

Stewardship Code

THE COMMITTEE ON
CORPORATE GOVERNANCE
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PREFACE

The Committee on Corporate Governance has focused on stewardship for several years. In recent years, there has been an increased focus on the role of shareholders/investors in listed companies – most recently with the European Commission’s proposal of 9 April 2014 for a revised Shareholder Rights Directive. In January 2016, the Minister of Business and Growth requested the Committee to draft a Stewardship Code in order to encourage the kind of stewardship in Danish listed companies that is beneficial to long-term value creation.

The aim of the Stewardship Code is – similar to that of the Recommendations on Corporate Governance – to promote the companies’ long-term value creation and thereby contribute to maximising long-term return for investors. Thus, the Recommendations on Corporate Governance and the Stewardship Code are mutually reinforcing in serving a common purpose.

As such, investors are different and, thus, stewardship activities and reporting thereon may vary from investor to investor. The scope and the exercise of stewardship activities should be considered in light of a principle of proportionality, which takes into account portfolio allocation, the number of shares held in the particular company and an assessment of the need to seek influence on company operations and/or strategy on the basis of good corporate governance. The principle of proportionality must also be considered in light of the particular investment strategy (e.g. active versus passive) and investment method (e.g. direct versus synthetic exposures). It should be emphasised that a passive/index-based investment strategy does not exempt investors from exercising stewardship activities. The Stewardship Code should result in increased transparency as to how the individual investor chooses to exercise stewardship activities. Accordingly, the Code is not meant to establish a uniform approach for investors’ exercise of stewardship activities.

Like the Recommendations on Corporate Governance, these stewardship principles are “soft law “ to be applied on a “comply or explain” basis. Thus, investors can choose either to comply with a given principle or not, in which case the investor should give an explanation as to why and how the investor has chosen to act in that particular regard. To establish the necessary level of transparency, investors are encouraged to consider the principles and disclose whether or not they comply with each principle.

Financial markets are global. Many Danish investors are active in Denmark as well as abroad and non-Danish investors are also investing in Danish listed companies. Accordingly, the Committee has sought to ensure that the Code is in line with leading foreign stewardship principles, notably including The UK Stewardship Code.

The Code is meant as a supplement to applicable law, including sector-specific requirements, which prevail in case of discrepancy. The Committee assumes compliance with such requirements and they are therefore not reflected in the guiding principles of this Code.

The Committee will follow developments within the area of stewardship and the guiding principles will – in accordance with the soft law principle – be developed on an on-going basis when necessary. This is particularly relevant with regard to the European Commission’s proposal of 9 April 2014 for a revised Shareholder Rights Directive, which is currently being negotiated within the EU. The Committee is monitoring the proposal closely and will consider an update of the Code to the extent necessary.

The Stewardship Code applies to financial years starting on 1 January 2017 or thereafter.

Copenhagen, 29 November 2016

The Committee on Corporate Governance

INTRODUCTION

1. The Committee's work and monitoring

The Committee will, on a continuous basis, follow the development of corporate governance both nationally and internationally and aims to push forward corporate governance, including in respect of stewardship.

The Committee on Corporate Governance will prepare an annual survey in order to identify areas in which the Stewardship Code either is not up-to-date with developments in this area, or where it is deemed necessary to provide further guidance to investors in their stewardship activities. On the basis of such surveys, the Committee will prepare a yearly report to be published on the Committee's website. The Committee's first report is expected to be published in 2018.

2. Target group

The Stewardship Code is primarily addressed to Danish institutional investors, who invest in shares of companies that are publicly listed in Denmark. The Code is directed at shareholders and asset managers, as well as investors who perform both roles and directly or indirectly manage third party funds. First and foremost, the Code is relevant to investment funds, insurance companies, investment firms, pension funds and financial institutions.

The Code may also serve as inspiration to Danish institutional investors with investments in shares in companies listed outside Denmark and to foreign institutional investors with investments in shares in companies that are publicly listed in Denmark. The Code may also be a source of inspiration for other investors, including other investors managing third party funds.

3. Soft law and its implications

The Stewardship Code is so-called "soft law" and, thus, more flexible than legislation ("hard law"). Soft law reflects "best practice" and is characterised by a high degree of voluntariness, which provides the flexibility required for investors to adapt the scope and exercise of stewardship activities to specific circumstances.

Soft law is more dynamic than traditional legislation, as it is easier to adjust to developments in the relevant areas concerned. This enables the principles to stay appropriate and up-to-date. It is crucial that the principles are flexible, as no one-size-fits-all solution exists in terms of stewardship.

4. The “comply or explain” principle

The Stewardship Code is based on voluntariness and the “comply or explain” principle. Accordingly, it is not a legal requirement that investors must address the Stewardship Code, and it is up to the individual investor to determine the extent to which the principles are complied with.

The Committee recommends that all Danish institutional investors with investments in shares in companies that are publicly listed in Denmark address and consider the Stewardship Code.

