



Swiss Code of Best Practice for Corporate Governance

PREFACE

economiesuisse, in co-operation with SWX Swiss Exchange invited interested members and organisations to take part in a broad-based Panel of Experts on Corporate Governance (members see below) pursuant to a decision of its Board of 22nd August 2000. The following Working Group was formed from this Panel to prepare and publish a Code of Best Practice on Corporate Governance:

Prof. Peter Böckli, Attorney-at-law, (interalia) member of the Boards of Directors of Nestlé SA (Audit Committee) and UBS (independent Vice-Chairman) – author of the Swiss Code;

Prof. Karl Hofstetter, University of Zurich, General Counsel / Executive Vice President Schindler Holding AG (therefore a representative of a typical large Swiss company concern with a strong family shareholding – author of the analysis report;

Thomas Hodler, J.S.D., General Secretary, Swiss Re;

Dr. Richard T. Meier, SWX Swiss Exchange, Project Manager for Corporate Governance guidelines;

Christian Stiefel, Federation of Swiss Industrial Holding Companies,

as well as occasionally **Thomas Pletscher**, Member of the Executive Board, economiesuisse and Chairman of the Panel of Experts

This working group also undertook the reconciliation of the Swiss Code and the SWX Swiss Exchange guidelines on Corporate Governance. The Corporate Governance Swiss Code of Best Practice (hereafter Swiss Code) was unanimously approved on 25th March 2002 by the Board of Directors of economiesuisse on the unanimous recommendation of the Panel of Experts. The following organisations, which follow closely the topic of Corporate Governance in the context of their statutory activities, have explicitly endorsed the Swiss Code:

ASIP Swiss Association of pension funds	Talstrasse 20	8001 Zürich	25th April 2002
ethos - Swiss Investment Foundation for Sustainable Development	Place Cornavin 2 Case postale	1211 Genève 1	29th April 2002
Swiss Society of Financial Analysts and Portfolio Managers (SSFP)	Feldstrasse 80	8180 Bülach	9th April 2002
Swiss Insurance Association	C.F. Meyerstrasse 14	8022 Zürich	8th May 2002
SGCI Swiss Society of Chemical Industries	Nordstrasse 15 Postfach	8035 Zürich	6th June 2002
Confederation of Swiss employers	Hegibachstrasse 47	8032 Zürich	29th April 2002
sgv - Umbrella organisation of small and medium-sized enterprises SME	Schwarztorstr. 26 Postfach	3001 Bern	19th April 2002
SwissBanking Swiss Bankers Association	Aeschenplatz 7 Postfach 4182	4002 Basel	22nd April 2002
Swiss Retail Federation	Marktgasse 50 Postfach	3000 Bern 7	2nd May 2002

Swissmem	Kirchenweg 4 Postfach	8032 Zürich	16th April 2002
Swiss Institute of certified Accountants and Tax Consultants	Limmatquai 120 Postfach 892	8025 Zürich	8th April 2002
Association of Private Limited Companies	St. Jakobsstrasse 7 Postfach 2879	4002 Basel	17th April 2002
Federation of Swiss Industrial Holding Companies	Luisenstrasse 38 Postfach 209	3000 Bern 6	25th April 2002

economiesuisse will be responsible for the further development of the Swiss Code. It will coordinate the procedure for the approval of amendments.

The following organisations and companies were represented in the Panel of Experts “Corporate Governance”:

