

**DEPARTURE FROM THE RECOMMENDATIONS OF THE FINNISH CORPORATE GOVERNANCE CODE****Introduction**

The Finnish Corporate Governance Code (2010) has been prepared in accordance with the so-called comply or explain principle. This means that the company shall comply with all recommendations of the Code. A company may depart from an individual recommendation, however, but in this case, it must disclose such a departure and provide an explanation for doing so. The company complies with the Code even if it departs from an individual recommendation, provided that the company discloses and explains the departure. A company must disclose that it complies with the Code, and provide information on any departures as well as their explanations on its website and in its annual Corporate Governance Statement (see recommendation 54).

The comply or explain principle gives the company more flexibility in the application of the Code. The Code states that a company may depart from an individual recommendation of the Code due to, e.g. the ownership or company structure or the special characteristics of its area of business. A clear and extensive explanation will consolidate the trust in the decision made by the company and make it easier for the shareholders and investors to evaluate the departure.

The comply or explain principle is applied in almost all Corporate Governance Codes of the EU member states, and the European Commission has also acknowledged the comply or explain approach. The Commission has expressed its concern about the insufficient quality of the explanations provided by companies, however. It has paid special attention to the general nature of the explanations provided and the scarceness of the information that they contain. The Commission has felt that a good explanation accounts for the reason for the departure in a transparent and comprehensive manner and explains the alternative solution adopted by the company.

The Securities Market Association feels that it is of utmost importance that the explanations provided by companies are of a high quality standard. In this manner, it is possible to secure that the principle remains an essential part of the Corporate Governance system and reduce the need for further regulation.

It is compulsory to explain departure from the Code



Listed companies must account for any departure from the Code and provide an explanation for it. This obligation is based on law and it has been explained in the Code. In addition, the entire Code is part of the rules of Helsinki Exchange and therefore binding on listed companies.

Sufficient explanation

In order to meet quality requirements, an explanation should be clear and comprehensive. In practice, this means that the company shall

- tell what recommendation it departs from (number and heading of the recommendation),
- explain in what manner it departs from said recommendation,
- provide an explanation for the departure, and
- present the solution that the company has adopted instead.

As for many of the recommendations, it may be well founded for the company to describe the procedure through which the company has arrived at the decision to depart from the Code. If the General Meeting has made a decision related to departure from the Code, it is often appropriate to explain the measures taken by the Board of Directors or a Board Committed in this matter.

Manner of presenting departure

A company must state that it complies with the Code and provide information on any departures as well as their explanations in the manner that the company finds appropriate

- on its website (recommendation 55) and
- in its annual Corporate Governance Statement (recommendation 54).

In addition, it is appropriate that the company tells in the introductory paragraph of its Corporate Governance Statement which Code it applies, when the Code has become effective and where it is available. Here the company must also state if it adheres to the entire Code or if it makes some departures from it. In the latter case, the company should list the recommendations from which it departs. Investors also benefit from knowing the recommendation based on which the Corporate Governance Statement has been prepared.



The summary information included in the introductory paragraph shall also be presented on the company website.

Departure in practice

Up to now, most departures have been related to recommendation 9 (gender representation of the Board), recommendation 10 (term of the directors), and recommendations 14 and 26 (independence of Board and Committee members).

The explanations provided by companies that depart from recommendation 9 have in several cases been too general and therefore insufficient. The Securities Market Association encourages companies to follow the recommendation on the gender representation of the Board of Directors (recommendation 9) and states that if a company departs from the recommendation, the informative quality of explanation must be sufficient. This means, for instance, that the company describes the preparatory measures that it has taken for achieving a gender representation on the Board. It is not sufficient, for instance, to merely state that the company has not been able to find a suitable female director or that the Annual General Meeting has decided on the composition of the Board of Directors.