The Committee finds that self-regulation is the best form of regulation when it comes to corporate governance, including stewardship. This is also the predominant position internationally. However, it requires that society, companies and investors have a positive attitude towards stewardship and that they engage in stewardship activities.

To establish the necessary level of transparency, it is important that investors consider each principle of the Code. If an investor deviates from a principle, the investor must explain why it has chosen to do so and the approach chosen instead.

5. A Stewardship Report according to the “comply or explain” principle

The Committee recommends that investors prepare an annual Stewardship Report on the Stewardship Code according to the “comply or explain” principle. In the report, the investor should address each principle according to the “comply or explain” principle. The Committee recommends that the investor collects the data in a “Stewardship Report” to be published either in the management’s review in the annual report or on the investor’s website.

Such an annual Stewardship Report may contribute to enhance the visibility of the individual investor’s stewardship activities and increase transparency, which the Committee considers appropriate. The Stewardship Report should provide an overview of the investor’s approach to the Stewardship Code.

The Committee considers it important that the Stewardship Code is a suitable tool for investors to exercise stewardship activities and that it enhances transparency. The Committee’s comments to the principles may be used as a guideline and source of inspiration in the investors’ work with the principles. The comments should be seen as a tool for institutional investors in this context. The reporting regarding the Stewardship Code should only be carried out with regard to the principles – not in relation to the supplementary comments.

STEWARDSHIP CODE

Principle 1: Engagement Policy

IT IS RECOMMENDED that institutional investors should publicly disclose an engagement policy with respect to investments in shares in companies that are publicly listed in Denmark.

COMMENTS: Stewardship activities imply engagement from investors in relation to the company's circumstances, development and management.

Stewardship activities may include a wide range of activities ranging from monitoring companies in the portfolio, dialogue with companies, collaboration with other investors, to participation and voting at general meetings. The actual decision to buy or sell particular stock is also an important element of stewardship.

The engagement policy should explain to which extent and, if necessary, how the investor exercises stewardship activities and how stewardship activities fit into the broader investment process. The policy should describe circumstances that may affect the scope and exercise of stewardship activities in certain situations, such as the importance of the principle of proportionality in relation to portfolio allocation, the number of shares held in the relevant company and an assessment of the need to seek influence on company operations and/or strategy on the basis of corporate governance, and investment strategy (e.g. active versus passive) and investment method (e.g. direct versus synthetic exposures).

The Committee finds that the ultimate responsibility for the exercise of stewardship activities remains with the investor, regardless of whether certain activities are outsourced to e.g. external investment managers or proxy advisors.

Institutional investors should in their engagement policy disclose any use of service providers (voting advisory services) and, if so, how the service provider is used.

To the extent that activities are outsourced, it should be explained, which steps are taken to ensure that the outsourced activities are carried out in accordance with the adopted engagement policy.

Investors may have one engagement policy covering both investments in publicly listed companies in and outside Denmark, but they should clarify that the policy (also) applies to shares publicly listed in Denmark. The engagement policy may be combined with the investor's other policies, guidelines or the like regarding responsible investments, provided it is clear that it includes an engagement policy on stewardship.

Principle 2: Monitoring and dialogue

IT IS RECOMMENDED that institutional investors monitor and engage in a dialogue with the companies in which they invest, taking due account of the investment strategy and the principle of proportionality.

COMMENTS: Regular monitoring and dialogue are important elements of stewardship. The scope and the exercise of stewardship activities should be considered in light of the principle of proportionality, which takes into account portfolio allocation, number of shares held in the relevant company concerned and an assessment of the need to seek influence on company operations and/or strategy on the basis of corporate governance. The principle of proportionality must also be considered in light of the particular investment strategy (e.g. active versus passive) and investment method (e.g. direct versus synthetic exposures). In this context, it should be emphasised that a passive/index-based investment strategy does not exempt investors from exercising stewardship activities.

Relevant topics for investors' dialogue with companies may include strategy, performance, risk, capital structure, corporate governance, corporate culture, management remuneration and corporate social responsibility, cf. Section 99 a-b of the Financial Statements Act.

Institutional investors should consider all material information disclosed by the company that is relevant to investors, e.g. the annual report, quarterly and half-yearly reports, periodic notices, investor presentations and the company's corporate governance statement, cf. Section 107 b of the Financial Statements Act.

It is assumed that companies ensure that information potentially affecting investors' ability to trade their shares will not be conveyed to investors without prior agreement. In certain situations, institutional investors may be willing to be given insider status. An institutional investor, who is willing to be given insider status in certain situations, should indicate the willingness to do so in the engagement policy, cf. Principle 1, and further explain how the company should act accordingly.

The exchange of inside information and other forms of dialogue between investors and companies must be carried out in accordance with applicable law relating to the disclosure of inside information and equal treatment of investors.

Principle 3: Escalation

IT IS RECOMMENDED that institutional investors as part of the engagement policy determine how they may escalate their stewardship activities beyond regular monitoring and dialogue.

COMMENTS: Instances when institutional investors may consider escalating their stewardship activities include, e.g. when the investor has concerns about the company's strategy, performance, risk, capital structure, corporate governance, corporate culture, management remuneration, or corporate social responsibility.