ABB Ltd, Zürich; Alcan Holding Switzerland AG, Zürich; ASIP – Schweiz.
Pensionskassenverband, Thun; Bâloise Holding, Basel; Bühler AG, Uzwil; Ciba
Spezialitätenchemie AG, Basel; Clariant International Ltd., Muttenz; Credit Suisse Group,
Zürich; Ethos – Schweizerische Anlagestiftung für nachhaltige Entwicklung, Genf; F. Hoffmann-
La Roche AG, Basel; Georg Fischer AG, Schaffhausen; Lombard, Odier & Cie., Genève; Lonza
Group AG, Zürich; Nestlé SA, Vevey; Novartis International AG, Basel; Rieter Holding AG,
Winterthur; Schindler Holding AG, Hergiswil; Schweizerische Bankiersvereinigung, Basel;
Schweizerischer Arbeitgeberverband, Zürich; Schweizerische Vereinigung für Finanzanalyse
und Vermögensverwaltung (SVFV), Bülach; Schweiz. Versicherungsverband (SVV), Zürich;
SGS Société Générale de Surveillance Holding SA, Genève; Swiss Banking Institute,
Universität Zürich, Zürich; Swiss Re, Schweizerische Rückversicherungsgesellschaft, Zürich;
Swiss Retail Federation, Bern; Swissca Holding AG, Bern; SwissCham – Verband Schweiz.
Aussenwirtschaftskammern, Zürich; Swissmem, Zürich; SWX Swiss Exchange, Zürich;
Treuhand-Kammer, Zürich; UBS AG, Zürich und Basel; Vereinigung der privaten
Aktiengesellschaften, Basel; Vereinigung Schweizerischer Industrie-Holdinggesellschaften
(Industrie-Holding), Bern; Versicherungskasse der Stadt Zürich, Zürich; Zurich Financial
Services, Zürich

PREAMBLE

1. Since *economiesuisse* is the Federation of enterprises from all sectors of the economy (industry, financial sector, other services), it is the appropriate private sector institution to establish the principles of Corporate Governance in Switzerland.

In the light of international discussions and on initiative of interested circles, *economiesuisse* appointed a “Corporate Governance” Panel of Experts at the beginning of 2001 with the task of unifying the different efforts to various aspects of Corporate Governance in Switzerland. The existence of existing models forms a reliable basis for the Swiss Code, first and foremost those in Great Britain (“Cadbury Report” 1992, “Hampel Report” 1998 and finally the “Combined Code” which is compulsory for all companies listed in London). Further text proposals are based on models from a number of other countries such as France (Rapport Viénot) and recently Germany (the Corporate Governance study of July 2001 by the “Commission Baum” appointed by the Federal Chancellor and the “German Corporate Governance Code” published in February 2002).

2. The text of the “Swiss Code” addresses the situation *in Switzerland* with its characteristic mixture of large, medium and small companies. Here, despite all the criticism, there has been a gradually perceptible improvement in corporate practices since the revision of the Company Law, which came into effect on 1st July 1992. It is a law the conceptual principles of which differ both from the German and the anglo-saxon Company laws. The Swiss Code will through its clear comprehensibility present the high standard of practices which are today – apart from some well-known exceptions – widely respected by many exemplary companies in Switzerland. At a time when capital markets are being linked world-wide the Swiss Code will give a picture mainly to foreign investors as to what has been achieved and what is anticipated in corporate governance practices.
3. The “Swiss Code” is addressed to public limited companies as recommendations. Non-listed economically significant companies or organisations (also in other legal forms) should be able to develop appropriate guidelines from the Swiss Code.
4. Each of the participating organisations should be free to emphasise the importance of different aspects and pursue its own ideas in the development of the Swiss Code including where necessary departing from its core aspects.
5. The question of capital structure and particularly the principal “one share – one vote” requested by the investors are not part of the “Swiss Code”. The reasons for this decision are set forth in the analysis report “Corporate Governance in Switzerland” by Prof. Karl Hofstetter and discussed in detail by the Panel of Experts. However, each restriction on the capital-proportional voting rights is subject to disclosure according to the guidelines of SWX Swiss Exchange.

6. As in each country, Corporate Governance in Switzerland is set within the context of the current Swiss law. Some foreign criticism shows that certain peculiarities of the Swiss company and stock exchange law were not sufficiently taken into consideration. The separate report "Corporate Governance in Switzerland", written by Prof. Hofstetter in collaboration with the Working Group, analyses the major points of criticism and the provisions of currently applicable Swiss Law. This report deals especially with the actual state of the Swiss stock exchange and takeover law (notification threshold, public offers, threshold for compulsory offering, Opting out, ad-hoc publicity, half year reports, accounting standards etc.). Most of these aspects have a connection with Corporate Governance as well but cannot or can only partially be the object of recommendations of a Code of Best Practice. The "Swiss Code" presented here should be understood in the light of this analysis.

