



# Corporate governance – recent trends in France

Increasing numbers of French listed companies have recently been adjusting their corporate governance practices, evidencing the emergence of the two following principal trends:

- the move to a balanced representation of men and women on corporate boards; and
- the combination of the roles of chairman and chief executive officer under the authority of a single individual, while moving closer to the UK practice of appointing a 'senior independent director' to corporate boards.

This briefing summarises certain aspects of these trends, as well as how French listed companies are incorporating them into their corporate governance policies and practices.

## Increased representation of women on boards of directors and supervisory boards of listed companies

### Developments in French law and recommendations

On 20 January 2010, the French National Assembly (*Assemblée Nationale*) adopted a draft bill calling for a more balanced gender representation in the governing bodies of French listed companies. The bill, currently being debated in the Senate (*Sénat*), would require women to represent at least 40 per cent of the membership of the boards of directors (or supervisory boards) of listed companies within six years of the bill's enactment (with an intermediary quota of 20 per cent within three years). In addition, in the case of listed companies with boards of eight members at the most, the gap between the number of male and female board members may not exceed two.

Appointments made in violation of the quota requirements would be considered null and void. If women are not represented on the board of directors or the supervisory board within six months of the bill's enactment, at least one woman representative must be appointed at the time of the first renewal of the term of a director or supervisory board member to occur after the date of such enactment.

On 19 April 2010 the Association of French Private-Sector Companies (AFEP) and French Business Confederation (MEDEF) recommended that French listed companies increase women's membership of their governing bodies, performing a virtually identical

transcription of the proposed law into the AFEP-MEDEF corporate governance code for French listed companies, which serves as a benchmark for nearly all French listed companies in determining their corporate governance policies.

### Current trends in the CAC 40

Several companies included in the CAC 40 index have already anticipated the enactment of these quotas by the French parliament (*Parlement*). For example, PPR, which currently has one woman serving on its board of directors, announced on 12 April 2010 that it intended to propose during its next general shareholders' meeting the appointment of three additional women to its board, thereby increasing its size from 11 to 14 members, of which nearly 30 per cent will be women. In a similar vein, Vivendi proposed in early March 2010 the appointment of three women to its supervisory board, increasing its female representation to one-third. Examples of other CAC 40 companies that have recently announced the proposed appointment of one or more women to their corporate boards are LVMH (with the appointment of Bernadette Chirac), Lafarge, Vallourec, Alcatel Lucent, Renault, Sanofi-Aventis and BNP Paribas.

## Concentration of power with the chief executive of French listed companies and appointment of a 'senior independent director'

An increasing number of CAC 40 companies that had previously adopted a system of management with a

separate chairman and chief executive officer are now choosing to combine these roles under the authority of a single individual, while counterbalancing this concentration of power with the appointment of a 'senior independent director' (sometimes also referred to as a 'vice chairman' or 'reference director').

### Concept of 'senior independent director'

The concept of a senior independent director, which originates in the UK's Combined Code of Corporate Governance, does not exist under French law. An increasing number of corporate boards of CAC 40 companies are nevertheless adopting this practice with a view to displaying an exemplary standard of corporate governance.

Furthermore, the Association Française de la Gestion Financière, the trade association representing the French asset management industry, which has indicated a preference for the separation of powers by having two distinct roles of chairman of the board and chief executive officer, or a management structure consisting of a supervisory board and an executive board, recommended in January 2010 that companies that have not opted for such a separation of powers:

- give their shareholders an explanation of why the two functions were not separated; and
- designate an independent 'lead director' who would monitor conflicts of interest and report on them at the general shareholders' meeting.

### Current trends in the CAC 40

Veolia Environnement, Accor, Vinci, Renault and Société Générale have all proceeded with appointments reflecting this trend, some of them drawing inspiration from the British model and the definition of 'senior independent director' set forth in the Combined Code. According to the 'comply or explain' practices set forth therein, the senior independent director should be available to shareholders if they have concerns that contact through the normal channels of chairman, chief executive or finance director has failed to resolve or for which such contact is inappropriate. The code also provides that the non-executive directors should meet without the chairman present at least annually, under the leadership of the senior independent director, to appraise the chairman's performance.

The foregoing examples illustrate the marked tendency to concentrate powers with the chief executive of CAC 40 companies and the corresponding will to reinforce the responsiveness and efficiency of the group's management by ensuring a centralised leadership and representation in the context of the global economic crisis. In some cases, the appointment of a reference director or vice chairman is also a result of criticism aimed at the group's management. The appointment of a senior independent director has thus sought to ensure a rigorous level of internal controls, to more fairly represent minority shareholders confronting 'heavyweight' majority shareholders or to respond to criticism or questioning in relation to suspected conflicts of interest.

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