

# THE POWER OF BEING UNDERSTOOD

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NEWSLETTER CORPORATE GOVERNANCE

2019.1 – NEW GOVERNANCE CODE





## NEW GOVERNANCE CODE

The Corporate Governance Commission Corporate Governance has recently published a new governance code, the code 2020.

As before, this code is to be considered as soft law. It is composed of 10 major principles that are compulsory. These principles are detailed into a number of provisions for which the “comply or explain” principle applies.

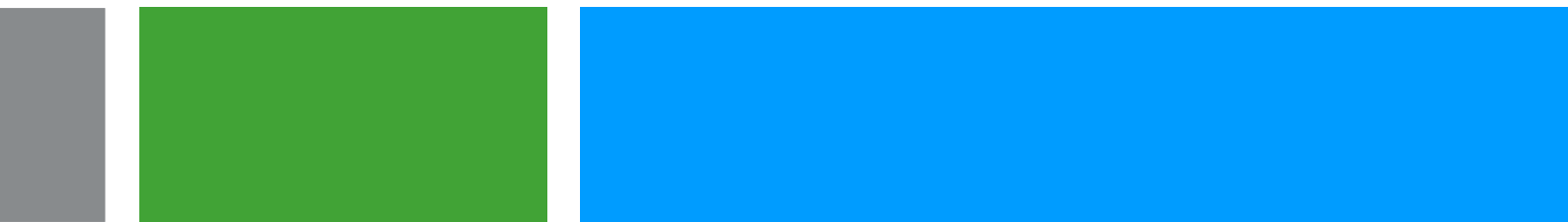
The code aims at giving more guidelines than before. It takes into account the new Code on Companies and Associations and in doing so, refers to both one-tier and two-tier structures.

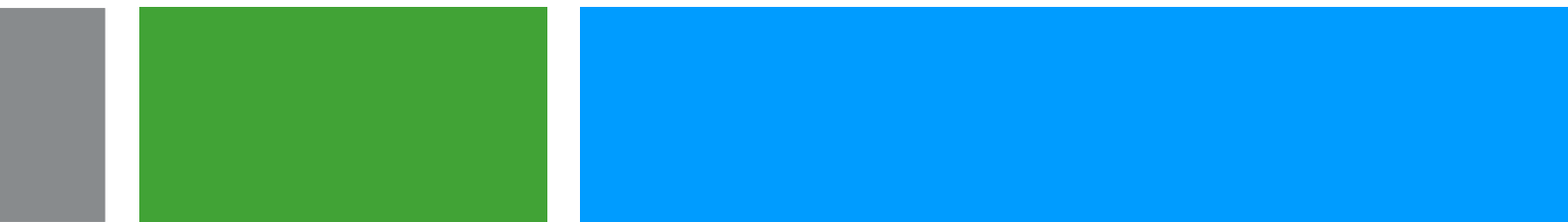
On 17 May 2019, the Royal Decree of 12 May 2019 laying down the corporate governance code to be complied with by listed companies was published in the Belgian Official Gazette. From now on, Belgian listed companies will be required to designate the Belgian Corporate Governance Code 2020 as a reference code within the meaning of Article 3:6(2)(4) of the Companies and Associations Code.

The same transitional arrangement is provided for as in the Act of 23 March 2019 introducing the Companies and Associations Code and containing various provisions. As a result, the Royal Decree of 12 May 2019 applies to new legal persons as of 1 May 2019 and existing legal persons as of 1 January 2020, unless they have decided to comply with the Companies and Associations Code before that date. Existing companies must apply this decree to the annual accounts relating to financial years ending on 1 January 2020 or later, unless the company in question has already voluntarily amended its articles of association in line with the new Companies and Associations Code before that date.

The 10 main principles and changes are the following :

1. The company shall make an explicit choice regarding its governance structure and clearly communicate it
  - Each company shall make an explicit choice of one of the possible governance structures permitted by law (one tier or two-tier)
  - At least once every five years, the board should review whether the chosen governance structure is still appropriate
2. The board and the executive management shall remain within their respective remits and interact constructively
  - The emphasis is placed on sustainability: *“The board should pursue sustainable value creation by the company, by setting the company’s strategy, putting in place effective, responsible and ethical leadership and monitoring the company’s performance”*
  - *“In order to effectively pursue such sustainable value creation, the board should develop an inclusive approach that balances the legitimate interests and expectations of shareholders and other stakeholders”*

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- *“The board should support the executive management in the fulfilment of their duties and should be prepared to constructively challenge the executive management whenever appropriate”*
  - *“The board of directors should determine the risk appetite of the company in order to achieve the company’s strategic objectives”*
  - *“The board should determine the company’s remuneration policy for non-executive board members and executives, taking into account the overall remuneration framework of the company”*
3. The company shall have an effective and balanced board
- *“The composition of the board should be determined so as to gather sufficient expertise in the company’s areas of activity as well as sufficient diversity of skills, background, age and gender”*
  - Point 3.5 defines requirements for independent board members
4. Specialised committees shall assist the board in the execution of its responsibilities
- *“The board should set up specialised committees in order to advise the board in respect of decisions to be taken, to give comfort to the board that certain issues have been adequately addressed and, if necessary, to bring specific issues to the attention of the board. The decision-making should remain the collegial responsibility of the board”*
  - Strategy formulation should not be referred to any permanent committee
5. The company shall have a transparent procedure for the appointment of board members
- More attention is placed on planning the renewal of the board and on the choice of the President
6. All board members shall demonstrate independence of mind and shall always act in the best interests of the company
- *“Board members should engage actively in their duties and should be able to make their own sound, objective and independent judgements when discharging their responsibilities. Acting with independence of mind includes developing a personal conviction and having the courage to act accordingly by assessing and challenging the views of other board members, by interrogating the executives when appropriate in the light of the issues and risks involved, and by being able to resist group pressure”*
  - *“Each board member should place the company’s interests above their own. The board members have the duty to look after the interests of all shareholders on an equivalent basis. Each board member should act according to the principles of reasonableness and fairness”*
7. The company shall remunerate board members and executives fairly and responsibly
- *“A non-executive board member should receive part of their remuneration in the form of shares in the company. These shares should be held until at least one year after the non-executive board member leaves the board and at least three years after the moment of award. However, no stock options should be granted to non-executive board members”*
  - *“The board should set a minimum threshold of shares to be held by the executives.”*

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8. The company shall treat all shareholders equally and respect their rights
    - *“The board should ensure an effective dialogue with shareholders and potential shareholders through appropriate investor relation programmes, in order to achieve a better understanding of their objectives and concerns. Feedback of such dialogue should be given to the board, on at least an annual basis”*
    - *“The board should debate whether it would be appropriate for the company to enter into a relationship agreement with the significant or controlling shareholder(s)”*
  9. The company shall have a rigorous and transparent procedure for evaluating its governance regime
    - The board should evaluate its performance at least once every 3 years and the performance of its members at the end of their mandate
  10. The company shall publicly report on the application of the code
    - The code integrates the principles for a good quality “explain”

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