"CORPORATE GOVERNANCE" as a guiding principle

Corporate governance encompasses the full range of principles directed towards shareholders' interest seeking a good balance between direction and control and transparency at the top company level while maintaining decision-making capacity and efficiency.

The "Swiss Code of Best Practice for Corporate Governance" as a guideline and recommendation

The *Swiss Code of Best Practice for Corporate Governance* ("Swiss Code") is intended for public limited companies. Certain provisions are addressed to institutional investors and intermediaries. The purpose of the Swiss Code is to set out guidelines and recommendations, but not force Swiss companies into a straightjacket. Each company should retain the possibility of putting its own ideas on structuring and organization into practice.

I. SHAREHOLDERS

1. *As investors, shareholders have the final decision within the company.*

- The powers of the shareholders are defined by statute. They alone are entitled to make decisions with regard to personnel matters at the top company level (electing and granting release to members of the Board of Directors and appointing the company's auditors), the final approval of accounts (annual and consolidated financial statements) and policy on distributions and shareholders' equity (dividends, increase in capital or reduction of capital). The shareholders determine in the Articles of Association the purpose of the company and other key elements and rules. Their approval is required for decisions on mergers, demergers, changes in the Articles of Association and liquidation.
- Shareholders exercise their rights in the General Shareholders' Meeting and have the right to make motions on items prescribed by the agenda. They may also request information on company matters not included in the agenda and, if appropriate, a special audit.
- Institutional investors, nominees and other intermediaries exercising shareholders' rights in their own name should ensure, as far as possible, that beneficial owners may exercise their influence as to how such shareholders' rights are brought to bear.
- Where registered shares are acquired through custodian banks, the latter should invite the party acquiring the shares to apply for registration in the company's Register of Shareholders.

2. *The company should endeavour to facilitate the exercise of shareholders' statutory rights.*

- To this end the Articles of Association may lower to an appropriate degree the statutory threshold for shareholders to place items on the agenda or to convene an Extraordinary General Shareholders' Meeting.
- If the General Shareholders' Meeting reduces the par value of shares through repayment, the Board of Directors should review whether it would be appropriate to adjust the required threshold (relating to requests to place items on the agenda, convene meetings or, where appropriate, for a special audit to be carried out) to ensure that shareholders' rights are not curtailed.
- The Articles of Association should be available in writing or in electronic form at any time.

3. *The company should ensure that the General Shareholders' Meeting is used as a forum for communication so that it is well-informed in discharging its function as the highest corporate authority.*

- The Board of Directors should inform the shareholders in such a way that they can exercise their rights in the knowledge of the essential basis of their decisions.
- The company should, when convening meetings, provide concise explanations on agenda items and on motions put forward by the Board of Directors. Requests by shareholders to place items on the agenda and motions made by them should, if received in time, be officially communicated.

4. *The company should facilitate the participation of shareholders at General Shareholders' Meetings by clearly setting dates and time limits well in advance.*

- The Board of Directors should give notice of the date of the next ordinary General Meeting as early as possible.
- The company should give notice of the deadline for shareholders to propose items for the agenda as well as corresponding motions. This date should not be set any further in advance of the meeting's date than necessary.
- If the Board of Directors sets a deadline prior to the General Meeting in order to identify the persons entitled to exercise shareholders' rights, this deadline, both for holders of registered and of bearer shares, should ordinarily be no more than a few days before the date of the meeting.

5. *The organization of the meeting should enable shareholders to make relevant and concise comments on the agenda items.*

- The Chairman should use his¹ powers to ensure that shareholders may exercise their rights. He should conduct the meeting in a balanced and purposefully way.
- In the interest of the efficient running of the meeting the Chairman should take care that there be no rambling, repeated or unnecessarily derogatory statements. He may limit the time allotted to each speaker, if there are numerous requests to speak on the same agenda item.

6. *Arrangements should be made to ensure that shareholders' rights to information and inspection are met.*

- The Chairman should answer questions which are in order and relate to the company or arrange for a competent specialist or the Chairmen of the Board Committees to reply.
- Complex questions or those having a number of different aspects should be submitted to the Board of Directors in writing in sufficient time to allow for a response to be prepared.
- The minutes of the meeting should be made available to the shareholders as soon as possible but not later than three weeks after the meeting's date.

