



Erhvervs- og Selskabsstyrelsen
Kampmannsgade 1
1780 København V
By email:
cg-komite@eogs.dk

London, January 4th 2010

Dear Sirs,

Subject: Governance for Owners' (GO) response to Komitéen for god Selskabsledelses udkast til reviderede Anbefalinger for god Selskabsledelse.

We are writing to outline the views of Governance for Owners (GO) on the Committees consultation document on changes to Danish Corporate Governance Code. By way of introduction, GO is an independent partnership based in London with operations in the US, South East Asia and in Japan. Our business concentrates on two activities. The first is a fund that invests in European publicly listed companies where value can be added through making use of ownership rights, i.e. a shareholder engagement fund. The other is an advisory service that assists long-term equity investors in fulfilling their ownership responsibilities through intelligent voting at shareholder general meetings and engagement on quoted companies in Europe, the US, Japan, and South East Asia.

GO generally endorses the changes made to the Code and are particularly pleased with the changes made to the section on determination of independence (5.4.1) and the section on committee disclosure (5.10.6).

However we also make the following observations and comments:

2.1.3

We strongly support the suggested recommendation that management decides on ethical responsibility policies. However, further to that we suggest the board appoints a member amongst themselves to take overall responsibility for the issue. We suggest that this individual is in regular communication with other members in the organisation who hold the day-to-day responsibility for these issues and that this individual reports to the rest of the board at board meetings on relevant developments. Finally, this individual must be identified in the annual report and must be accountable to shareholders. While the individual should ideally be independent of the company we acknowledge that there is also a case for this individual to be an executive director.

3.1

We very much support the recommendation to create separate board committees and generally find that their responsibilities have been described in sufficient detail. However, with particular regards to the audit committee we strongly believe that all members should be independent. While all directors have a duty to act in the interests of the company the audit committee has a



particular role in acting independently to ensure that the interests of shareholders are properly protected in relation to financial reporting and internal control.

5.6.1 and 5.10.6

In relation to the publication of the number of board meetings (5.6.1) and the number of committee meetings (5.6.1) we also find it very valuable if companies disclose the attendance at each meeting. The attendance rate can often alert shareholders to overcommitted board members just as it provides reassurance to shareholders that decisions have been reached by a full and thereby sufficiently independent committee/board.

5.7.1 and 5.7.3

We believe that board members must diligently assess the workload involved in all board memberships held before taking on new roles in order not to become overcommitted which is also suggested in the recommendations. We also agree that that a Chief Executive Director should not take on more than three non-executive board memberships or alternatively a position as chairman of a board and only one other non-executive board membership. However we do not agree that it does not make sense to make recommendations with regards to the maximum number of memberships a non-executive member of a board, who is not also an executive director of another company, should hold (comment to 5.7.3).

Recent changes to the Companies Act is now allowing companies to adopt a one-tier board structure or one of two types of two-tier board structured as they see fit. Should companies choose to adopt a one-tier board structure non-executive board members would be required to be more actively involved in the running of the company than has traditionally been the case in Denmark.

Held together with the emerging concept of professional board members who build up a portfolio of non-executive board memberships, the need for a limit on number of board memberships for all board members is crucial.

6.1.5

In section 6.1.5 we note the recommendations with regards to disclosure of performance criteria for variable pay schemes. While we agree with most we strongly believe that criteria for variable pay should span at least 3 years. This is not purely a house policy but is best practice internationally including in other Scandinavian countries.

We also have a fundamental concern with regards to executive remuneration in general which we believe has not been addressed by the revised code. Since the vote on remuneration guidelines was introduced we have almost exclusively seen remuneration policies which were too general e.g. listing all possible viable pay schemes the company may consider using in future, limits and possibly the performance criteria but rarely any performance metrics and how they will be applied. When guidelines are too wide we run the risk that companies have no need to propose changes which would require a shareholder vote and hence companies remuneration guidelines will stagnate while best practise moves on.

6.2.2

In the comment to section 6.2.2 of the revised code it is suggested that companies propose an occasional advisory vote on their remuneration guidelines. However the purpose of this advisory vote in relation to the mandatory binding vote (Companies Act) is a little unclear to us. Are you suggesting that companies, in addition to the binding vote on the remuneration guidelines, propose an occasional advisory vote on the implementation of the guidelines?



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Or are you in fact suggesting that the binding vote is used when changes are made to the policy – which can be few and far between – and the occasional advisory vote is used to make sure the policy still reflects best practice? Of the two interpretations we would prefer the former. However, ideally we would like the remuneration guidelines to be sufficiently narrow to begin with as they automatically would require binding shareholder approval more often.

We thank you for the opportunity to comment on the revised code and look forward to seeing the next stage.

Yours sincerely,

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