The initial dialogue may take place on a confidential basis. However, to the extent that a company does not respond constructively to the dialogue, the institutional investor should consider whether to escalate the relationship by e.g.:

- additional meetings specifically to discuss concerns;
- meetings with the chairman of the board;
- escalating stewardship activities in collaboration with other investors;
- presenting statements/views at general meetings;
- submitting resolutions at general meetings;
- making public statements, e.g. in advance of general meetings;
- requesting a general meeting to be convened, and, in some cases, proposing to change board membership or a completely new board; or
- selling the shares.

Finally, the investor may choose to exclude the company and possibly add it to the investor's exclusion list, if the sale of the shares is due to systematic lack of compliance with one or more of the investor's policies, or parts thereof, and the investor does not feel that continued dialogue would be productive. Any exclusion list should be publicly available, clearly indicating the date of the most recent update.

Principle 4: Collaboration with other investors

IT IS RECOMMENDED that institutional investors as part of the engagement policy should describe how they will act collectively with other investors in order to achieve greater effect and impact.

COMMENTS: It can be effective for institutional investors to collaborate with other investors, e.g. in connection with escalated stewardship activities.

Investors must be careful not to act in concert according to the provisions on mandatory takeover bids, if the collaboration with other investors is carried out in connection with the acquisition of shares in the company concerned, as, in certain cases, this may lead to the investors acting in concert being required to make a mandatory takeover bid. In November 2013, ESMA published a "White List" of activities, which investors are

able to carry out in collaboration with other investors without acting in concert pursuant to the provisions on mandatory takeover bids. For example, the collaboration between investors will not automatically lead to the conclusion that investors are acting in concert in cases, where investors jointly discuss possible issues that need to be raised with the company's board of directors, or jointly contact the company's board of directors in respect of the company's policies, practices or specific actions, which the company could consider. Collaboration with respect to replacing members of the board of directors is not covered by the "White List".

It is only relevant to consider ESMA's "White List" if the collaboration with other investors is carried out in connection with acquisition of shares or other kinds of stake building in the company in question.

Principle 5: Voting policy

IT IS RECOMMENDED that institutional investors as part of their engagement policy adopt a voting policy and are willing to publicly disclose whether and how they have voted.

COMMENTS: Institutional investors with voting rights ought (either themselves or through a service provider) to vote at all general meetings and be willing to disclose whether and how they have voted. This is not a requirement of systematic disclosure, e.g. through a database. Investors should reasonably be expected to disclose whether and how they have voted, e.g. in connection with a specific enquiry.

The starting point for many investors is typically to support the board of directors. However, this ought not to be investors' default position. If the investor is unable to achieve a satisfactory outcome through dialogue, the investor should consider its options for voting at a general meeting. In cases where the investor intends to abstain from voting or to vote against the recommendations of the board of directors, the investor should consider informing the board of directors in advance of its intentions and its reasons for doing so.

Institutional investors' policy for stock lending and recalling lent stock in relation to voting at general meetings should also be included in the voting policy.

Principle 6: Conflicts of interest

IT IS RECOMMENDED that the engagement policy contains a description of how conflicts of interest in relation to stewardship are identified and managed.

COMMENTS: To the extent not already regulated by applicable law, including sector specific requirements, institutional investors should have procedures for the identification and management of potential conflicts of interest in order to safeguard the interests of the customers/clients/beneficiaries of the institutional investor.

Conflicts of interest may arise in connection with exercising stewardship activities in respect of businesses, which have customer/client status, or where the business in question is directly or indirectly represented in the institutional investor's own management. Similarly, conflicts of interest may arise when exercising stewardship activities within a group of companies or in relation to competitors.

To the extent a description of how the investor identifies and manages conflicts of interest in relation to stewardship is already publicly available elsewhere, the engagement policy may simply make reference thereto.

Principle 7: Reporting

IT IS RECOMMENDED that institutional investors at least annually report on their stewardship activities, including voting activity.

COMMENTS: The report should give a clear impression of how the investor's engagement policy was implemented over the course of the year.

Confidentiality and transparency are important stewardship principles, which may, however, be conflicting at times. In certain situations, confidentiality between an investor and a company may well be crucial to achieving a positive outcome.

In their stewardship reporting, institutional investors should seek to establish transparency using both qualitative and quantitative information but without disclosing confidential information or information that can impede the exercise of stewardship activities or render it impossible. Investors can choose an appropriate summary reporting method and publish the report on the investor's website or in the investor's annual report.

The stewardship report should be based on the investor's engagement policy and mention any deviations from it. The report should disclose any use of service providers (voting advisory services) and, if so, indicate the extent of their services, identify the supplier and explain the degree to which the advisor's recommendations have been followed either partially or in full, when voting and/or when engaging in dialogue. Further, the report should disclose any deviations from the voting policy.

If the investor discloses stewardship activities, e.g. as part of the investors reporting in accordance with international guidelines or standards, reference can be made to that report.