7. *In the General Shareholders' Meeting the will of the majority should be clearly and fairly expressed.*

- The Chairman should implement the voting procedures in such a way that the majority will can be determined in as an unambiguous and efficient a way as possible.
- In the absence of a clear majority, the Chairman should arrange for voting to take place by written or electronic ballot. If voting takes place by a show of hands, shareholders may request votes against the motion and any abstentions to be recorded. The number of such votes cast should be communicated to the meeting.
- The Chairman may arrange for a combined poll to be taken when electing members of corporate bodies or granting release to them, provided no opposition from the shareholders is apparent and there is not a request for a separate vote on one or more individuals.

¹ Terms which indicate a particular gender are intended to denote either gender.

8. *The Board of Directors should also take steps to contact shareholders in between the General Shareholders' Meetings.*

- The Board of Directors should inform shareholders on the progress of the company also during the course of the financial year.
- The Board of Directors should appoint a position for shareholders relations. In the dissemination of information, the statutory principle of equal treatment should be respected.

II. BOARD OF DIRECTORS AND EXECUTIVE MANAGEMENT

a) Functions of the Board of Directors

9. *The Board of Directors, which elected by the shareholders, is responsible for the strategic direction of the company or the group.*

- The Board of Directors should determine the strategic goals, the general ways and means to achieve them and the individuals charged with management
- In its planning it should ensure the fundamental harmonisation of strategy and finances.

10. *Swiss company law lays down the inalienable and non-transferable primary functions of the Board of Directors.*

- The primary functions are:
 1. the ultimate direction of the company and the giving of the necessary directives;
 2. the establishment of the organization;
 3. the structuring of the accounting system and of the financial controls as well as financial planning, insofar as necessary to manage the Company;
 4. the appointment and removal of the persons entrusted with the management and representation of the company;
 5. the ultimate supervision of the persons entrusted with the management, with regard, in particular, to compliance with the law, the Articles of Association, regulations and directives;
 6. the preparation of the annual report as well as the preparation of the general shareholders' meeting and the implementation of its resolutions;
 7. the notification of the court in case of an excess of indebtedness over assets.

(Art. 716a (1) Swiss Code of Obligations)

11. *Subject to the provisions of the Articles of Association the Board of Directors should lay down the powers and responsibilities of the persons in charge of managing the business.*

- The Board of Directors should ensure that management and control functions are allocated appropriately.
- If the Board of Directors delegates management responsibilities to a Managing Director or to a separate Executive Board, it should issue organizational regulations with a clear definition of the scope of the powers conferred. As a rule it should reserve to itself the power to approve certain significant business transactions.

b) Composition

12. *A well-balanced membership of the Board of Directors should be sought for.*

- The Board of Directors should be small enough in numbers for efficient decision-making and large enough for its members to contribute experience and knowledge from different fields and to allocate management and control functions (section 21 ff.) among themselves. The size of the Board should match the needs of the individual company.
- Members of the Board of Directors should be persons with the abilities necessary to ensure an independent decision-making process in a critical exchange of ideas with the Executive Management.
- The majority of the Board should, as a rule, be composed of members who do not perform any line management function within the company (non-executive members).
- If a significant part of the company's operations is abroad, the Board of Directors should also include members having long-standing international experience or members from abroad.

13. *The Board of Directors should plan for the succession of its members and ensure that members receive continuing education.*

- The ordinary term of office for members of the Board of Directors should, as a rule, not exceed four years. Adequately staggered terms of office are desirable.
- The Board of Directors should plan the succession of its members and lay down the criteria for selecting candidates.

- The Board of Directors should ensure that newly elected members receive appropriate introduction and that Board Members, where required, receive further training with respect to their responsibilities.

c) Procedures and Chairmanship of the Board of Directors

14. *The Board of Directors should determine the procedures appropriate to perform its function.*

- The Board of Directors should, as a rule, meet at least four times a year according to the requirements of the company. The Chairman should ensure that deliberations are held at short notice whenever necessary.
- The Board of Directors should review regulations it has issued at regular intervals and amend them as required.
- The Board of Directors may obtain at the company's expense independent advice from external experts on important business matters.
- The Board of Directors should discuss annually its own and its members' performance.

