intended to protect their personal interests at the expense of the interests of shareholders. The Code of Practice supplements the provisions in the Securities Trading Act on the limitation of the company's freedom of action once it is aware that a mandatory offer is to be made.

The Public Companies Act requires that, where a company has a corporate assembly, matters in respect of rationalisation or restructuring the company's activities that will result in major changes or reorganisation for the workforce must be decided by the corporate assembly on the basis of proposals from the board of directors.

The obligation to make a mandatory offer applies to any party that through acquisition becomes the owner of shares representing more than 40% of the voting rights in a Norwegian company whose shares are quoted on a Norwegian stock exchange, cf. Vphl § 4-1. A number of the provisions in Vphl Chapter 4, including the duty to produce an offer document, also apply to voluntary offers, i.e. offers that will give rise to the obligation to make a mandatory offer pursuant to § 4-1 if the offer is accepted by the parties to whom it is made, cf. Vphl § 4-18.
When any offer is made pursuant to Vphl. Chapter 4, the board is required to issue a statement on the offer, cf. Vphl. § 4-16. This applies to both voluntary and mandatory offers. In the case of a mandatory offer, the company's freedom of action is restricted during the offer period, cf. Vphl. § 4-17.
The authority of the corporate assembly in respect of rationalisation measures is set out in Asal. § 6-37.

14 AUDITOR

The auditor should submit the main features of the plan for the audit of the company to the board of directors annually.

The auditor should participate in meetings of the board of directors that deal with the annual accounts. At these meetings the auditor should review any material changes in the company's accounting principles, 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 auditor should at least once a year present to the board of directors a review of the company's internal control procedures, including identified weaknesses and proposals for improvement.

The board of directors should hold a meeting with the auditor at least once a year at which neither the chief executive nor any other member of the executive management is present.

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. The board should receive annual written confirmation from the auditor that the auditor continues to satisfy the requirements for independence. In addition, the auditor should provide the board with a summary of all services in addition to audit work that have been undertaken for the company.

The board of directors must report the remuneration paid to the auditor at the annual general meeting, including details of the fee paid for audit work and any fees paid for other specific assignments.

Commentary:

The requirements for an annual audit plan and for the auditor to participate in board meetings are intended to give the board of directors better insight into the work of the auditor and to represent an important supplement to the auditor's necessary routine contact with the company's executive management.

The knowledge and experience of the auditor is of particular value to the board of directors when it considers the company's annual accounts. The annual accounts are the responsibility of the board and the chief executive, and making active use of the auditor when considering the accounts will improve the basis for the board's decision.

In view of the auditor's independence of the company's executive management, the board of directors should hold at least one meeting a year with the auditor at which the company's management is not present. For this purpose, the board must resolve to exclude the chief executive from the meeting in accordance with § 6-19 of the Public Companies Act.

The requirement for the board of directors to issue guidelines in respect of the company's ability to use the auditor for other services is intended to contribute to greater awareness of the auditor's independence of the company's executive management. The Auditing and Auditors Act includes more detailed provisions on the independence of the auditor.

The Accounting Act requires that the notes to the annual accounts provide information on the remuneration paid to the auditor and the breakdown of this remuneration between audit and other services. The Code of Practice does not consider it sufficient to provide these figures in the notes, and requires in addition that the general meeting should be informed of what services other than the audit have been provided by the auditor.

The Public Companies Act stipulates that the auditor must attend the general meeting if the business which is to be transacted is of such a nature that his or her attendance must be considered necessary. The auditor is, in any case, entitled to participate in the general meeting. The Code of Practice expects the board of directors to make arrangements for the auditor to participate in all general meetings.

The auditor is elected by the general meeting, cf. Asal. § 7-1. The auditor elected must serve until another auditor has been elected, cf. Asal. § 7-2. The auditor must attend the general meeting if the business which is to be transacted is of such a nature that his or her attendance must be regarded as necessary, cf. Asal. § 7-5. The auditor is, in any case, entitled to participate in the general meeting, cf. Asal. § 7-5.
The Auditing and Auditors Act (Revisorloven), Chapter 4, sets out requirements for the independence and objectivity of the auditor.
Auditors are required to identify any errors or shortcomings in respect of the company's accounting and the management of its assets by means of an itemised letter addressed to the company's management (in the case of a joint stock company this will normally be the board of directors), cf. Revisorloven § 5-4.
The Financial Supervisory Authority of Norway (Kredittilsynet) has issued guidelines for auditors' provision of advisory services to audit clients, cf. Kredittilsynet Circular No. 23/2003.
The remuneration paid to the auditor must be approved by the general meeting, cf. Asal. § 7-1. Regnskapsloven § 7-31 requires that the notes to the annual accounts provide information on the remuneration paid to the auditor and a breakdown of this remuneration between the audit fee and fees for other services.