15. *The Chairman is responsible for the preparation and conduct of meetings; the providing of appropriate information is one of his core responsibilities.*

- The Chairman is entrusted with conducting the Board of Directors in the company's interest. He should ensure that procedures relating to preparatory work, deliberation, passing resolutions and implementation of decisions are carried out properly.
- The Chairman should ensure in mutual cooperation with the Executive Management that information is made available in good time on all aspects of the company relevant for decision-making and supervision. The Board of Directors should receive, as far as possible prior to the meeting, the well presented and clearly organized documentation; if that is not possible, the Chairman should make the documentation available prior to the meeting allowing sufficient time for perusal.
- As a rule persons responsible for a particular business should be present at the meeting. Anyone who is indispensable for answering questions in greater depth should be available.

d) Dealing with conflicts of interest and advance information

16. *Each member of the Board of Directors and Executive Board should arrange his personal and business affairs so as to avoid, as far as possible, conflicts of interest with the company.*

- Should a conflict of interest arise, the member of the Board of Directors or Executive Management concerned should inform the Chairman of the Board. The Chairman, or Vice-Chairman, should request a decision by the Board of Directors, which reflects the seriousness of the conflict of interest. The Board shall decide without participation of the person concerned.
- Anyone who has interests in conflict with the company or is obligated to represent such interests on behalf of third parties should not participate to that extent in decision-making. Anyone having a permanent conflict of interest should not be a member of the Board of Directors or the Executive Management.
- Transactions between the company and members of corporate bodies or related persons should be carried out “at arm’s length” and should be approved without participation of the party concerned. If necessary, a neutral opinion should be obtained.

17. *The Board of Directors should regulate the principles governing ad hoc publicity in more detail and take measures to prevent insider-dealing offences.*

- The Board of Directors should consider in particular whether appropriate action (e.g. “close periods”) should be taken with regard to purchasing and selling securities of the company or other sensitive assets during critical periods, e.g. in connection with take-over projects, before media conferences or prior to announcing corporate results.

e) *Chairman of the Board of Directors and President of the Executive Management: joint or separate function*

18. *The principle of maintaining a balance between direction and control should also apply to the top of the company.*

- The Board of Directors should determine whether a single person (with joint responsibility) or two persons (with separate responsibility) should be appointed to the Chair of the Board of Directors and the top position of the Executive Management (Managing Director, President of the Executive Board or Chief Executive Officer).
- If, for reasons specific to the company or because the circumstances relating to availability of senior management makes it appropriate, the Board of Directors decides that a single individual should assume joint responsibility at the top of the company, it should provide for adequate control mechanisms. The Board of Directors may appoint an experienced non-executive member (lead director) to perform this task. Such person should be entitled to convene on his own and chair meetings of the Board when necessary.

f) Internal control system dealing with risk and compliance

19. *The Board of Directors should provide for systems for internal control and risk management suitable for the company.*

- The internal control system should be geared to the size, the complexity and risk profile of the company.
- The internal control system should, depending on the specific nature of the company, also cover risk management. The latter should apply to both financial and operational risks.
- The company should set up an Internal Audit function which should report to the Audit Committee or, as the case may be, to the Chairman of the Board.

20. *The Board of Directors should take measures to ensure compliance with applicable rules.*

- The Board of Directors should arrange the function of compliance according to the specific nature of the company. It may also allocate compliance to the internal control system.
- The Board of Directors should review at least once a year whether the principles of compliance applicable to themselves and the company are sufficiently known and are constantly observed.

g) Committees of the Board of Directors

21. *The Board of Directors should form committees to perform defined tasks.*

- The Board of Directors should appoint committees from amongst its members responsible for carrying out an in-depth analysis of specific business-related or personnel matters for the full Board in preparation for passing resolutions or exercising its supervisory function.
- The Board of Directors should appoint the members as well as the Chairman of each committee and determine its procedures. Otherwise, the rules applying to the Board of Directors should apply accordingly to the committees.
- The Board may combine the functions of several committees provided that all their members fulfil the respective qualifications.
- The committees should report to the Board of Directors on their activities and findings. The overall responsibility for duties delegated to the committees remains with the Board of Directors.

22. *As regards committee members, particular rules on independence should be applied*

- It is recommended that a majority of the members of certain committees be independent. Independent members shall mean non-executive members of the Board of Directors who never were or were more than three years ago a member of the executive management and who have no or comparatively minor business relations with the company.
- Where there is a cross membership in Boards of Directors, the independence of the respective member should be carefully examined case by case.
- The Board of Directors may lay down further criteria of independence.

Audit Committee

23. *The Board of Directors should set up an Audit Committee.*

- The Committee should consist of non-executive, preferably independent members of the Board of Directors.
- A majority of members, including the Chairman should be financially literate.

24. *The Audit Committee should form an independent judgement of the quality of the external auditors, the internal control system and the annual financial statements.*

- The Audit Committee should form an impression of the effectiveness of the external audit (the statutory auditors or if applicable, the group auditors) and the internal audit as well as of their mutual cooperation.
- The Audit Committee should, additionally, assess the quality of the internal control system including risk management and should have an appreciation of the state of compliance with norms within the company.
- The Audit Committee should review the individual and consolidated financial statements as well as the interim statements intended for publication. It should discuss these with the Chief Financial Officer and the head of the internal audit and, separately, should the occasion warrant, with the head of the external audit.
- The Audit Committee should decide whether the individual and consolidated financial statements be recommended to the Board of Directors for presentation to the General Shareholders' Meeting.
- The Audit Committee should assess the performance and the fees charged by the external auditors and ascertain their independence. It should examine compatibility of the auditing responsibilities with any consulting mandates.

Compensation Committee

25. *The Board of Directors should set up a Compensation Committee.*

- A majority of the Compensation Committee should consist of non-executive and independent members of the Board of Directors.
- The Chairman of the Board respectively the President of the Executive Management should, as a rule, be consulted except when their own remuneration is under review.
- The Compensation Committee should draw up the principles for remuneration of members of the Board of Directors and the Executive Management and submit them to the Board of Directors for approval.

26. *The Committee should see to the defining of a remuneration policy, primarily at top company level.*

- The Compensation Committee should take care that the company offer an overall package of remuneration, which corresponds to performance and the market, in order to attract and retain persons with the necessary skills and character.
- The remuneration should be demonstrably contingent upon sustainable company success and the individual contribution by the person in question. False incentives should be avoided.
- The dilution effect caused by share option schemes for senior managers should be minimized and the conditions for exercising options shall not be modified subsequently in favour of the option holders.
- Contracts of employment with top managers should contain such provisions on termination of employment as are commensurate with market conditions and which protect the company's interest. In case of early termination of a top management contract only such severance compensation should be paid which is either owed due to the contract or which has been negotiated in compatibility with the interests of the company.

Nomination Committee

27. *The Boards of Directors should set up a Nomination Committee.*

- The Nomination Committee should lay down the principles for the selection of candidates for election or re-election to the Board of Directors and prepare a selection of candidates in accordance with these criteria.

- The Nomination Committee may also be assigned responsibilities in connection with the selection and assessment of candidates for top management.

h) Particular circumstances

28. *The rules contained in this Code may be adapted to actual circumstances, depending on the shareholder structure and size of the company.*

- Companies with active major shareholders (including subsidiaries listed on the stock exchange) as well as small and medium-sized enterprises may adapt or simplify the guidelines. Such companies should implement in their own way an appropriate arrangement for the assessment of the external audit, a functionally efficient internal control system, the remuneration policy for members of the Board of Directors and the Executive Management and the succession policy for the Board of Directors.
- Small and medium-sized companies may assign responsibilities to individuals instead of setting up committees or have the full Board of Directors perform these tasks.

III. AUDITING

29. *The function of the external audit is performed by the statutory auditors elected by the shareholders and, should that be the case, the group auditors.*

- The external auditors should discharge the functions assigned to them in accordance with the guidelines relevant to them. They should cooperate in an appropriate way with those in charge of internal auditing.
- Auditors and group auditors should comply with the guidelines on maintaining independence applicable to them.

IV. DISCLOSURE

30. *The company should disclose information on Corporate Governance in its annual report.*

- The SWX Swiss Exchange Directive on information relating to Corporate Governance is applicable with regard to detailed disclosures.